Decision Amending the Criminal Code of the Federation of BiH by repealing Chapter XX, Criminal Offences Against Honour and Reputation

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";

Noting that since its inception, the Peace Implementation Council has consistently acknowledged that freedom of expression is an essential step in developing democratic institutions and serves as a cornerstone of democracy;

Recalling that the Peace Implementation Council in the Madrid Declaration of December 1998 noted the need for coordination in the creation of a supportive legal framework required to allow journalists to work professionally, independently and with security and supported the efforts by the High Representative and the Organisation for Security and Cooperation in Europe to protect and promote media freedom;

Bearing in mindthat consistent with the exhortations of the Peace Implementation Council and as a result of the failure of both State and Entity officials to adopt appropriate legislation to protect journalists' freedom of expression and movement, the High Representative issued the Decision on Freedom of Information and Decriminalising of Libel and Defamation (O.G. Bosnia and Herzegovina No 14/99);

Further bearing in mind that the said Decision suspended, in the Entities' criminal codes, the sanction of imprisonment for defamation, libel and slander and required both Entities to adopt the necessary legislation to create civil remedies therefor in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms and further required both Entities to repeal the relevant criminal provisions once the civil legislation was adopted;

Noting that the Peace Implementation Council in the Annex to its Declaration of May 2000 demanded that the authorities of Bosnia and Herzegovina act promptly to adopt legislation that supports the public's right to access and impart information, namely, Freedom of Access to Information and Defamation laws;

Further noting that the Federation Law on Protection Against

Defamation is in full force and effect as of the date hereof;

Considering the unacceptable legal discrepancy between the Entities with regard to the criminality of defamation and the resulting discrimination against residents of the Federation of Bosnia and Herzegovina;

Acknowledging the recent efforts of the Entities to establish equality through constitutional amendments and noting that it is unacceptable to allow residents of the Federation of Bosnia and Herzegovina to be disadvantaged in relation to the residents of Republika Srpska;

Having taken into account and considered the totality of the matters aforesaid, the High Representative hereby issues the following:

DECISION

Amending the Criminal Code of the Federation of Bosnia and Herzegovina (O.G. Federation of Bosnia and Herzegovina Nos 43/98, 2/99, 15/99 and 29/00) by repealing Chapter XX, Criminal Offences Against Honour and Reputation (Articles 213 through 220).

The law which follows and forms an integral part of this Decision shall enter into force pursuant to Article 2 thereof but on an interim basis, until such time as the Parliament of the Federation of Bosnia and Herzegovina adopts the same 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 Gazette of the Federation of Bosnia and Herzegovina.

Sarajevo, 1 November 2002

Paddy Ashdown

LAW AMENDING THE CRIMINAL CODE OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

Article 1

Chapter XX, Criminal Offences Against Honour and Reputation (Articles 213 through 220) of the Criminal Code of the Federation of Bosnia and Herzegovina is repealed.

Article 2

This Law shall enter into force on 1 November 2002 and shall be published without delay in the Official Gazette of the Federation of Bosnia and Herzegovina.