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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**INTERNATIONAL TASK FORCE
FOR THE IMPLEMENTATION
OF THE DECISIONS IN CASE No. 5/98
OF THE CONSTITUTIONAL COURT
OF BOSNIA AND HERZEGOVINA**

GUIDANCE AND OPTIONS

Sarajevo, 6 March 2001



A. REPUBLIKA SRPSKA**First step: Constitutional amendments**

Article 1

The Republika Srpska is one of the two Entities composing Bosnia and Herzegovina.

Article 2, paragraph 2

An agreement on a change of the boundaries between Republika Srpska and the Federation of Bosnia and Herzegovina may be subject to confirmation by way of a referendum in the Republic.

Article 5

Section 2 [added]**Option A**

The Republic shall ensure that members of all constituent peoples in Bosnia and Herzegovina as well as others are fairly represented in the Government as well as in the conduct of public affairs at every level, including in the public administration, the law enforcement agencies and the judiciary.

Option B

The Republic shall promote the development of a pluralist society. In particular the Republic shall ensure that members of all constituent peoples in Bosnia and Herzegovina as well as others are fairly represented in the Government as well as in the conduct of public affairs at every level, including in the public administration, the law enforcement agencies and the judiciary.

Section 3 [added]**Option A**

Do not include

Option B

The Republic shall ensure that citizens of all the constituent peoples of Bosnia and Herzegovina along with Others, are equally treated before the law and shall in particular ensure, without discrimination, that all refugees and displaced persons have the right freely to return to their homes of origin and that a safe and secure environment shall be provided for all persons.

Article 6, paragraph 2

A citizen of the Republic may not be deprived of his citizenship.

Article 7

(1) In the Republika Srpska the official languages shall be Serbian (Ijekavski and Ekavski dialect), Bosnian and Croatian, and the official alphabets Cyrillic and Latin.

(2) Other languages may be used as a means of communication and instruction.

(3) Additional languages may be designated as official by law.

Article 28

Delete Paragraph 4.

Article 44, paragraph 2

Deleted

Article 59, paragraph 1, 2 and 3

Deleted

Article 68, item 16

Deleted

Article 75, paragraph 2 and 3 [added]

Vital interests of the Constituent Peoples of BiH and the Others in Republika Srpska shall be protected by the Constitutional Commission. The composition and functioning of the Constitutional Commission shall be regulated by law.

“Vital interest” in the sense of the previous paragraph pertains to the capacity of the Constituent Peoples of Bosnia and Herzegovina and the Others to maintain and develop their culture and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

Article 76, paragraph 2

Deleted

Article 98

Deleted

Article 138

Deleted

Second step: Recommended legislative amendments required in execution of article 75 (2) of the RS Constitution - the Constitutional Commission

Article 1

Option A

The Constitutional Commission shall ensure that any law, regulation and/or decision for the consideration of the National Assembly of Republika Srpska does not violate the vital interest of one of the constituent peoples of Bosnia and Herzegovina or of the Others and is not in contradiction with the Constitution of Republika Srpska or with the Constitution of Bosnia and Herzegovina.

Option B

The Constitutional Commission shall ensure that any law, regulation and/or decision for the consideration of the National Assembly of Republika Srpska does not violate the vital interest of any of the constituent peoples of Bosnia and Herzegovina or of the Others and is not in contradiction with the Constitution of Republika Srpska or with the Constitution of Bosnia and Herzegovina, and does not violate individual rights guaranteed under the said constitutions, in particular human rights and the right not to be discriminated against.

Article 2

“Vital interest” in the sense of the previous paragraph pertains to the capacity of the Constituent Peoples of Bosnia and Herzegovina and the Others to maintain and develop their culture and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

Article 3

The Commission shall consist of twelve (12) members. Each of the constituent peoples of Bosnia and Herzegovina and the Others shall have three members within the Commission whose term of office shall cease each time a new National Assembly shall be convened following elections.

The members shall be chosen from among those elected to the National Assembly of the Republika Srpska but may include experts elected from outside the elected delegates.

