Decision Enacting the Law on the Cantonal Prosecutor's Office of the Western Herzegovina Canton

In the exercise of the powers vested in the High Representative by Article V of Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) to the General Framework Agreement for Peace in Bosnia and Herzegovina, according to which the High Representative is the final authority in theatre regarding interpretation of the said Agreement on the Civilian Implementation of the Peace Settlement; and considering in particular Article II.1. (d) of the last said Agreement, according to the terms of which the High Representative shall "Facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation";

Recalling paragraph XI.2 of the Conclusions of the Peace Implementation Conference held in Bonn on 9 and 10 December 1997, in which the Peace Implementation Council welcomed the High Representative's intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement in order to facilitate the resolution of any difficulties as aforesaid "by making binding decisions, as he judges necessary" on certain issues including (under sub-paragraph (c) thereof) "measures to ensure implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities";

Recalling further paragraph 12.1 of the Declaration of the Peace Implementation Council which met in Madrid on 15 and 16 December 1998, which made clear that the said Council

considered that the establishment of the rule of law, in which all citizens had confidence, was a prerequisite for a lasting peace, and for a self-sustaining economy capable of attracting and retaining international and domestic investors;

Bearing in mind the reinvigorated strategy for judicial reform to strengthen the Rule of Law efforts in Bosnia and Herzegovina in 2002/03 which was endorsed by the Steering Board of the Peace Implementation Council on 28 February 2002 and noting that the aforementioned strategy was devised in response to calls by the authorities in Bosnia and Herzegovina for firmer International Community actions to tackle economic crime, corruption and problems inherent in the judicial system;

Further bearing in mind the communiqué of the Steering Board of the Peace Implementation Council issued at Sarajevo on 7 May 2002 wherein it was stated that the establishment of a single High Judicial and Prosecutorial Council would "lay the foundations for further reform of the judiciary, such as the re-structuring of the court and prosecutorial systems";

Considering that the communiqué of the Steering Board of the Peace Implementation Council issued at Sarajevo on 31 July 2002 called upon the authorities in Bosnia and Herzegovina to assist in the timely establishment of the High Judicial and Prosecutorial Council and in the re-structuring of the Court and Prosecutorial systems;

Conscious of the necessity to pursue the re-structuring and selection process following the establishment of the High Judicial and Prosecutorial Council for the Federation of Bosnia and Herzegovina and that re-structuring is a fundamental step towards reforming and strengthening the Prosecutorial system;

Observing that criminal activities continue to infringe on the economic, fiscal, commercial and other social rights and

interests of the citizens of Bosnia and Herzegovina and that the re-structuring of the Prosecutorial System in the Federation of Bosnia and Herzegovina will advance the robust fight against crime in Bosnia and Herzegovina;

Convinced of the vital importance to Bosnia and Herzegovina of ensuring that the rule of law is strengthened and followed in order to create the ground for economic growth and foreign investment;

Mindful therefore both of the urgency and of the need to re-structure the Prosecutorial System of the Federation of Bosnia and Herzegovina and for all the reasons as aforesaid,

I hereby issue the following

DECISION

Enacting the Law on the Cantonal Prosecutor's Office of the Western Herzegovina Canton, which is hereby attached as an integral part of this Decision.

The said Law shall enter into force as provided for in Article 40 thereof on an interim basis, until such time as the Cantonal Assembly adopts this Law in due form, without amendment and with no conditions attached.

This Decision shall come into effect forthwith and shall be published without delay in the Official Gazette of the Western Herzegovina Canton.

LAW ON THE CANTONAL PROSECUTOR'S OFFICE OF THE WESTERN HERZEGOVINA CANTON

I. GENERAL PROVISIONS

Article 1

The Cantonal Prosecutor's Office (hereinafter: the Prosecutor's Office) is an autonomous state body which, in the framework of the rights of the Western Herzegovina Canton (hereinafter: the Canton), shall undertake, as provided by Law, certain measures concerning the investigation and prosecution of persons that may have committed criminal offences and economic violations and conducts other activities as defined by Federation and Cantonal Law.

Article 2

The Prosecutor's Office shall perform its function in conformity with the Constitution of Bosnia and Herzegovina, the Constitution of the Federation of Bosnia and Herzegovina and of the Canton and on the basis of the laws of Bosnia and Herzegovina, the Federation, and the Canton.

Article 3

Within its competence, the Prosecutor's Office shall protect the exercise of human rights and civil freedoms guaranteed by the Constitutions of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Canton and the rights and interests of legal entities as defined by law, and shall ensure constitutionality and legality.

