

IS DAYTON FAILING?:

**Bosnia Four Years After
The Peace Agreement**

RESTRICTED CIRCULATION

ICG Balkans Report N°80
Sarajevo, 28 October 1999

Table Of Contents

EXECUTIVE SUMMARY	i
I. INTRODUCTION: DAYTON'S GOALS	1
A. Purpose	1
B. Annex By Annex.....	2
II. ANNEX 1-A: CEASE FIRE AND MUJAHEDDEEN	3
A. Cessation Of Hostilities	4
B. Armed Civilian Groups: Militia And Paramilitary	4
C. Foreign Troops: The Osama Bin Laden Connection	4
D. Who Pays The Rent?.....	5
E. War Criminals	5
F. The Fear Of Body Bags: Why Dayton Isn't Working.....	6
III. ANNEX 1-B: REGIONAL STABILIZATION	7
A. Purpose	7
B. Confidence And Security Building Measures	7
C. Implementation	8
D. The Standing Committee On Military Matters	8
E. The Federation Armies: HVO And Abih	8
F. Funding An Arms Race?	9
G. Sub-Regional Arms Control	10
H. Agreement On Regional Arms Control	10
IV. ANNEX 2: BOUNDARIES AND BRCKO	11
A. Boundaries.....	11
B. Brcko: A United District?.....	11
V. ANNEX 3: ELECTIONS	11
A. The Failure Of "Democratic" Elections	11
B. The Fraudulent 1996 Elections: Déjà Vu From 1990.....	12
C. The 1997 Elections: Gerrymandering Dayton To Death	13
D. OSCE Intervention.....	15
E. The 1998 Election: Poplasen Wins	15
F. The Potemkin Village Of Multi-Ethnic Administration	16
G. Boycotts And Threats Of Violence	17
H. The PEC And The Draft Permanent Election Law	17
I. Whither Elections?.....	18
VI. ANNEX 4: THE CONSTITUTION	18
A. The House Of Cards.....	19
B. Why Is It Not Implemented?	19
C. Three Peoples, Two Entities, One Republic	20
D. Constituent Peoples: Us Vs. Them Vs. Them.....	21
E. Denial Of Individual Human Rights	21
F. Dayton's Glue: The Weakness Of The Joint Institutions	22
G. The Parliamentary Assembly	22
H. The House Of ["Constituent"] Peoples: Institutionalised Discrimination	22
I. Legislative Ineffectiveness.....	23
J. The Presidency	24
K. Co-Presiding: The Council Of Ministers	25
L. The Constitutional Court Of Bih	26
M. The Failure Of Central Institutions	26

VII. ANNEX 5: ARBITRATION	27
VIII. ANNEX 6: HUMAN RIGHTS	27
A. The Human Rights Chamber	28
B. Speed And Case Load	28
C. Ombudsperson	29
D. Why Is The Commission Ineffective?.....	30
E. The Confusion Of Bureaucracy	30
F. Human Rights Soldiers.....	31
G. Human Rights - What They Could Be.....	31
H. Whither Human Rights.....	32
IX. ANNEX 7: REFUGEE RETURN – THE KEY TO DAYTON	32
A. How Many Have Actually “Returned?”	32
B. Republika Srpska: The Ethnic Cleansers Win.....	33
C. Federation: Croat Obstruction, Bosniak Semi-Obstruction	33
D. 1999 Returns	34
E. The Escape Clause: Chapter 1.....	34
F. The Ill-Fated Commission.....	34
G. Results.....	35
H. The Property Fund	36
I. Refugee Return And Security Issues	36
J. Minority Return Minimalism	37
K. Refugee Return Opportunities	37
L. Refugee Return Strategies	38
M. The High Representative Acts	38
N. The Fear Of What May Develop	39
X. ANNEX 8: PRESERVING NATIONAL MONUMENTS	39
A. The List And The Law	39
B. The Need For Protection: Radimlja Necropolis And The "Bogomil" Stecci	40
C. Non-Compliance And Extinction	40
XI. ANNEX 9: PUBLIC CORPORATIONS	40
A. Commission On Public Corporations	41
B. Transportation Commission And Railway Corporation	41
C. The Electric Company And Other Non-Existent Corporations.....	41
XII. ANNEX 10: THE OFFICE OF THE HIGH REPRESENTATIVE	42
A. What Is It?	42
B. Authority + No Power = Non-Implementation.....	42
XIII. ANNEX 11: INTERNATIONAL POLICE TASK FORCE (IPTF)	43
A. The Purpose Of Annex 11.....	43
B. Republika Srpska: Defiance And Reluctance.....	44
C. The Federation: A House Divided... ..	45
D. Un-Federated Federation: Stolac And Croat Separatism.....	46
E. Training	47
F. IPTF Limitations: Weak Enforcement Mechanisms	47
G. Problems In Practice And Public Perception	48
H. And Finally...The Courts	49
I. Whither IPTF?	50

