Decision on Appointment of an International Prosecutor to the Special Department for War Crimes in the Prosecutor's Office of BiH

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";

Considering 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;

Noting that the communiqué of the Steering Board of the Peace Implementation Council issued at Sarajevo on 26 September 2003 stated that the Board took note of the 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;

Noting further that the Steering Board of the Peace Implementation Council on 1 April 2004 tasked the High Representative to engage with the BiH authorities in discussion to decide on the legal process aiming at establishing a Domestic War Crimes Registry […] with a view to having the first war crimes processed in January 2005;

Recalling the Agreement between the High Representative for Bosnia and Herzegovina and Bosnia and Herzegovina on the Establishment of the Registry for Section I for War Crimes and Section II for Organized Crime, Economic Crime and Corruption of the Criminal and Appellate Divisions of the Court of Bosnia and Herzegovina and the Special Department for War Crimes and the Special Department for Organized Crime, Economic Crime and Corruption of the Prosecutor's Office of Bosnia and Herzegovina signed by the Presidency of Bosnia and Herzegovina and the High Representative on 1 December 2004;

Bearing in mind the relevant provisions of the Law on the Prosecutor's Office of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina ", 24/02, 3/03, 37/03, 42/03, 9/04, 35/04 and 61/04) providing for a number of international prosecutors to be appointed to the Special

Department for War Crimes;

Convinced that, although the accountability for the gross violations of human rights that took place during the conflict is of concern to all humanity, it ultimately remains the responsibility of the people of Bosnia and Herzegovina themselves and that the Registry for Section I for War Crimes and Section II for Organized Crime, Economic Crime and Corruption of the Criminal and Appellate Divisions of the Court of Bosnia and Herzegovina and the Special Department for War Crimes and the Special Department for Organized Crime, Economic Crime and Corruption of the Prosecutor's Office of Bosnia and Herzegovina will provide, with the funds available, both the necessary physical infrastructure and the legal and administrative assistance to ensure that the Court of Bosnia and Herzegovina and the Prosecutor's Office of Bosnia and Herzegovina is able to meet the standards required by the international community;

Mindful therefore both of the urgency and of the need to establish the Special Department for War Crimes in the Prosecutor's Office of Bosnia and Herzegovina and Section I for War Crimes in the Criminal and Appellate Divisions of the Court of Bosnia and Herzegovina and, to appoint the international prosecutors to the Special Department for War Crimes and for all the reasons as aforesaid,

Noting the Joint Recommendation for Appointment of an International Prosecutor of 10 May 2005 signed by the Registrar of the Registry for Section I for War Crimes and Section II for Organized Crime, Economic Crime and Corruption of the Criminal and Appellate Divisions of the Court of Bosnia and Herzegovina and the Special Department for War Crimes and the Special Department for Organized Crime, Economic Crime and Corruption of the Prosecutor's Office of Bosnia, Chief Prosecutor of Bosnia and Herzegovina and President of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina,

The High Representative hereby issues the following

DECISION

On Appointment of an International Prosecutor to the Special Department for War Crimes in the Prosecutor's Office of Bosnia and Herzegovina

1. As provided by Article 18 a paragraph 1, as amended, of the Law on the Prosecutor's Office of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina", 24/02, 3/03, 37/03, 42/03, 9/04, 35/04 and 61/04, hereinafter: the Law), the following person is hereby appointed as international prosecutor to the Special Department for War Crimes within the Prosecutor's Office of Bosnia and Herzegovina:

Peter Tinsley

2. The initial term of appointment of the appointed International Prosecutor shall be for two years, subject to reappointment pursuant to the Law. The International Prosecutor is required to reside in Bosnia in Herzegovina during the term of his appointment and cannot perform any other function that is incompatible with the prosecutorial service or that can impede his performance of the prosecutorial function on a full time basis. To the extent applicable, all other requirements for judicial service as set forth in the Law shall apply to this appointment.

3. The International Register of the Registry for Section I for War Crimes and Section II for Organized Crime, Economic Crime and Corruption of the Criminal and Appellate Divisions of the Court of Bosnia and Herzegovina and the Special Department for War Crimes and the Special Department for Organized Crime, Economic Crime and Corruption of the Prosecutor's Office of Bosnia and Herzegovina shall notify the High Representative of any occurrence, including the ones as referred to in Paragraph 2 of this Decision, that may cause

the inability of the appointed International Prosecutor to perform his mandate. In the event of resignation by or inability of the International Prosecutor to complete his mandate, the High Representative will appoint a successor to complete the above-mentioned term of office.

4. During the term of appointment, the appointee shall complete all training programs as directed by the Chief Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina, and adhere to all professional conduct standards as established by the Prosecutor's Office of Bosnia and Herzegovina.

5. The appointed International Prosecutor shall perform the duty of prosecutor in accordance with the Constitution of Bosnia and Herzegovina and laws of Bosnia and Herzegovina, take decisions upon his best knowledge, conscientiously, responsibly and impartially to uphold the rule of law, and shall protect the freedoms and rights of individuals granted by the Constitution of Bosnia and Herzegovina and the European Convention on Human Rights and Fundamental Freedoms. Before taking up his official duties, which must occur no later than 17 May 2005, the International Prosecutor shall take a solemn oath to that effect before the President of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina.

6. This Decision shall enter into force forthwith and shall be published without delay in the Official Gazette of Bosnia and Herzegovina.

Sarajevo , 11 May 2005

Paddy Ashdown
High Representative