Article 4

The Prosecutor's Office shall be established and abolished by Law.

Article 5

(1) The Function of the Prosecutor's Office is carried out by the Chief Cantonal Prosecutor (hereinafter: Chief Prosecutor) and his or her Deputy Chief Cantonal Prosecutors (hereinafter: Deputy Chief Prosecutors) and Cantonal Prosecutors (hereinafter: Prosecutors).

(2) The Chief Prosecutor, Deputy Chief Prosecutors, and Prosecutors shall be selected and appointed by the High Judicial and Prosecutorial Council of the Federation of Bosnia and Herzegovina (hereinafter: the High Judicial and Prosecutorial Council).

(3) The Chief Prosecutor shall have not more than two Deputy Chiefs. The number of Deputy Chief Prosecutors and Prosecutors shall be determined by the High Judicial and Prosecutorial Council.

(4) If the Chief Prosecutor has two Deputy Chiefs, the High Judicial and Prosecutorial Council shall, upon proposal of the Chief Prosecutor, appoint one of the two Deputy Chiefs as the Chief Prosecutor's First Deputy.

Article 6

(1) The Prosecutor's Office shall be represented and chaired by the Chief Prosecutor.

(2) Deputy Chief Prosecutors and Prosecutors shall perform the tasks entrusted to them by the Chief Prosecutor and shall be accountable to the Chief Prosecutor regarding the execution of those tasks.

(3) Deputy Chief Prosecutors and Prosecutors may perform any action in the proceedings before a court or governmental body, which the Chief Prosecutor is legally authorized to perform.

Article 7

(1) The mandate of the Chief Prosecutor and Deputy Chief Prosecutor shall be six years and they may be re-appointed. This mandate shall be subject to resignation, mandatory retirement age, or removal from office for cause. Upon expiration of the mandate, the Chief Prosecutor and Deputy Chief Prosecutor shall continue to perform their duties as Prosecutors.

(2) The function of the Prosecutors shall be permanent. This mandate shall be subject to resignation, mandatory retirement age, or removal from office for cause.

Article 8

The Cantonal Collegium of Prosecutors shall consist of the Chief Prosecutor, the Deputy Chief Prosecutor, and the Prosecutors.

Article 9

(1) The performance of the Prosecutor's Office shall be supervised by the Chief Federation Prosecutor in order to guarantee the legality and efficiency of proceedings. Upon the request of the Chief Federation Prosecutor, the Chief Prosecutor shall provide case reports with details of measures undertaken by the office.

(2) The Chief Prosecutor shall regularly, and at least once every six months, submit to the Federation Prosecutor's Office reports on the crime situation and the resolution of cases.

Article 10

The Prosecutor's Office has the right and duty, within the framework of performing its duties, upon their own initiative or upon demand, to inform the Cantonal Assembly, the Government of the Canton, or the President or Vice-President of the Canton in relation to the implementation of criminal law in the Canton and the performance of the office.

Article 11

(1) The Prosecutor's Office may inform the public and appropriate authorities and organizations, through the media or other means, about the crime situation in the Canton.

(2) Within the scope of the work as defined by Law and in accordance with the interests of the proceedings, the

Prosecutor's Office may inform the public about individual cases prosecuted if the information concerned is of public interest. On the occasion of informing the public, the Prosecutor's Office shall be guided by the interests of justice, bearing in mind the standards referred to in the Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Article 12

(1) The Prosecutor's Office shall monitor and analyze problems in the prosecutorial practice of the Canton, which are important for the implementation of Criminal Law.

(2) Regarding the issues within the responsibilities of the Federation Prosecutor's Office and the Prosecutor's Office, which are important for the implementation of Federation Criminal Law, the Chief Federation Prosecutor and the Chief Prosecutor, may take joint stances at a session convened by the Chief Federation Prosecutor upon his/her initiative or upon the proposal of the Chief Prosecutor.

Article 13

(1) In the Prosecutor's Office the Bosnian, Croat and Serb languages shall be equally used.

(2) Additionally, the Prosecutor's Office may use other languages as a means of communication.

(3) In the Prosecutor's Office the Latin and Cyrillic alphabets shall be equally used.

Article 14

(1) Cantonal regulations on the employment of officials in administrative bodies shall accordingly apply to officials of the Prosecutor's Office, unless otherwise provided by this Law.