XIV. CONCLUSION	50
A. The International Community's Uphill Struggle.....	50
B. Why Isn't It Working?.....	51
XV. POLICY OPTIONS	52
A. Option 1) Pull Out Immediately.....	52
B. Option 2) Continue Present Strategies.....	52
C. Option 3) Rewrite DPA.....	53
D. Option 4) Enforce DPA More Robustly.....	54
E. Option 5) Create An International Protectorate.....	54
F. Whither Bosnia And Herzegovina?.....	55
GLOSSARY OF ABBREVIATIONS	56

ACKNOWLEDGEMENTS

This report was prepared by an International Crisis Group team working out of the Sarajevo office.

ICG wishes to thank James Hooper of the Balkan Action Council and Stephen Schwartz, who gave generously of their time and editing skills. In addition, ICG wishes to thank numerous people in a variety of organisations currently working in Bosnia and Herzegovina who provided us with information and documents. These organisations include, but are not limited to: the Organisation for Security and Co-operation in Europe (OSCE), the Office of the High Representative (OHR), the Stabilisation Force (SFOR), the United Nations Mission in Bosnia and Herzegovina (unmibh), the United Nations High Commission for Refugees (UNHCR), the Commission for Real Property Claims (CRPC), the United Nations Educational, Scientific and Cultural Organisation (UNESCO), and the World Bank. It is to these people, who strive to implement the Dayton Peace Accords, as well as to the people of Bosnia and Herzegovina, that this report is dedicated.

Sarajevo, 28 October 1999



IS DAYTON FAILING?

Bosnia Four Years After The Peace Agreement

EXECUTIVE SUMMARY

In anticipation of the fourth anniversary on 21 November 1999 of the signing of the Dayton Peace Accords, this report presents a detailed analysis of the agreement and the future of the Bosnian peace process. The report assesses efforts to implement the agreement annex by annex, identifying obstacles to continued progress and setting out key choices facing international policymakers.

A traditional peace treaty consists of a cease-fire and arms reduction and boundary demarcation agreements. Dayton went far beyond these goals to create a state, comprised of two multi-ethnic entities. Dayton's aim was to not only stop the fighting, but to reverse ethnic cleansing and provide a blueprint for a new, unified country.

Today Bosnia and Herzegovina has three *de facto* mono-ethnic entities, three separate armies, three separate police forces, and a national government that exists mostly on paper and operates at the mercy of the entities. Indicted war criminals remain at large and political power is concentrated largely in the hands of hard line nationalists determined to obstruct international efforts to advance the peace process. In many areas, local political leaders have joined forces with police and local extremists to prevent refugees from returning to their pre-war homes. The effect has been to cement wartime ethnic cleansing and maintain ethnic cleansers in power within mono-ethnic political frameworks. The few successes of Dayton – the Central Bank, a common currency, common license plates, state symbols and customs reforms – are superficial and were imposed by the international community. Indeed, the only unqualified success has been the four-year absence of armed conflict.

A thorough examination of the Dayton Peace Accords, annex by annex, indicates that the ethnic cleansers are winning the battle to shape post-war Bosnia. All in all, significant portions of Dayton remain unimplemented. In spite of the High Representative's recent energetic and long-awaited actions on refugee returns, it is too early to state whether or not they will translate into actual implementation. Local authorities continue to demand donor aid in return for partial co-operation. Dayton's fragile and limited achievements to date could now be threatened as donor aid starts to fall. The inability of donors to hold out the promise of aid could cause local leaders to be even more non-compliant than now. The severe economic downturn and negative GDP growth that a reduction in aid will cause can only aggravate social unrest. Pensions are in arrears, and estimates of unemployment range from 39 percent in the Federation to 50 percent in Republika Srpska. Social discontent has already burst into the open, with demonstrators regularly blocking highways and buildings. Ominously, in the past, many local politicians have channelled this unrest into nationalism.

