Decision Enacting the Law on Amendments to the Criminal Procedure Code of the Brcko District of Bosnia and Herzegovina

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 "[F]acilitate, 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 furtherparagraph 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 that was endorsed by the Steering Board of the Peace Implementation Council on 28 February 2002;

Recalling theUN Security Council Resolution 1503 (2003) and the statement of 23 July 2002 made by the President of the Security Council (S/PRST/2002/21), which endorsed the strategy of International Criminal Tribunal for the Former Yugoslavia ("ICTY") for completing investigations by the end of 2004, all trial activities at first instance by the end of 2008, and all of its work in 2010 (S/2002/678), by concentrating on the prosecution and trial of the most senior leaders suspected of being most responsible for crimes within the ICTY's jurisdiction and transferring cases involving those who may not bear this level of responsibility to competent national jurisdictions, as appropriate, as well as the strengthening of the capacity of such jurisdictions;

Notingthe Security Council's statement that the above-mentioned Completion Strategy shall in no way alter the obligation of countries to investigate those accused whose cases would not be tried by the ICTY and take appropriate action with respect to indictment and prosecution, while bearing in mind the primacy of the ICTY over national courts;

Noting alsothat the strengthening of national judicial systems is crucially important to the rule of law in general and to the implementation of the ICTY Completion Strategy in particular;

Noting further that, in its communiqué issued after its meeting in Sarajevo on 26 September 2003, the Steering Board of the Peace Implementation Council took note of UN Security Council Resolution 1503, which, *inter alia*, called on the International Community to support the work of the High Representative in setting up the war crimes chamber;

Having in mind that, in the communiqué issued after the meeting of the Peace Implementation Council Steering Board in Vienna on 15 March 2006, the Political Directors expressed their continuing support for the State Court to enable the authorities of Bosnia and Herzegovina to effectively prosecute domestically, war crimes indictees and those indicted for organized crime;

Noting the progress made in developing the capacity of the Special Section for War Crimes of the Court of Bosnia and Herzegovina and the Special Department for War Crimes of the Prosecutor's Office of Bosnia and Herzegovina;

Further noting that such capacity has sometimes been undermined by the non-recognition of the legal specificities associated to the transfer of cases from the ICTY;

Conscious, in particular, that certain provisions of the domestic legislation applicable to the cases transferred to Bosnia and Herzegovina from ICTY can impede the effective domestic trial of said cases;

Deploring, however, that the changes to legislation necessary to facilitate the prosecution and adjudication of the cases transferred from the ICTY have not been given the attention it requires by the authorities in Bosnia and Herzegovina;

Bearing in mind the letter of 4 April 2007, signed by the Presidents of the Court of Bosnia and Herzegovina, of the Supreme Court of the Federation of Bosnia and Herzegovina, of the Supreme Court of the Republika Srpska and of the Appellate Court of the Brcko District of Bosnia and Herzegovina, which

requests urgent action aimed at enacting certain amendments to the Criminal Procedure Code;

Being especially seized of the urgency to amend such provisions;

Having considered and borne in mind all these matters,

The High Representative hereby issues the following

DECISION

Enacting the Law on Amendments to the Criminal Procedure Code of the Brcko District of Bosnia and Herzegovina

(Official Gazette of the Brcko District of Bosnia and Herzegovina , Nos. 10/03, 48/04and 6/05)

The Law which follows and which forms an integral part of this Decision shall enter into force as provided for in Article 6 thereof on an interim basis, until such time as the Assembly of the Brcko District of Bosnia and Herzegovina adopts this Law in due form, without amendment and with no conditions attached.

This Decision shall be published on the official website of the Office of the High Representative and shall come into effect forthwith.

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

Sarajevo, 13 April 2007

Dr. Christian Schwarz-Schilling
High Representative

Law

on amendments to the criminal procedure code of The Brcko District of Bosnia and Herzegovina

Article 1

(Amendment to Article 135)

(1) In the Criminal Procedure Code of the Brcko District of Bosnia and Herzegovina (Official Gazette of the Brcko District of Bosnia and Herzegovina, Nos. 10/03, 48/04 and 6/05; hereinafter: the Code), Article 135 (*Duration of Custody in the Course of Investigation*), after Paragraph (3) a new Paragraph (4) shall be added to read:

"(4) Exceptionally and in an extraordinarily complex case concerning a criminal offense for which a long-term imprisonment is prescribed, custody may again be extended for no longer than three (3) months after the extension of the custody referred to in paragraph 3 of this Article. Such an extension may occur twice consecutively, following a substantiated motion of the Prosecutor for each extension, which needs to contain the statement of the Prosecutor about the necessary measures that have to be undertaken in order to complete the investigation (Article 225, Paragraph 3). An appeal against the decision on the custody extension shall be decided by the Appellate Court. An appeal does not stay the execution of the decision."

(2) In the current Paragraph (4) of Article 135 of the Code, which shall become Paragraph (5), the words "Paragraph 1

through 3” shall be replaced by the words “Paragraph 1 through 4”.

Article 2

(Amendment to Article 137)

(1) Paragraph (2) of Article 137 (*Custody after the Indictment Confirmation*) of the Code shall be amended to read:

“After the confirmation of an indictment and before the first instance verdict is pronounced, the custody may not last longer than:

a) one year in the case of a criminal offense for which a punishment of imprisonment for a term up to five years is prescribed;

b) one year and six months in the case of a criminal offense for which a punishment of imprisonment for a term up to ten years is prescribed;

c) two years in the case of a criminal offense for which a punishment of imprisonment for a term exceeding ten years may be imposed, but not the long-term imprisonment;

d) three years in the case of a criminal offense for which a punishment of long-term imprisonment is prescribed.

(2) After Paragraph (2) of Article 137 of the Code, a new Paragraph (3) shall be added, which shall read:

“(3) If, during the period referred to in Paragraph 2 of this Article, no first instance verdict is pronounced, the custody shall be terminated and the accused released.”

(3) In the current Paragraph (3) of Article 137 of the Code, which shall become Paragraph (4), first and third sentences, the words “six (6) months” shall be replaced by the words “nine (9) months”.

(4) Current Paragraph (4) of Article 137 of the Code shall become Paragraph (5).

Article 3

(Amendment to Article 138)

In Paragraph (3) of Article 138 (*Ordering Custody after the Verdict is pronounced*) of the Code, the words “a judgment becomes legally binding” shall be replaced by the words “committing the person to serve the sentence”, and the word “first instance” shall be replaced by the words “legally binding judgment”.

Article 4

(Amendment to Article 287)

In Article 287 (*Custody After Pronouncement of the Judgment*) of the Code the words “and until the judgment becomes legally binding” shall be deleted.

Article 5

(Application of this Law)

This Law shall apply to all cases in which the final verdict has not been rendered before the date of entry into force of this Law.

Article 6

(Entry into Force of this Law)

This Law shall enter into force on a day after its publication in the “Official Gazette of the Brcko District of Bosnia and Herzegovina”.