(2) Cantonal regulations on government administration related to the management and responsibilities of a senior official and his/her deputy shall accordingly apply to the Chief Prosecutor, the Deputy Chief Prosecutor(s), and the Prosecutors, unless otherwise provided by this Law.

Article 15

(1) The Prosecutor's Office shall have its seal in accordance with the Cantonal Law on the Seal.

(2) The title of the Prosecutor's Office and the Coat of Arms of the Federation of Bosnia and Herzegovina and the Canton must be displayed on the Prosecutor's Office Building.

II GENERAL RESPONSIBILITIES AND POWERS

Article 16

The Prosecutor's Office shall investigate and prosecute persons that may have committed criminal offences and economic violations and conducts other activities as defined by Law.

Article 17

(1) If the Chief Prosecutor determines that due to a violation of Cantonal Law or an International Treaty there are well-founded reasons for him/her to pursue a legal remedy against an executive Court decision or a decision issued in administrative or other proceedings, he/she may demand that the enforcement of such a decision be postponed or cancelled, if its enforcement may cause irreversible detrimental consequences.

(2) If the Chief Prosecutor files a request referred to in Paragraph 1 of this Article, the enforcement of the decision shall be postponed or cancelled. The postponement or cancellation of the decision on enforcement shall be effective

until the decision has been made regarding the legal remedy filed by the Chief Prosecutor.

(3) The decision on postponement or cancellation of the enforcement shall cease to be effective if the Chief Prosecutor fails to pursue the legal remedy within 30 days from the day he/she received the decision.

Article 18

(1) Within the scope of his/her authority as defined by Article 9 of the Law on the Federation Prosecutor's Office, the Chief Federation Prosecutor may issue general or individual mandatory instructions to the Prosecutor's Office and carry out criminal investigation and prosecution in Cantonal Courts and Municipal Courts, whenever the Chief Federation Prosecutor has reason to believe that the Prosecutor's Office has failed to implement the criminal law of the Federation or that the prosecution of criminal acts cannot be carried out efficiently under the jurisdiction of the Prosecutor's Office.

(2) The Chief Federation Prosecutor may entrust some cases or actions falling within the competencies of the Prosecutor's Office to another Prosecutor's Office. Regardless of the competencies of a Prosecutor's Office, the Chief Federation Prosecutor may also entrust individual cases to individual Chief Prosecutors, Deputy Chief Prosecutor(s), Federation Prosecutor(s) or Prosecutor (s) of a Prosecutor's Office.

Article 19

(1) The Chief Prosecutor, or a Deputy Chief Prosecutor, or a Prosecutor may be temporarily assigned to another Cantonal Prosecutor's Office or to the Federation Prosecutor's Office without his/her consent for a period of not longer than six months within a five-year period.

(2) The Chief Federation Prosecutor shall pass a decision on

temporary assignment and inform the High Judicial and Prosecutorial Council accordingly.

(3) The Chief Prosecutor, Deputy Chief Prosecutor, or Prosecutor who has been assigned to another Cantonal Prosecutor's Office or the Federation Prosecutor's Office shall be entitled to a salary, allowances, and other income as specified by Law.

Article 20

The Chief Prosecutor shall have the right and duty to give mandatory instructions to Deputy Chief Prosecutors and Prosecutors regarding his/her work, and additionally, may do the following:

a. Take certain actions which are within the competence of Deputy Chief Prosecutor(s) or Prosecutor(s);
b. Authorize different Deputy Chief Prosecutor(s) or Prosecutor(s) to process individual cases that are within the competence of other Deputy Chief Prosecutor(s) or Prosecutor(s); and
c. Authorize Deputy Chief Prosecutor(s)or Prosecutor(s) to perform individual activities that are within the competence of other Deputy Chief Prosecutor(s) or Prosecutor(s).

Article 21

(1) As applied in this Law, mandatory work instructions shall be understood to mean instructions of a general character regarding the work and activities of Deputy Chief Prosecutors and Prosecutors, as well as instructions for actions in particular cases.

(2) The Chief Prosecutor shall issue mandatory work instructions of a general character, in accordance with the Rulebook.

III. ORGANIZATION AND WORK

Article 22

(1) The Prosecutor's Office shall be established with jurisdiction for the entire territory of the Canton.

(2) Upon the proposal of the Chief Prosecutor and having heard the Chief Federation Prosecutor and the Government of the Canton, the High Judicial and Prosecutorial Council shall decide on the establishment or abolition of sub-offices of the Prosecutor's Office in Municipalities of the Canton. Sub-offices may be opened only if there is an urgent and indispensable need for such a sub-office.