The current policies for implementing Dayton are flawed, due to the refusal of the NATO-led international force (SFOR) to fulfil its mandate and act as an implementing agent, despite clear authorisation to do so under the terms of the agreement. In addition, two out of the three ethnic groups actively oppose Dayton, and are prepared to wait until such a time as the international community withdraws and the agreement can be laid to rest. Unless a way can be found to break the current deadlock, the agreement's only major success – peace – will be increasingly at risk. While peace was a worthy and admirable goal, it was the promise of implementation of certain key principles and the creation of a unified state that persuaded the Bosniaks in particular to sign the agreement in 1995. Unlike the Serbs and Croats, they demand a higher level of implementation of all the Dayton annexes throughout all three ethnic areas. The failure of current policies to ensure complete implementation could yet trigger renewed fighting, particularly as the international community starts to withdraw. As the 1998 Madrid Implementation Council noted, "Bosnia and Herzegovina's structure remains fragile. Without the scaffolding of international support, it would collapse".

The international community must now examine seriously its options for Bosnia and Herzegovina's future. These policy options include:

1. Pulling out immediately;
2. Maintaining the present approach;
3. Rewriting the Dayton Peace Accords;
4. Enforcing Dayton more robustly;
5. Creating an international protectorate for Bosnia and Herzegovina.

The international community must decide if Dayton is worth salvaging, or whether a complete pullout is warranted, as isolationist forces in some countries urge. If the international community decides to pull out, it must be prepared for the very real possibility that the Serbs, Croats and Bosniaks will attempt to achieve their unrealised war aims through violence. All the hard-won progress of the last four years will be lost. If the international community chooses this option, it must decide if it is willing to pay the social, political, economic, and human costs associated with a renewed war in the Balkans, as well as the implications for broader pan-Balkan and European stability. If, on the other hand, the international community wishes to remain engaged in Bosnia, it must choose one of the remaining options, realising that some could also lead to renewed fighting.

The International Crisis Group does not believe that Option Two – maintaining the present approach – provides a viable basis for long-term peace in Bosnia. Option Three, while risking renewed fighting, could also lead to a positive reinterpretation of the political realities in place and lead to a lasting peace. Options Four and Five, while requiring a more focused long-term international presence, would lock in the gains made to date and create an environment conducive to the development of an international exit strategy, and the emergence of Bosnia as a self-sustaining economic and political unit. Option Four would require a more robust approach within the Dayton framework, both by SFOR and the Office of the High Representative (OHR), as well as more targeted approaches to aid. Option Five, while unpopular abroad, is very popular in Bosnia, and would enable the international community to correct some of Dayton's mistakes.

Sarajevo, 28 October, 1999

IS DAYTON FAILING?

Bosnia Four Years After The Peace Agreement

I. INTRODUCTION: DAYTON'S GOALS

A. Purpose

In anticipation of the fourth anniversary (21 November 1999) of the signing of the Dayton Peace Accords (DPA), this report examines the level of implementation, annex by annex, of the General Framework Agreement for Peace in Bosnia and Herzegovina (GFAP). It shows that, over the course of four years, although the war has ended, significant portions of the DPA remain unimplemented, and under current policies, may remain so.

A traditional peace treaty or cessation of hostilities would have consisted of cease-fire, arms reduction, and boundary demarcation agreements, the essence of Annexes 1-A, 1B, and 2. The November 1995 GFAP went far beyond these simple goals: it is a document designed to create a new country, the unified state of Bosnia and Herzegovina, comprised of two multi-ethnic entities. This unified state would have a functioning central government, hold democratic elections under international auspices, "adopt and adhere to normal international human rights standards," and allow freedom of movement.ⁱ The state's human rights commission would enforce international human rights obligations. Displaced persons were to be allowed to return to their homes, or to be compensated for their loss in cases where return wasn't possible. Joint public corporations were to be established, as was a commission for the protection of national monuments. Indicted war criminals were to be arrested and turned over to The Hague, and all foreign fighters and soldiers were to leave the country. In short, Dayton's aim was to stop the fighting, reverse ethnic cleansing, and create a new, unified country. This has not occurred.