Article 4

Option A

Each political party or coalition represented in the Assembly, or a group of three (3) delegates of the National Assembly, has the right to nominate one candidate or a list of candidates for the election of members of the Constitutional Commission. Each list shall be identified as Serb, Bosniac, Croat, or Other and shall run as such. Each delegate in the National Assembly shall cast one vote for a list. The mandates shall be distributed amongst

the lists in proportion to the votes cast for the list until the quotas for the Serbs, Bosniacs, Croats, and Others have been filled.

Option B

Each political party or coalition represented in the Assembly, or a group of three (3) delegates of the Assembly, has the right to nominate candidates for the election of members of the Constitutional Commission. Each candidate on the list shall be identified as Serb, Bosniac, Croat, or Other. Each delegate in the National Assembly shall cast one vote for a list. The mandates shall be distributed amongst the lists in proportion to the votes cast for the list until the quotas for the Serbs, Bosniacs, Croats, and Others have been filled.

Article 5

If all the positions assigned to one of the Constituent Peoples of BiH or to the Others have not been filled through the procedure described in article 4, individual members of the National Assembly adhering to the Constituent People whose quota has not been filled or to the Others, shall be entitled to nominate additional candidates in sufficient number as to enable the quota of that group to be filled.

Option A

If a position allocated to one of the Constituent Peoples of BiH or to the Others has not been filled through the procedures described in article 4 or 5, paragraph 1, the candidates already appointed shall by a two-thirds majority co-opt members to represent the Constituent People or Others who would otherwise not have representation.

Option B

If a position allocated to one of the Constituent Peoples of BiH or to the Others has not been filled through the procedures described in article 4 or 5, paragraph 1, the candidates already appointed shall by a simple majority co-opt members to represent the Constituent People or Others who would otherwise not have representation.

Article 6

The Commission shall appoint a Chair Person at its constituting session .

Article 7

No later than 10 days before the first reading of laws, regulations and/or decisions for the consideration of the National Assembly of the Republika Srpska, the Constitutional Commission shall be provided with copies of the texts by the Speaker of the National Assembly of the Republika Srpska.

Article 8

In the event that any three members of the Commission considers that a law, regulation or governmental decision proposed either impairs or could impair the vital interest of a Constituent People of Bosnia and Herzegovina or of Others, or otherwise violates article 1 of this law, a meeting of the Constitutional Commission shall be convened by the Chair Person of the Commission no later than the fifth day after receiving notification in writing of the

same. The convening of a meeting of the Constitutional Commission shall suspend the legislative procedure initiated with the National Assembly.

Article 9

In the event that a Constitutional Commission is convened as aforesaid, all members of such Commission shall use their best endeavours to reach an Agreement resolving the matter raised, within 3 clear days of the day of such convening. Any agreement within the Commission shall require the support of a majority of the members of the Commission provided that this majority includes votes from at least one Bosniak, one Serb, one Croat and one Other.

Article 10

If the Commission agrees that the proposed law, regulation or decision does not violate the vital interests of one of the Constituent Peoples of Bosnia and Herzegovina or of the Others and does not violate Article 1 of this Law, the procedure within the Parliament shall resume.

If the Commission agrees that the proposed law, regulation or decision does violate the vital interests of one of the Constituent peoples of Bosnia and Herzegovina or of the Others or otherwise violates Article 1 of this Law, the disputed text shall be amended in accordance with the recommendations of the Commission. The Commission may agree to suggest an alternative text. In this case the legislative procedure may resume with the text suggested by the Commission.

The National Assembly, through its Chairman, may lodge an appeal against the decision of the Commission with the Constitutional Court of Republika Srpska. The Court will, through an emergency procedure, issue a binding decision on whether the disputed decision, regulation or proposed law impairs the vital interest of one of the Constituent Peoples of Bosnia and Herzegovina or the Others or otherwise violates article 1 of this law.