(3) Cantonal Prosecutor's Offices and Sub-Offices are a single organizational body. Sub-offices are established in order to guarantee efficiency of proceedings concerned.

Article 23

The Prosecutor's Office, in the fulfillment of its function, shall act before the Cantonal and Municipal Courts of the Canton.

Article 24

The seat of the Prosecutor's Office shall be in Siroki Brijeg.

Article 25

When the Chief Prosecutor is absent or incapacitated, he/she shall be replaced by the (First) Deputy Chief Prosecutor, and then the Deputy Chief Prosecutor, if one has been appointed. In the case that the Chief Prosecutor and his/her Deputy Chief(s) are absent or incapacitated, the Prosecutor, who has the most official experience, shall act as Temporary Chief Prosecutor. If the Chief Prosecutor and his/her Deputy Chiefs

are absent or incapacitated for longer than one month, the Chief Federation Prosecutor shall designate an Acting Chief Prosecutor, but not for longer than the period of six months. When this period has expired, the Chief Federation Prosecutor shall inform the High Judicial and Prosecutorial Council about the vacancy in the Prosecutor's Office, who in turn may announce the vacancy of the position.

Article 26

The Chief Prosecutor, the Deputy Chief Prosecutors, and the Prosecutors cannot be held responsible in terms of criminal or civil liability for any offense they might have committed in the course of discharging their official duties.

Article 27

(1) The Canton shall be responsible for damage caused to a citizen or a legal entity by the Chief Prosecutor, Deputy Chief Prosecutors, or Prosecutors in the course of discharging his/her duties by incorrect or unlawful work.

(2) The Canton may demand that the Chief Prosecutor, the Deputy Chief Prosecutors, or the Prosecutors compensate the damage amount paid only if the damage was caused deliberately or out of gross negligence.

(3) The request to pay out damage compensation as referred to in Paragraph 2 of this Article shall be subject to the statute of limitations after six months from the day of the original damage compensation payment.

Article 28

(1) At the end of each budgetary year, the Chief Prosecutor shall make a statistical overview of its activities which refers to:

a) pending and completed cases (description of the criminal act, date of its commission, name, surname and date

of birth of the alleged perpetrator, date of filing),

b) number of incoming cases during the current year (see item a),

c) date and kind of final or temporary decision on pending cases in the office,

d) date and kind of final or temporary decision on cases under indictment in a court or after a court verdict.

(2) At the end of each budgetary year, on the basis of the statistical overview, the Chief Prosecutor shall inform the Cantonal Assembly. The Chief Prosecutor shall elaborate on the development of criminality in the Canton and crime trends. The Chief Prosecutor may, in his conclusions submit proposals to reform the law. The aforementioned conclusions shall be published in the media and in other appropriate fora.

(3) The Chief Prosecutor shall provide the Chief Federation Prosecutor with necessary data for the purposes mentioned in Article 28, Paragraph 2 of the Law on the Federation Prosecutor's Office.

IV. INTERNAL ORGANIZATION OF THE PROSECUTOR'S OFFICE

Article 29

(1) There shall be Rulebook of the Prosecutor's Office, which shall regulate, *inter alia*, the organization of the Prosecutor's Office, the number of administrative-technical staff, and the conditions for performance of such duties.

(2) The Rulebook of the Prosecutor's Office shall be issued by the Chief Prosecutor, upon approval of the Collegium of Prosecutors and the High Judicial and Prosecutorial Council.

Article 30

(1) The Chief Prosecutor directs the Office administration. He/she shall issue general instructions to the prosecutorial and administrative branches of the Office in accordance with the Rulebook.

(2) At the beginning of each year, the Chief Prosecutor shall make a general plan for the distribution of cases and for administrative matters. Regarding case distribution, the general plan must define objective criteria according to which cases shall be distributed. The general plan may be amended during the year if required due to a change in the number of incoming cases or related administrative matters or other unforeseen circumstances.

Article 31

(1) The Prosecutor's Office shall have a Registrar, appointed by the Collegium of Prosecutors. The Prosecutor's Office shall have other staff in charge of expert, administrative and technical duties.

(2) The Registrar shall assist the Chief Prosecutor in the exercise of the administrative duties and in making the administrative part of the plan under Article 30, Paragraph 2 of this Law.

(3) An individual who is a graduate of a Law Faculty and has at least two years of relevant experience in law shall perform the duties of the Registrar.