Today's Bosnia and Herzegovina consists of three de facto mono-ethnic entities,ⁱⁱ three separate armies, three separate police forces, and a national government that exists mostly on paper and operates at the mercy of the Entities. Ethnic leaders – such as Croatian President Franjo Tudman – continue to support the separate existence of this illegal three-entity system.ⁱⁱⁱ Indicted war criminals remain at large. The criteria for voter registration, written by and large by the international community, directly contradict the GFAP. As a result, nationalist political parties, including many of the ethnic cleansers who were responsible for the war in the first place, remain securely in power throughout the country. Nationalist extremists – often encouraged, organised and funded by the ruling political parties – still bomb and torch the homes of returning refugees in certain areas.^{iv} Corrupt police side with nationalist elements in their respective enclaves and sometimes openly support their activities.^v Foreign fighters, such as Mujahadeen, still roam the country, and international terrorists are sheltered by local governments. Foreign governments continue to give direct support to military bodies. All this prevents refugees from returning to their pre-war homes, which cements the wartime ethnic cleansing and cleansers in power within mono-ethnic political frameworks. This was not what DPA intended.

There have been some successes under DPA: the Central Bank, a common currency, common license plates, state symbols, and the CAFAO-led Customs reforms. So too, SFOR has managed to keep the peace for three and a half years. But the one common factor among these successes is that all were forcibly imposed by the international community.

Outside of the DPA framework, the efforts of the World Bank, UNHCR, USAID, the EU, and individual donor nations succeeded in reconstructing much of Bosnia's war-damaged public infrastructure. Today, Bosnia and Herzegovina has new roads, schools, hospitals, bridges, houses, and power lines, and in Sarajevo much of the wartime damage has been repaired.

However in the process of reconstruction, Bosnia has become donor dependent. Were it not for donor aid – which may account for 30% of official GDP – economic growth would probably be negative.^{vi} Little private investment – foreign or domestic – has occurred in manufacturing. The overall investment climate appears far from hospitable, suffering from strangling bureaucracy, excessively high taxes, corruption, oppressive payment bureaux, and a wholly inefficient legal system. Even the American hamburger chain mcdonalds has been put off, and Volkswagen is experiencing difficulties at every step of the way.^{vii} Politicians appear more interested in staying in power, than in making the needed structural changes in the economy that will attract private investment.

B. Annex by Annex

When examined annex by annex, the Dayton Peace Accords present a sobering picture of non-compliance and non-implementation. The major success under DPA has been the cessation of hostilities and boundary demarcation. While a worthy and admirable goal, it was the promise of implementation of certain key principles and the creation of a unified state that persuaded the Bosniaks in particular to sign the peace. Unlike the Serbs and Croats, they expect full implementation of all the DPA annexes throughout all three ethnic areas.

Annex 1-A – the cease-fire aspects – is probably the most successful of all the annexes to date, yet still remains only partially implemented. Although peace has been maintained for almost four years, foreign military forces are still present throughout Bosnia and Herzegovina. These include Mujahadeen, Croatian, and Serb groups. NATO pays rent for many of its facilities to local political powerbrokers, and fails to live up to its enforcement potential under Article VI. Most troubling, war criminals still roam freely, in particular in Republika Srpska.

Annex 1-B – regional and sub-regional arms control – remains largely unimplemented, as much of its success depends on voluntary compliance, as well as the co-operation of the joint governmental bodies and organs outlined in Annex 4. Unfortunately, these bodies exist primarily on paper. As a result, military and confidence building measures between the former warring factions are largely non-existent.

Annex 2 – inter-entity boundaries and Brcko – has been somewhat implemented. Today the inter-entity boundaries are settled largely beyond doubt. Brcko implementation, however, remains problematic. Although much progress has occurred on paper, the new district still maintains three separate administrations, health care and education systems, pension systems, payment bureaux, and police forces.

Annex 3 – democratic elections – has been implemented clumsily, haphazardly, and in one crucially important area – voter registration – in contradiction of the DPA text. Implementation has been characterised by international appeasement of the ethnic cleansers, which has resulted in the ethnic cleansers cementing their power via the ballot box and with international approval. Operating with the framework required of it by the DPA constitution, the proposed Election Law could codify some of the mistakes made to date in implementing Annex 3.

Annex 4 – the constitution of Bosnia and Herzegovina – is unwieldy, clumsy, unworkable, and bears no relation to the reality of Bosnian political life. The central government institutions exist largely on paper, and are only as powerful as the entities allow them to be. The concept of "constitutionality of nationalities" permits legalised discrimination on the basis of ethnic background. Indeed, the entire constitution enshrines ethnic discrimination as a principle of law. The constitution, as it now stands, would not permit Bosnia and Herzegovina to join either the Council of Europe or the European Union without significant modification, unless the Council of Europe ignores its own Charter to allow BiH to accede.

