Decision Enacting the Law on Amendments to the Law on Court of Bosnia and Herzegovina

In the exerciseof 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";

Consideringparagraph 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;

Considering furtherparagraph 3 of Annex II (Rule of Law and Human Rights) to the last said Declaration, according to which the establishment of judicial institutions at the State level, which meet an established constitutional need to deal with criminal offences perpetrated by public officials of Bosnia and Herzegovina in the course of their duties, and with administrative and electoral matters, is a precondition for the establishment of the rule of law in Bosnia and Herzegovina;

Recallingthe Declaration of the Peace Implementation Council, which met in Brussels on 23 and 24 May 2000, and the Annex thereto, pursuant to which the adoption of a Law on a Court of Bosnia and Herzegovina was envisaged by September 2000;

Recalling in addition that the Council of Ministers of Bosnia and Herzegovina and the Parliamentary Assembly of Bosnia and Herzegovina did not pass the said Law on Court of Bosnia and Herzegovina through the regular procedure and considering the necessity to establish the Court the High Representative issued the Decision imposing the Law on Court of Bosnia and Herzegovina on November 12, 2000;

Bearing in mindthe 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;

Notingthat the Steering Board of the Peace Implementation

Council in Sarajevo on 7 May 2002 called upon the local authorities to ensure the rapid establishment of the Court of Bosnia and Herzegovina reminding the Bosnia and Herzegovina authorities that the Appellate Division of the Court needs to be operational in order to adjudicate election complaints and urging the authorities to immediately find a sustainable solution to the problem of the location of the Court;

Noting further that the communiqué of the Steering Board of the Peace Implementation Council issued at Sarajevo on 31 July 2002 stated that the Board welcomes the creation of the Special Chambers and endorses the proposal of the High Representative to include national and international Judges and Prosecutors in a Special Panel/Department for Organized Crime, Economic Crime and Corruption in the Court of Bosnia and Herzegovina and the Prosecutor's Office of Bosnia and Herzegovina;

Bearing in mindthat 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 establishment of a Special Panel for Organized Crime, Economic Crime and Corruption within the aforesaid Court of Bosnia and Herzegovina will advance the robust fight against crime in Bosnia and Herzegovina;

Convinced ofthe 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 thereforeboth of the urgency and of the need to establish the Special Panel for Organized Crime, Economic Crime and Corruption in the Court of Bosnia and Herzegovina and for all the reasons as aforesaid,

I hereby issue the following

DECISION

Enacting the Law on Amendments to the Law on Court of Bosnia and Herzegovina, which is hereby attached as an integral part of this Decision.

The said Law shall enter into force as a law of Bosnia and Herzegovina as provided for in Article 11 thereof on an interim basis, until such time as the Parliamentary Assembly of Bosnia and Herzegovina adopts this Law in due form, without amendment and with no conditions attached.

This Decision shall come into force forthwith and shall be published without delay in the Official Gazettes of Bosnia and Herzegovina, of the Federation of Bosnia and Herzegovina, of the Republika Srpska and of the District of Brcko.

LAW ON AMENDMENTS TO THE LAW ON COURT OF BOSNIA AND HERZEGOVINA

Preamble

The Law on Court of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina No. 29/00, Official Gazette of the Federation of Bosnia and Herzegovina No. 52/00, Official Gazette of the Republika Srpska No. 40/00) (hereinafter the 'Law'), as amended by Article 73 of the Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina is hereby amended as follows:

Article 1

Article 2 of the Law shall be deleted and the following new Article 2 shall be added:

'The Court shall be composed of a President and a number of other judges as further defined by this law.'

Article 2

In Article 11, paragraph 1: after the words "budget of Bosnia and Herzegovina." the following sentence shall be inserted:

‘Before the commencement of the budget year, the President of the Court shall present a budget proposal to High Judicial and Prosecutorial Council of Bosnia and Herzegovina. The President of the Court has the right to attend and to defend the High Judicial and Prosecutorial Council proposal at the sessions of the Parliamentary Assembly and its relevant committees whenever budgetary matters affecting the Court are discussed or decided.’

In Article 11, after paragraph 2: the following new paragraphs 3 and 4 shall be added:

‘3. The Court Budget shall include a separate item specifying the budget requirements for the work of the Special Panels for Organized Crime, Economic Crime and Corruption within the Criminal Division (hereinafter the ‘Special Panels’) and the Special Appellate Panel for Organized Crime, Economic Crime and Corruption within the Appellate Division (hereinafter the ‘Special Appellate Panel.’).

