Decision to remove Milan Tupajic from his positions as Member of the Main Board of the SDS and Member of the Republika Srpska National Assembly and from other public and party positions he currently holds

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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 the Peace Agreement throughout Bosnia and Herzegovina and its Entities which "may include actions against persons holding public office";

Noting that in paragraph X.4 of the Annex to the Declaration of the Peace Implementation Council made at Madrid on 16 December 1998 it was stated that the Council acknowledged that leaders whom the High Representative bars from official office "may also be barred from running in elections and from any other elective or appointive public office and from office within political parties until further notice";

Mindful of the fact that the peace implementation process, which continues to be pursued under the aegis of the General Framework Agreement for Peace in Bosnia and Herzegovina, is not yet complete;

Further mindful of the fact that the peace implementation process requires to be completed in order that a stable political and security environment in Bosnia and Herzegovina is established which is conducive, *inter alia*, to fundamental economic reform and to the return of refugees and displaced persons;

Recalling that under Article II, Paragraph 8 of the Constitution of Bosnia and Herzegovina, all competent authorities in Bosnia and Herzegovina are legally obliged to cooperate with and to provide unrestricted access to the International Tribunal for the Former Yugoslavia and are further legally obliged, in particular, to comply with orders issued pursuant to Article 29 of the Statute of the Tribunal;

Recalling further all relevant resolutions of the Security Council of the United Nations and in particular Resolution 1503 of 28 August 2003 and Resolution 1534 of 26 March 2004 by

which the Security Council called upon all States, especially Serbia and Montenegro, Croatia and Bosnia and Herzegovina, and on the Republika Srpska within Bosnia and Herzegovina, to intensify cooperation with and render all necessary assistance to the ICTY, particularly to bring Radovan Karadzic and Ratko Mladic, […] and all other indictees to the ICTY;

Noting that Bosnia and Herzegovina's failure to meet its international obligations towards the International Criminal Tribunal for Former Yugoslavia increasingly constitutes an obstacle to Bosnia and Herzegovina's integration into Europe and that such failure is largely attributable to failures on the part of Republika Srpska;

Further noting, by way of illustration, the Istanbul Summit Communiqué issued on 28 June 2004 by which the Heads of State and Government participating in the meeting of the North Atlantic Council expressed their concerns that Bosnia and Herzegovina, particularly obstructionist elements in the Republika Srpska entity, has failed to live up to its obligation to cooperate fully with ICTY, including the arrest and transfer to the jurisdiction of the Tribunal of war crimes indictees, a fundamental requirement for the country to join Partnership for Peace;

Recalling that the Steering Board of the Peace Implementation Council, at its meeting held in Sarajevo on 25 June 2004, noted that Republika Srpska has failed to locate or apprehend even one war-crimes indictee in the nine years since the Dayton Accord and emphasized that Republika Srpska an Entity of Bosnia and Herzegovina guaranteed under Dayton, is failing to carry out a key obligation under Dayton and international law, for which the relevant individuals and institutions must be held accountable;

Regretting that a number of persons indicted under Article 19 of the Statute of the ICTY have been able, at least prior to the date hereof, to elude just prosecution, and that such

elusion of just prosecution cannot have occurred without the assistance of other individuals and entities, whereby the implementation of the General Framework Agreement for Peace in Bosnia and Herzegovina has been obstructed;

Ever conscious of the need to balance in due proportion the public good with the rights of individuals;

For the reasons hereinafter set out the High Representative hereby issues the following

DECISION

To remove Milan Tupajic from his positions as Member of the Main Board of the SDS and Member of the Republika Srpska National Assembly and from other public and party positions he currently holds

and to bar him from holding any official, elective or appointive public office and from running in elections and from office within political parties unless or until such time as the High Representative may expressly authorise him so to do or to hold the same. Any entitlement to receive remuneration or any privileges or status arising out of his post(s) ceases forthwith.

This Decision has immediate effect and will not require any further procedural steps.

Milan Tupajic must vacate his office immediately and is barred from the date hereof from further entering the same.

This Decision shall be published without delay in the Official Gazette of Republika Srpska.

REASONS FOR REMOVAL

Bosnia and Herzegovina has singularly failed to discharge its international obligation to bring closure to arguably the most lamentable chapter of its history. It has failed especially

and egregiously in the territory of the Republika Srpska to apprehend and deliver to just prosecution a number of persons indicted under Article 19 of the Statute of the ICTY.

Said failure could not have occurred without the active assistance of individuals and entities, or indeed without the general culture of both overt and secret complicity and of silence prevalent in the one Entity of Bosnia and Herzegovina where such individuals are believed to have found sanctuary, *i.e.*, Republika Srpska.

Despite its constitutionally mandated duty to fully co-operate with ICTY – which duty was impressed upon Republika Srpska further by the Resolutions of the United Nations Security Council referenced above – indicted individuals remain at large within Republika Srpska and have been and are presently assisted in evading justice by individuals in positions of authority and by institutions of a state and political character. That this state of affairs has continued for nine years following the end of the war without a single war criminal being arrested in the territory of the Republika Srpska by the authorities of the Republika Srpska is a source of deep and abiding concern not only for the people of Bosnia and Herzegovina but for the international community as a whole.

For over a decade and throughout the war, SDS has held the reins of political power in Republika Srpska. The Entity's failure to apprehend those indicted individuals in flagrant disregard of Bosnia and Herzegovina's obligations under international law is, therefore, a damning indictment of SDS' commitment to proper governance. Given its dubious legacy as the political party founded by and initially presided over by the chief ICTY indictee at large, Radovan Karadzic, it was doubly incumbent upon SDS to effect expiation and rehabilitation by proactively pursuing and bringing to book the erstwhile architects of its odious policies which so disfigured the polity. That it has not done so is a testament,

at best, to its negligent abdication of governmental responsibility or, at worst, to its concerted will to obstruct peace implementation by clinging to vestiges (and figures) of its bankrupt past.

It now falls on the international community to redress this intolerable situation by initiating direct and sweeping action against those SDS officials and others who obstruct international law in Republika Srpska. Based on the foregoing, it is deemed necessary to remove from public office certain SDS officials who exercise significant influence on the party. Among these is Milan Tupajic.

Milan Tupajic holds the positions of Member of the Main Board of the SDS and Member of the **Republika Srpska National Assembly.** As a leading member of the SDS occupying a position of responsibility within the party and based upon solid information and belief, Milan Tupajic is, in whole or in part, culpable for the SDS' failure to purge the political landscape of conditions conducive to the sustenance of individuals indicted under Article 19, as aforesaid. Milan Tupajic's failings are inimical to stability and the rule of law. Milan Tupajic, therefore, obstructs the process of peace implementation and must be removed from office forthwith. The principles of proper governance and transparency, protection of the integrity and reputation of the institutions of Bosnia and Herzegovina, and active support for the rule of law and for the international obligations of Bosnia and Herzegovina – so essential to the peace implementation process – mandate this outcome.

Sarajevo 29 June, 2004

Paddy Ashdown

High Representative