Annex 5 – inter-entity arbitration – is entirely unimplemented.

Annex 6 – human rights – goes largely unimplemented, as systematic discrimination continues throughout the country, in defiance of the Human Rights Commission, many of whose decisions and recommendations are ignored.

Annex 7 – refugee return – the crucial centrepiece of DPA, which permits all refugees and displaced persons to return to their pre-war place of residence, remains almost entirely unimplemented, with almost 1.2 million Bosnian displaced persons and refugees still seeking a permanent housing solution.^{viii} Return of Bosniaks and Croats to Republika Srpska equals less than 3% of all those ethnically cleansed from there, with the situation of minority return to Croat-controlled Herzegovina only marginally better. Minority refugee returns to Bosniak-controlled areas, while substantially better than for their Serb or Croat opposites, remain disappointingly low.

Annex 8 – the Commission to Preserve National Monuments – has achieved little. Although a Commission exists, almost four years after Dayton its work is still secret, due to fears the ethnic groups will destroy each other's monuments.

Annex 9 – joint corporations – is implemented only in small measure, primarily due to non-co-operation among the parties.

Annex 10 – civilian implementation – created the Office of the High Representative (OHR), and has been implemented only in as much as it has created a large international bureaucracy. Although given sweeping "protectorate"-style powers at several Peace Implementation Council meetings (Sintra and Bonn), the lack of an enforcement mechanism and the reliance on local co-operation renders the OHR largely powerless.

Annex 11 – the International Police Task Force (IPTF) – has created an enormous U.N. bureaucracy which lacks an enforcement mechanism, and has proven unable – in spite of numerous training programs – to change police behaviour in BiH.

A thorough examination of the Dayton Peace Accords, annex by annex, indicates that nearly four years after the 21 November 1995, signing in Dayton, Ohio, the ethnic cleansers have won: Bosnia is ethnically divided. All in all, significant portions of the treaty remain unimplemented. In the words of the Madrid Peace Implementation Council, "Bosnia and Herzegovina's structure remains fragile. Without the scaffolding of international support, it would collapse."^{ix} Under current policies, an international community and NATO withdrawal would likely result in renewed fighting.

II. ANNEX 1-A: CEASE FIRE AND MUJAHEDDEEN

Of all the annexes of the Dayton Peace Accords, Annex 1-A is – in addition to Annex 2 – one of the few annexes that has been largely implemented. Nonetheless, significant areas of Annex 1-A are not enforced, most notably those provisions concerning the presence of foreign forces (such as Mujahadeen) on Bosnian soil, armed civilian groups,

and provisions which allow SFOR the right to use facilities without paying rent. More significantly, SFOR has largely ignored its authority to enforce the civilian aspects of DPA. This has proven catastrophic for the DPA, as Annex 1-A provides the only implementation mechanism in the entire treaty.

A. Cessation of Hostilities

Perhaps the greatest success of the DPA was the cessation of hostilities. As outlined in Articles I, II, III, IV, V, and VI, DPA has been largely successful. The war has stopped. Inter-entity violence has ended. Freedom of movement exists. The high visibility of NATO-led SFOR has made all three sides feel secure, knowing that an outside power could intervene to prevent renewed ethnic hostilities. It is the very presence of SFOR that gives the country the level of security and stability that has enabled the post-war reconstruction efforts to succeed, and has contributed to post-war economic growth. What foreign and domestic investment has taken place is due primarily to this stabilising influence. In this regard, the implementation of Annex 1-A has been quite successful. Without the presence of SFOR, all remaining annexes of DPA could not be implemented. And without SFOR, the country would likely slip back into war.

Yet, in spite of these successes, some aspects of Annex 1-A are not yet implemented.