4. At the end of each budgetary year, the President of the Court shall inform the Parliament of Bosnia and Herzegovina of the execution of the budget of the Court.’

Article 3

In Article 19, paragraph 3: after the words ‘to any Division, Panel or case’, the full stop shall be deleted and the following words shall be inserted ‘except when otherwise defined by law.’

In Article 19, paragraph 5: after the words ‘appointed thereto by the President’, the full stop shall be deleted and the following words shall be inserted ‘except when otherwise defined by law.’

Article 4

In Article 21, paragraph 1 item b): after the words ‘to

different divisions and panels', the following words shall be inserted 'as agreed by the Plenum of the Court;'

In Article 21, paragraph 1 item c): after the words 'in case of disqualification of a judge', the following words shall be inserted 'as agreed by the Plenum of the Court;'

In Article 21, paragraph 1 item h): the word 'judges' shall be deleted.

Article 5

In Article 23, paragraph 1: the words 'Criminal and' and the word 'each' shall be deleted.

In Article 23, after paragraph 1 the following new paragraph 2 shall be inserted:

'The Criminal Division shall consist of at least ten judges. It shall sit in panels of three judges.'

Article 23, paragraph 2 shall become 'paragraph 3 and the words 'at least five judges' shall be deleted and the following words shall be inserted 'at least ten judges.'

Article 23, paragraph 3 shall become 'paragraph 4'and after the words 'Appellate Division' the following words shall be inserted 'except in the Special Appellate Panel.'

Article 6

In Article 24 the following new paragraphs 1 and 2 shall be inserted:

1. 'Special panels for Organized Crime, Economic Crime and Corruption shall be established in the Criminal Division.

2. A judge of the Special Panels shall not participate in the work of any other panel of the Criminal or Administrative Division.'

In Article 24 paragraphs 1.,2., and 3., shall become ‘paragraphs 3.,4.,and 5.,’ respectively.

Article 7

In Article 26, after paragraph 1: the following new paragraph 2 shall be inserted:

‘A Special Appellate Panel for Organized Crime, Economic Crime and Corruption shall be established in the Appellate Division to hear appeals against decisions of the Special Panels.’

Article 8

In Article 61, after paragraph 1: the following new paragraph 2 shall be inserted:

‘The Special Appellate Panel shall hear appeals against decisions of the Special Panels of the Criminal Divisions pursuant to the provisions of the Criminal Procedure Code of Bosnia and Herzegovina.’

In Article 61 paragraphs 2 and 3 shall become ‘paragraphs 3 and 4’ respectively.

Article 9

In Article 65, after paragraph 1: the following new paragraphs 2 and 3 shall be inserted:

2. ‘The Court shall have jurisdiction for crimes defined in the Laws of the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brcko District which occurred prior to the entry into force of the Criminal Code of Bosnia and Herzegovina when those crimes include elements of international or inter-Entity crime as defined in the Criminal Code of Bosnia and Herzegovina.’

3. “When the Criminal Division of the Court is established and the Office of the Prosecutor of Bosnia and

Herzegovina is established all courts in the Federation of Bosnia and Herzegovina, the Republika Srpska and Brcko District which have in their jurisdiction criminal cases, which fall under the jurisdiction of the Court pursuant to Article 65, paragraph 2, in which the indictment has not entered into force, shall be bound to transfer immediately the cases to the Office of the Prosecutor of Bosnia and Herzegovina. If the indictment has entered into force further proceedings will be conducted by the courts and prosecutors' offices in the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brcko District."

Article 10

Entry into force

This Law on Amendments to the Law on the Court of Bosnia and Herzegovina shall enter into force eight days after the date of its publication in the "Official Gazette of Bosnia and Herzegovina."

Article 11

Publishing of the Law

This Law on Amendments to the Law on the Court of Bosnia and Herzegovina shall be published in the "Official Gazette of Bosnia and Herzegovina", "Official Gazette of the Federation of Bosnia and Herzegovina", "Official Gazette of the Republika Srpska" and the "Official Gazette of the Brcko District of Bosnia and Herzegovina."

Sarajevo, 6 August 2002

Paddy Ashdown,
High Representative