Decision amending the Law on Filling a Vacant Position of a Member of the Presidency of BiH

In the exercise of the powers vested in me by Article V of Annex 10 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 this Agreement on civilian implementation of the peace settlement; and considering in particular Article: II. 1. (d) of the said Annex, 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 Council which met in Bonn on 9 and 10 December 1997, in which the Council welcomed the High Representative's intention to use his final authority in theatre in order to facilitate the resolution of any difficulties as aforesaid "*by making binding decisions, as he judges necessary*" on issues including (under sub-paragraph (c) thereof) "*measures to ensure implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities, as well as the smooth running of the common institutions*";

Considering that:

1. Article V of Annex 4 to the General Framework Agreement for Peace in Bosnia and Herzegovina (hereinafter referred to as the Constitution) provides that: "*The Presidency of Bosnia and Herzegovina shall consist of*

three Members: one Bosniac and one Croat, each directly elected from the territory of the Federation, and one Serb directly elected from the territory of the Republika Srpska";

2. Article V: 1. (a) of the Constitution provides that "Any vacancy in the Presidency shall be filled from the relevant Entity in accordance with a law to be adopted by the Parliamentary Assembly";
3. the Preamble of Annex 4 to the General Framework Agreement for Peace in Bosnia and Herzegovina states "that democratic governmental institutions and fair procedures produce peaceful relations within a pluralist society";

Noting that:

4. One of the Members of the Bosnia and Herzegovina Presidency has sent a letter dated 24 July 2000 to the other Members of the Presidency of Bosnia and Herzegovina referring to his decision to withdraw from his position in the said Presidency after the expiration of his current function as Chair of the Presidency expires on 12 October 2000;
5. On 31 July 2000 the Parliamentary Assembly of Bosnia and Herzegovina adopted a law on filling a vacant position of the Member of the Presidency of Bosnia and Herzegovina;

Further noting that:

6. Article 4 and 5 of the adopted law provide that the nomination by the House of Representatives of the candidate for the Presidency shall be effected by the members elected from the territory of the same Entity as the Member of the Presidency whose position has become vacant. Article 6 of the same law provides that the House of Peoples shall confirm the nominee elected in the House of Representatives by a majority of members of the House of Peoples belonging to the same constituent

people as the nominee;

7. Article 6 of the adopted law further provides that if the House of Peoples rejects two such nominees, then a third nominee shall be chosen and elected by a majority of the members of the House of Peoples belonging to the same constituent people as the nominee;
8. Article 7 of the adopted law provides that if a vacancy in the Presidency occurs within 30 days of the date announced for the next election of the House of Representatives, the vacant position shall be filled as an interim measure by the Chairman or Deputy Chairman of the House of Representatives belonging to the same constituent people as the member whose position is vacant. It is further provided that a Chairman or Deputy Chairman succeeding to the Presidency in such circumstances shall serve only until the newly elected Parliamentary Assembly of Bosnia and Herzegovina is convened in special session at which time a new Member of the Presidency shall be elected;

Bearing in mind that:

a. The House of Peoples of Bosnia and Herzegovina consists of Delegates not directly elected;
b. Were the circumstances referred to under paragraph 7 hereof to occur, a Member of the Presidency could be selected by three of the five members of the House of Peoples belonging to the same constituent people as the outgoing Member, rather than by the directly elected Members of the House of Representatives, elected from the territory of the same Entity as the Member of the Presidency, whose position has become vacant;
c. By adopting the law, and in particular Article 7 thereof, on 31 July 2000, the Parliamentary Assembly has enabled Members of the Presidency still in office to have the means by which they might unfairly influence the choice of their

successors;

Concluding that:

10. In order to have proper regard for the provisions of Articles V and V: 1. (a) of the Constitution, the law which comes into force with a view to filling a vacancy in the Presidency from the relevant Entity must provide that the vacancy is filled pursuant to a vote from the eligible members of the directly elected House of Representatives from the territory of the same Entity as the Member whose office has become vacant;
11. The period of 30 days referred to under paragraph 8 hereof is a period which likewise conflicts with the obligation in the Preamble of the Constitution to provide fair procedures since it imperils the democratic process by providing the means, as herein before referred to, by which current Members of the Presidency might unfairly influence the succession;

Determining accordingly that:

12. The law on filling a vacant position of a Member of the Presidency of Bosnia and Herzegovina must provide:
    a. that if the House of Peoples rejects two consecutive nominees selected by the House of Representatives, then the third nominee selected by the House of Representatives shall fill the vacancy without further confirmation by the House of Peoples;

    and that:

    b. the period referred to in article 7 of the adopted law should, in the circumstances therein referred to be one of 120 days.

Having considered, born in mind and noted all the matters aforesaid, I hereby issue the following:

DECISION

On amending:

The Law on Filling a Vacant Position of the Member of the Presidency of Bosnia and Herzegovina

The Law on Filling a Vacant Position of the Member of the Presidency of Bosnia and Herzegovina, shall, upon publication of the same in the Official Gazette of Bosnia and Herzegovina, be hereby amended with effect from the date of such publication as follows:

Article 1

In Article 6, paragraph 2 the existing text shall be deleted and replaced by the words:

“If the House of Peoples rejects two consecutive nominees submitted by the House of Representatives pursuant to this Article, then the third nominee selected by the House of Representatives shall fill the vacancy without further confirmation by the House of Peoples.”

Article 2

In Article 7 the figure of “30 days” shall be deleted and replaced by “120 days”.

Article 3

This Decision shall be published without delay in the Official Gazette of Bosnia and Herzegovina.

Sarajevo, 7 August 2000	Wolfgang Petritsch
	High Representative

Click here for the Press Release related to this Decision