B. Armed Civilian Groups: Militia and Paramilitary

Annex 1-A, Article II:3 commits all sides to "disarm and disband all armed civilian groups." In spite of this, a number of paramilitary formations still exist and function actively throughout bih, particularly in the RS. Several paramilitary units, including some from Prnjavor, Bijeljina, and Koraj appear to have been activated and sent to Kosovo to participate in ethnic cleansing during the NATO bombing of Yugoslavia. In addition there were the Zvornik-based White Eagles, allegedly controlled by SRS politician Mirko Blagojevic. Although the movements of these paramilitary groups were relatively well known, SFOR did nothing to stop either their departure to or return from Yugoslavia. In the Croat-controlled areas of western Herzegovina, particular concern is raised by the activities of the HVIDRA organisation, which, while nominally a group of war veterans and invalids, also appears to act as a paramilitary arm of the HDZ, in particular implementing radical actions intended to prevent minority refugee returns.^x So too, a group known as the "Black Shirts" seems to have been active in Drvar.

C. Foreign Troops: The Osama Bin Laden Connection

Article III:1-2 specifically states that all foreign forces "shall be withdrawn, together with their equipment, from the territory of bih, within 30 days." Foreign forces include "individual advisors, freedom fighters, trainers, volunteers, and personnel from neighbouring and other States."

This article is clearly not being implemented. The most recent and highly visible example of non-implementation was the arrest in Turkey of a Mehrez Amdouni, a member of Osama Bin Laden's terrorist organisation, who was travelling on a Bosnian passport. With the full knowledge of SFOR, local Bosnian officials permit Mujahadeen who fought in Bosnia during the war to reside in the Zavidovici-Maglaj region, particularly in the villages of Bocnja and Pehare. Many have received Bosnian citizenship and passports. Most of the Mujahadeen occupy Serb or Croat homes, and present a serious obstacle to refugee returns in the Zavidovici-Maglaj region. SFOR does not patrol these villages, as they fear attacks against their convoys. The Mujahadeen present a source of potential political and ethnic instability in central Bosnia, and have been linked to various terrorist attacks against Croats in the Travnik area and Mostar.^{xi} Some of these Mujahadeen may now be moving to the village of Svijetlica in the Dobojo east area.

The wartime Bosnian Croat Army (HVO – Hrvatsko Vijeće Obrane) still exists, and may also be considered to fall under the definition of the "foreign forces" prohibited under Article III, as it receives 100% of its financing from foreign sources, primarily Croatia.^{xii} This alone should qualify the HVO for consideration as a foreign army. In its recent judgement against Dusko Tadic and its argument against Tihomir Blaskic, The Hague tribunal declared the 1992-1995 war in Bosnia and Herzegovina to be an international conflict, and placed clear blame on FRY for waging a war against a sovereign country. Using this same logic, The Hague considered the Bosnian Serb Army (VRS – Vojska Republike Srpske) as an extension of the Yugoslav Army (VJ – Vojska Jugoslavije). Were The Hague to use similar logic against indicted Bosnian Croats, such as Vinko Martinovic "Stela" and Mladen Naletelic "Tuta," then The Hague could legally consider the HVO as part of the Croatian Army. This logic is borne out by the recent promotions and transfers of high-ranking HVO generals into the Croatian regular army. If this is indeed the case, then the very existence of the HVO could present a clear contradiction of Annex I-A.

Similar to the HVO, the VRS continues to receive foreign financial support, all of it from Belgrade.^{xiii} Officers from the VRS are trained in Yugoslavia and hold dual ranks in both the VJ and VRS. Shortly before his arrest for war crimes in Austria, the chief of staff of the VRS Momir Talic was promoted from the rank of Colonel to Lieutenant General in the VJ. In spite of Annex 1-A prohibitions, weapons are transferred between the two armies with regularity.^{xiv} Under the aforementioned ruling by The Hague in the Blaskic case, the VRS too could be considered a "foreign force" under the precedent of international law, in contradiction of Annex 1-A.

D. Who Pays the Rent?

Appendix B to Annex 1-A clearly states that the government of the Republic of Bosnia and Herzegovina and the government of the Republic of Croatia "shall, provide, free of cost, such facilities NATO needs for the preparation for and execution of the Operation." In spite of this, SFOR is paying rent to local authorities for properties which, under the DPA, they should be able to use for free. Although SFOR refuses to release data on this issue, it appears that in the hard line Serb nationalist enclave of Modrica, a company with close links to the local Mayor Novak Gojkovic reportedly collected 67,000 DM per month in cash from SFOR. Costs for the Slavonski Brod facilities in Croatia reportedly ran as high as 225,000 DEM per month. In Sarajevo the Energoinvest TAT facility charges rent to the German Army light armoured unit stationed there. In Lepenica near Tesanj the Danish Headquarters unit is reported to be paying rent. Local sources state that the U.S. Army commander at the now-closed Olovo base allegedly paid rent of 100,000 DEM per month in cash to the local mayor. Nordpol Brigade headquarters in Multi-national Division North claim to be the only SFOR base for which rent is not paid. Disturbingly, a common factor in much of the rent payment seems to be the transfer of cash to municipal officials by SFOR outside the normal municipal budget channels.