Article 11

In the event that the Constitutional Commission fails, within the period referred to in article 9, to reach an Agreement, the Commission shall, through its Chair Person, lodge an application with the Constitutional Court of Republika Srpska to issue, through an emergency procedure, a binding decision on whether the disputed decision, regulation or proposed law impairs the vital interest of one of the Constituent Peoples of Bosnia and Herzegovina or the Others or otherwise breaches article 1 of this law.

Third step: Recommended legislative amendments required in execution of article 10 (a) of the RS Constitution

RS Law on Senate, Article 2

Option A

No more than x [percentage to be determined] of the members of the Senate can be members of one of the constituent peoples of BiH.

Option B

The members of the Senate shall be fairly representative of the Constituent Peoples of Bosnia and Herzegovina along with Others.

Law on Government of Republika Srpska (OG of RS, No. 3/97), Article 5 [added]

Option A

No more than x [percentage to be determined] of the Ministers of the Government of Republika Srpska may come from one constituent people of BiH or from the Others and at least one Minister shall be elected from each of the constituent peoples of Bosnia and Herzegovina and at least one shall be elected from the Others.

Option B

The Ministers of the Government of the Republika Srpska shall be fairly representative of the constituent peoples of Bosnia and Herzegovina, along with Others.

B. FEDERATION OF BOSNIA AND HERZEGOVINA**First step: Constitutional amendments**

Article I.1

Section (1) to be deleted. The present Section (2) becomes Section (1).

The Federation of Bosnia and Herzegovina is one of the two Entities composing Bosnia and Herzegovina, and has all those powers, competencies and responsibilities which are not, according to the Constitution of Bosnia and Herzegovina, within the exclusive competence of the institutions of Bosnia and Herzegovina. The Federation of Bosnia and Herzegovina is composed of federal units with equal rights and responsibilities.

Article I.5

Section (1) to remain as it stands. Section 2 reads as follows :

Approval of symbols shall be considered an issue of vital interest and shall require a vote in each House of the Legislature, including a vote of the House of Peoples upon this basis.

Article I.6

- (1) In the Federation of Bosnia and Herzegovina the official languages shall be Bosnian, Croatian and Serbian, and the official alphabets Latin and Cyrillic.*
- (2) Other languages may be used as a means of communication and instruction.*
- (3) Additional languages may be designated as official by law.*

Article II.B.1

(1) There shall be three Ombudsmen, who shall be appointed by the Federation Legislature in accordance with the law. Not more than one Ombudsman shall be from the same Constituent People of Bosnia and Herzegovina or from the Others.

Sections (2) – (4) to remain unchanged.

Article IV.A.6

There shall be a House of Peoples comprising 50 delegates.

Article IV.A.8

The delegates to the House of Peoples shall be elected by the Canton Assemblies from among their delegates in proportion to the representation of political parties holding mandates in the canton assembly concerned. The number of delegates to be allocated to each canton shall be five.

Article IV.A.11

Each House shall elect from among its members its Chairman and Deputy Chairman, who shall not be elected from the same constituent people of Bosnia and Herzegovina or from the Others.

Article IV.A.18

Option A - House of Peoples for the representation of Cantons and Constitutional Commissions for the representation of peoples.

Section 1 [amended]:

Following a motion by the majority of delegates representing x [number to be determined] cantons, a proposal for legislation is required to be adopted by a majority of two-third of the delegates present and voting.

Section 2 and 3 [added]

Vital interests of the Constituent Peoples of Bosnia and Herzegovina and of the Others shall be protected by the Constitutional Commission of the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina. The composition and functioning of the Constitutional Commission shall be regulated by law.

“Vital interest” in the sense of the previous paragraph pertains to the capacity of the Constituent Peoples of Bosnia and Herzegovina and the Others to maintain and develop their culture and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

Option B - House of Peoples remains an a-typical body where both the cantons and the peoples are represented.