(4) The Registrar shall assist the Chief Prosecutor in the preparation and execution of the budget of the Prosecutor's Office.

Article 32

(1) The Prosecutor's Office will keep a register of cases. When a case is received by the Office, it will be registered

specifying *inter alia* the following data, if known:

– name and surname of the person against whom a criminal charge has been brought,

– nationality of the charged person,

– address of the charged person,

– date when the criminal act was committed,

– legal characterization of the criminal act,

– referring regulations of the Criminal Code,

– file number of the Office,

– file number of the Criminal Law Enforcement Agency,

– date of filing in the Office.

(2) The Chief Prosecutor shall regulate the details of the administration in the Rulebook, drafted in co-operation with the Registrar, in so far as these have not already been arranged in the general instructions and the plan of distribution.

Article 33

(1) A citizen of Bosnia and Herzegovina who is a graduate of a Law Faculty and who meets the general eligibility requirements for employment in governmental bodies may be accepted for work as a trainee.

(2) Trainees shall be employed in the Prosecutor’s Office and shall be gradually assigned to all types of tasks in order for them to acquire practical experience in all fields of work in the Prosecutor’s Office.

(3) Trainees should be employed for a definite period of time not to exceed two years.

(4) Trainees shall be sent for practical work to municipal and cantonal courts for part of their internship.

(5) The duration of trainees' practical work, the requirements for acquiring the right to take the bar exam, and the program and manner of taking the bar exam shall be regulated by a separate regulation.

Article 34

The provisions of separate regulations regulating positions, rights, and duties of the employees of Cantonal bodies shall apply to the employees of the Prosecutor's Office, unless otherwise provided by this or other Law.

V. FUNDING OF THE PROSECUTOR'S OFFICE

Article 35

(1) The Prosecutor's Office shall have its own budget, which shall be included in the budget of the Canton. Before the commencement of the budget year, the Chief Prosecutor shall present a budget proposal to High Judicial and Prosecutorial Council. The Chief Prosecutor has the right to attend and to defend the High Judicial and Prosecutorial proposal at the sessions of the Cantonal Assembly and its relevant committees whenever budgetary matters affecting the Prosecutor's Office are discussed or decided.

(2) The Chief Prosecutor, assisted by the Registrar, shall be responsible for preparing and implementing the budget.

(3) At the end of each budgetary year, the Chief Prosecutor shall inform the Cantonal Assembly on the execution of the budget of the Prosecutor's Office.

VI. TRANSITIONAL AND FINAL PROVISIONS

Article 36

(1) The Prosecutor's Office according to this law shall be established on a date as determined by the High Judicial and Prosecutorial Council. The High Judicial and Prosecutorial Council shall publish this decision in the Official Gazette of the Western Herzegovina Canton.

(2) On the date referred to in Paragraph 1 of this Article, all laws and regulations regarding Prosecutorial positions at Municipal level shall read as Prosecutorial positions at Cantonal level. Any provisions of the laws of the Federation or its Cantons that are inconsistent with this Law are repealed.

(3) On the date referred to in Paragraph 1 of this Article, the existing Law on the Prosecutor's Office of the Western Herzegovina Canton (Official Gazette of the Western Herzegovina Canton, no. 5/96) shall cease to be effective.

Article 37

(1) Until regulations on internal operation of the Prosecutor's Office are enacted in accordance with this Law, existing regulations on internal operation of the Prosecutor's Office are to be applied, unless they are inconsistent with this Law.

Article 38

The Chief Prosecutor, the Deputy Chief Prosecutors, and the Prosecutors are entitled to a salary and other remuneration as defined by Law.

Article 39

(1) On the date when the new Prosecutors Office is established pursuant to Article 36 Paragraph 1, the existing

Cantonal Prosecutor's Office and Municipal Prosecutor's Offices of the Western Herzegovina Canton shall transfer property, cases from their jurisdiction and archives to the newly established Prosecutor's Office.

(2) The transfer of property, cases and archives referred to in Paragraph 1 of this Article, shall be carried out by the existing Cantonal and Municipal Prosecutors, who shall make an official record of the transfer.

(3) A copy of the official records shall be delivered to the Cantonal Ministry of Justice and to the newly established Prosecutor's Office.

Article 40

This Law on the Prosecutor's Office of the Canton shall enter into force eight days after the date of its publication in the "Official Gazette of the Western Herzegovina Canton ."

Sarajevo, 21 August 2002

Paddy Ashdown
High Representative