E. War Criminals

Article X requires the Parties to "co-operate fully with all entities involved in implementation of this peace settlement...including the International Tribunal for the Former Yugoslavia." To date, this article has enjoyed blatant non-compliance by two of the three ethnic groups, the Bosniaks being the only side that appears to have handed over its indicted. In addition, SFOR seems to have taken its duties in regard to arresting indicted war criminals less than seriously.

To date the International Criminal Tribunal for the Former Yugoslavia, located in The Hague, has indicted publicly 66 persons. An additional number of individuals are under secret indictment. To date, 32 of these individuals have found their way to The Hague.

Of those arrested, 13 surrendered voluntarily, six were arrested outside Bosnia and Herzegovina, and SFOR arrested 13. The largest number of actions, which resulted in nine arrests and the death of one suspect, occurred in the sector under control of the British Army. The sector controlled by the U.S. Army has seen three arrests, while the French Army has to date managed to arrest only one suspect and kill a second.^{xv} Both the French and U.S. sectors contain large numbers of war criminals, including the Bosnian Serb war-time leader, Radovan Karadzic.

Today war criminals remain at large in numerous areas of Republika Srpska and Croat controlled "Herzeg-Bosna." Many of them work to prevent refugee returns in both directions, while maintaining control over their towns. Foca, Srebrenica, and Prnjavor are but a few areas frequently mentioned. The "big fish," such as Radovan Karadzic and former post-Dayton BiH Presidency member Momcilo Krajisnik^{xvi} still control politics in substantial parts of RS. Both French and U.S. forces have come under criticism for their unwillingness to arrest war criminals. Both the French and U.S. Armies claim they are unaware of the location of war criminals. Yet, as seen by U.S. General Montgomery Meigs' evasive answers regarding the arrest of war criminals at his final press conference,^{xvii} the problem of arresting war criminals is neither one of logistics nor of lack of information. Rather, it is a question of political will in the NATO capitals. As long as indicted individuals are permitted to remain at large, their presence will have a chilling effect on refugee return, ethnic and political integration, and long-term regional stability.

F. The Fear of Body Bags: Why Dayton Isn't Working

Article X of Annex 1-A commits the parties to "co-operate fully with all entities involved in the implementation of this peace settlement, or which are otherwise authorised by the United Nations Security Council, including the International Tribunal for the Former Yugoslavia." As will be shown throughout the remainder of this report, this co-operation is not occurring. The primary reason is that the only enforcement mechanism in the entire DPA is found in Article VI:3. This article states clearly that IFOR (today's SFOR) has the right "to help create secure conditions for the conduct by others of other tasks associated with the peace settlement...to assist the UNHCR and other international organisations in their humanitarian missions...to observe and prevent interference with the movement of civilian populations, refugees and DP's, and to respond appropriately to deliberate violence to life and person." This article is the key to the full implementation of the DPA.

Since early 1996 first IFOR and then SFOR have refused to fulfil this function. The problem is primarily one of political will, as the NATO capitals do not wish to make the difficult political decisions necessary to enforce the DPA entirely, as it might result in NATO casualties. As a result, the international community has had to rely on the good will of local officials to voluntarily comply with implementation of the DPA. As will be shown later in this report, the lack of local co-operation with Annexes 3 through 11, the lack of co-operation with Article X of Annex 1-A, and the lack of an enforcement mechanism, have prevented the organisations responsible for implementing the civilian aspects of the DPA (Annexes 3-11) from fulfilling their responsibilities.

In early 1999 the U.S. Army came out with a FRAGOP (operational order) entitled Pegasus Sunrise, which provided a long-awaited initial step in the direction of increased SFOR engagement. Pegasus Sunrise permitted U.S. Army personnel for the first time to provide logistical support to the OHR's Return and Reconstruction Task Force (RRTF). Nonetheless, logistical support is, in and of itself insufficient to implement DPA, and much more aggressive action by SFOR will be required if implementation is to succeed. Such action would include arresting persons indicted for war crimes, and removing persons from office who obstruct implementation of DPA. Recent actions by SFOR in Mostar on 14 October, 1999, indicate a tentative, albeit hesitant step in the proper direction.^{xviii} Yet whether or not this is an aberration is unknown.