Decisions of the legislature that concern the vital interest of a Constituent People of Bosnia and Herzegovina or of the Others shall require the approval of two-thirds of the delegates to the House of Peoples. This provision may be invoked by one-fourth of the delegates. If a majority of the delegates opposes the invocation of this provision, a Commission including an equal number of members from the three constituent peoples of Bosnia and Herzegovina and of Others shall be established to resolve the issue. If the Commission is unable to do so within one week of the provision’s invocation, the question shall be determined by the Constitutional Court of the Federation.

“Vital interest” in the sense of the previous paragraph pertains to the capacity of the Constituent Peoples of Bosnia and Herzegovina and the Others to maintain and develop their culture and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

Article IV.B.2

The House of Peoples shall nominate the President and Vice-President by a two-thirds majority. The President and Vice-President shall take office upon the approval of the House of Representatives. The President and the Vice-President may not be elected from the same constituent people of Bosnia and Herzegovina or from the Others. The persons elected shall serve alternating one-year terms as President and Vice-President during a four-year period.

Article IV.B.3

Section (1) to remain unchanged.

(2) If either the President or the Vice-President dies, is removed from office, or, in the opinion of the Cabinet acting by consensus, is permanently unable to fulfil the duties of the office, a new election shall take place in accordance with Article IV.B.2 within thirty days. Either the President or the Vice-President shall perform the functions of both President and Vice-President until the new President and Vice-President take office. If both offices become vacant, the Chairman of the House of Peoples shall serve as President, and the Chairman of the House of Representatives shall serve as Vice-President for the necessary period.

Article IV.B.4

The Federation Government shall consist of a Prime Minister, who shall be the President of the Government, a Deputy Prime Minister and Ministers.

Article IV.B.5

The President, with the concurrence of the Vice-President, shall nominate the Cabinet after consultation with the Prime Minister (or the nominee for that position). Nominations shall require the approval of the majority of the House of Representatives. Any vacancy shall be filled by the same procedure. Not more than x [percentage to be determined] of the members of government may be from the same constituent people of Bosnia and Herzegovina or from the Others and at least one Minister shall be appointed from each of the constituent peoples of Bosnia and Herzegovina and at least one shall be appointed from the Others.

Section (2) to remain unchanged.

Article IV.B.6

To be deleted.

Article IV.B.7

Sub-section (e)(iii) to be deleted

Article IV.B.8

The President, with the concurrence of the Vice-President, shall nominate officers of the armed forces. Nominations shall require the approval of each House of the Legislature. Approval of the nomination of the Joint Command of Military Forces shall require the approval of each House of the Legislature, including the approval by the House of Peoples pursuant to article IV, A, 18, Section 1.

Article IV.B.9

Option A

The Government is authorised to promulgate decrees having the force of law in response to national emergencies when the Legislature is unable to do so. Such decrees have to be approved by two-thirds of the members of Government.

Option B

The Government is authorised to promulgate decrees having the force of law in response to national emergencies when the Legislature is unable to do so.

Section (2) to remain unchanged.

Article IV.C.6

Sub-section (a) to be abrogated.

Article V.3

Cantons may establish Councils of Cantons in order to co-ordinate policies and activities on matters of common interest to their communities and to advise their representatives in the House of Peoples. These may include co-ordinating bodies, such as commissions and working groups, to share information and harmonise the Cantons' respective actions in implementing their responsibilities, but they may not include military or political arrangements.

Article V.8

(1) The President of the Canton shall be elected from the Canton Assembly by a majority vote in the Canton Assembly.

Sections (2) to (4) to remain unchanged.

(5) The Cantonal Government shall be nominated by the Cantonal President and approved by the Cantonal Legislature by a majority vote. The organisation of the Cantonal government shall be decided in accordance with the Cantonal Constitution, provided that the Government shall reflect the composition of the population of the canton as a whole.

Article V.12

Section (1) to remain unchanged.

Section (2)

Decisions of the Canton legislature that concern the vital interest of a constituent people of Bosnia and Herzegovina or of the Others shall require the approval by two-thirds of the delegates. This provision may be invoked by one-fourth of the delegates. If a majority of the delegates oppose the invocation of this provision, a Commission shall be established to resolve the issue. If the Commission is unable to do so within one week of the provision's invocation, the question shall be determined by the highest court of the Canton, subject to appeal to the Constitutional Court of the Federation.

Section (3)

In addition to a President, a Canton shall have a Vice-President.

(a) Election as President and Vice-President shall require approval of two nominees jointly by a two-thirds majority in the cantonal Legislature.

(b) The persons elected shall serve alternating one-year terms as President and Vice-President of the Canton during a two-year period.

Item (c) remains unchanged

(d) The president and the Vice-President may be removed by a two-thirds majority vote in the Cantonal Legislature.

(e) If either the President or the Vice-President dies, is removed from office, or, in the opinion of the Government of the Canton acting by consensus, is permanently unable to fulfill the constitutional duties of the office, the procedure provided in the above item (3) a) shall be followed within thirty days to fill the vacancy for the remainder of the original term. Either the President or Vice-President shall perform the functions of both offices during the period provided for in the preceding sentence or so long as, in the opinion of the Government of the Canton acting by consensus, the other is temporarily unable to do so. If both offices become vacant, the Chairman of the Cantonal Legislature shall serve as both President and Vice-President.

Section (4)

The Government of a Canton with a special regime shall:

(a) Be nominated by the President of the Canton, with the concurrence of the Vice-President. Nomination shall require approval of a two-thirds majority of the Cantonal Legislature;

(b) Generally reflect in its composition the composition of the population of the Canton. Not more than half of the members of government shall be elected from the same constituent people of Bosnia and Herzegovina or from the Others.

Section (5) to remain unchanged.

Article VIII.1

(1) Amendments to the Constitution may be proposed by the President in concurrence with the Vice-President, by the Government, by a majority of the House of Representatives or by the majority of delegates from at least three Cantons within the House of Peoples.

Section (2) to remain unchanged.

(3) To be adopted, proposed amendments require the following majorities:

(a) In the House of Peoples the majority within delegations elected from eight Cantons;

(b) In the House of Representatives, a two-thirds majority.

Recommended legislative amendments required in execution of article 75 (2) of the Federation Constitution (option A under Article IV.A.18 only) - the Constitutional Commission

Article 1

Option A

The Constitutional Commission shall ensure that any law, regulation and/or decision for the consideration of the Parliament of the Federation of Bosnia and Herzegovina does not violate the vital interest of one of the constituent peoples of Bosnia and Herzegovina or of the Others, and is not in contradiction with the Constitution of the Federation of Bosnia and Herzegovina or with the Constitution of Bosnia and Herzegovina.

Option B

The Constitutional Commission shall ensure that any law, regulation and/or decision for the consideration of the National Assembly of Republika Srpska does not violate the vital interest of any of the constituent peoples of Bosnia and Herzegovina or of the Others and is not in contradiction with the Constitution of Republika Srpska or with the Constitution of Bosnia and Herzegovina, and does not violate individual rights guaranteed under the said constitutions, in particular human rights and the right not to be discriminated against.

Article 2

“Vital interest” in the sense of the previous paragraph pertains to the capacity of the Constituent Peoples of Bosnia and Herzegovina and the Others to maintain and develop their culture and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

Article 3

The Commission shall consist of twelve (12) members. Each of the constituent peoples of Bosnia and Herzegovina and the Others shall have three members within the Commission whose term of office shall cease each time a new Parliament shall be convened following elections.

The members shall be chosen from among those elected to the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina but may include experts elected from outside the elected delegates.

Article 4

Option A

Each political party or coalition represented in the House of Representatives, or a group of three (3) delegates of the House of Representatives, has the right to nominate one candidate or a list of candidates for the election of members of the Constitutional Commission. Each list shall be identified as Serb, Bosniac, Croat, or Other and shall run as such. Each delegate in the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina shall cast one vote for a list. The mandates shall be distributed amongst the lists

in proportion to the votes cast for the list until the quotas for the Serbs, Bosniacs, Croats, and Others have been filled.

Option B

Each political party or coalition represented in the House of Representatives, or a group of three (3) delegates of the House of Representatives, has the right to nominate candidates for the election of members of the Constitutional Commission. Each candidate on the list shall be identified as Serb, Bosniac, Croat, or Other. Each delegate in the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina shall cast one vote for a list. The mandates shall be distributed amongst the lists in proportion to the votes cast for the list until the quotas for the Serbs, Bosniacs, Croats, and Others have been filled.

Article 5

If all the positions assigned to one of the Constituent Peoples of Bosnia and Herzegovina or to the Others have not been filled through the procedure described in article 4, individual members of the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina adhering to the Constituent People whose quota has not been filled or to the Others, shall be entitled to nominate additional candidates in sufficient number as to enable the quota of that group to be filled.

Option A

If a position allocated to one of the Constituent Peoples of BiH or to the Others has not been filled through the procedures described in article 4 or 5, paragraph 1, the candidates already appointed shall by a two-thirds majority co-opt members to represent the Constituent People or Others who would otherwise not have representation.

Option B

If a position allocated to one of the Constituent Peoples of BiH or to the Others has not been filled through the procedures described in article 4 or 5, paragraph 1, the candidates already appointed shall by a simple majority co-opt members to represent the Constituent People or Others who would otherwise not have representation.

Article 6

The Commission shall appoint a Chair Person at its constituting session .

Article 7

No later than 10 days before the first reading of laws, regulations and/or decisions for the consideration of the Parliament of the Federation of Bosnia and Herzegovina, the Constitutional Commission shall be provided with copies of the texts by the Speaker of the House of the Parliament of the Federation of Bosnia and Herzegovina that received the proposed law, regulation and/or decision first.

Article 8

In the event that any three members of the Commission considers that a law, regulation or governmental decision proposed either impairs or could impair the vital interest of a

Constituent People of Bosnia and Herzegovina or of Others, or otherwise violates article 1 of this law, a meeting of the Constitutional Commission shall be convened by the Chair Person of the Commission no later than the fifth day after receiving notification in writing of the same. The convening of a meeting of the Constitutional Commission shall suspend the legislative procedure initiated with the Parliament.

Article 9

In the event that a Constitutional Commission is convened as aforesaid, all members of such Commission shall use their best endeavours to reach an Agreement resolving the matter raised, within 3 clear days of the day of such convening. Any agreement within the Commission shall require the support of a majority of the members of the Commission provided that this majority includes votes from at least one Bosniak, one Serb, one Croat and one Other.

Article 10

If the Commission agrees that the proposed law, regulation or decision does not violate the vital interests of one of the Constituent peoples of Bosnia and Herzegovina or of the Others and does not violate Article 1 of this Law, the procedure within the Parliament shall resume.

If the Commission agrees that the proposed law, regulation or decision does violate the vital interests of one of the Constituent peoples of Bosnia and Herzegovina or of the Others or otherwise violates Article 1 of this Law, the disputed text shall be amended in accordance with the recommendations of the Commission. The Commission may agree to suggest an alternative text. In this case the legislative procedure may resume with the text suggested by the Commission.

Either of the Houses of the Parliament of the Federation of Bosnia and Herzegovina, may, through its Chairman, lodge an appeal against the decision of the Commission with the Constitutional Court of the Federation of Bosnia and Herzegovina. The Court will, through an emergency procedure, issue a binding decision on whether the disputed decision, regulation or proposed law impairs the vital interest of one of the Constituent Peoples of Bosnia and Herzegovina or the Others or otherwise violates article 1 of this law.

Article 11

In the event that the Constitutional Commission fails, within the period referred to in article 9, to reach an Agreement, the Commission shall, through its Chair Person, lodge an application with the Constitutional Court of the Federation of Bosnia and Herzegovina to issue, through an emergency procedure, a binding decision on whether the disputed decision, regulation or proposed law impairs the vital interest of one of the Constituent Peoples of Bosnia and Herzegovina or the Others or otherwise breaches article 1 of this law.