In essence, the international community's failure to implement DPA is primarily political in nature. NATO governments have yet to display the will to enforce DPA obligations, due to the fear of casualties. This has weakened the hand of key international officials assigned to facilitate implementation in Bosnia. Dayton is failing, primarily due to SFOR's non-compliance.

III. ANNEX 1-B: REGIONAL STABILIZATION

A. Purpose

To secure lasting regional stability, DPA required specific security measures from the Republic of Croatia, Federal Republic of Yugoslavia, and Bosnia and Herzegovina. These included "new forms of...transparency and...force levels at the lowest numbers consistent with the Parties' respective security and the need to avoid an arms race in the region."^{xix} Stability was to be achieved through various confidence and security building measures, and measures for sub-regional arms control that would eventually rise to the level of a regional arms control agreement. In marked contrast to Annex 1-A and the remainder of DPA, compliance with Annex 1-B was made voluntary, and parties could withdraw anytime after December 1999.

The OSCE Department of Regional Stabilisation (DRS) is tasked to assist with the implementation of Article II, Article IV and the establishment of the conditions for eventual implementation of Article V.^{xx} The DRS has put together a wide range of activities, primarily concentrating on the facilitation and execution of arms control verification Inspections, verification of information, and communication between the entity armed forces. Furthermore, various seminars, training programs and courses are being organised to bring former warring factions together, or at least provide a minimum of communication and co-ordination. These include efforts to bring about "democratisation" of the armed forces, and introduce a code of military conduct for mid and senior-level officers. Four years after Dayton, Article V negotiations are still under way in Vienna, and as of yet there is no clear mandate to begin implementation. As a result, Article V goes unimplemented.

Although OSCE has developed and employed a comprehensive policy followed by concrete measures to facilitate the implementation of the Articles, II, IV, success in implementation has been marginal. This is due in large part to the unwillingness of the parties to work together. Although military personnel express the willingness to cooperate, their political leaders block most efforts at compliance. Foreign financial support for the HVO prevents the unification of the Federation Army. Even more troubling, in what may mark the beginning of a local arms race, both the Bosniak Army of BiH and the Serb VRS planned to increase their 1999 military budgets substantially. As of now it appears budget shortfalls may have prevented these increases, and recent meetings between the three parties and the Standing Committee on Military Matters called for a reduction in "military potential" by as much as 15% by the end of 1999.^{xxi}

B. Confidence and Security Building Measures

Article II of Annex 1-B provides for the RBiH, FBiH and RS, under OSCE auspices, "to agree upon a series of measures to enhance mutual confidence and reduce risk of conflict, drawing fully upon the 1994 Vienna Document of the negotiations on Confidence- and Security-Building measures of the OSCE".^{xxii} Clearly, creating confidence between the former warring factions is not an easy task.

The OSCE has implemented 15 measures under Article II, which include the exchange of information on military assets, command structures and military activities, the restriction of

military deployment and exercises, the prohibition of reintroducing foreign forces, the withdrawal of forces and heavy weapons, and monitoring weapons manufacturing. To supervise these activities, a Joint Consultative Commission (JCC) was created, consisting of three delegations, one from RS, one from the Federation, and one from the bih joint institutions. The OSCE Chairman-in-Office for Article II and IV chairs the JCC. The basic aim of these measures was to establish transparency and initiate processes of democratising control of the armed forces.

C. Implementation

Due in part to a slow start, numerous problems exist, from the Military Liaison Missions to the Standing Committee on Military Matters. The Military Liaison Missions between the Parties were not created until June 1998, and as of yet, they do not function properly. Influenced by political party control, representatives from the various armies have shown no real desire to co-operate and overcome practical problems, as they tend to place responsibility for implementation on OSCE. The only real progress has occurred in the number of inspections, 185 to date.^{xxiii} In reality, much of Annex 1-B depends on the proper functioning of the central government and institutions created under Annex 4, particularly the Presidency.

D. The Standing Committee on Military Matters

Under Annex 4 the joint Presidency was to create a Standing Committee on Military Matters (SCMM), which would enable the members of the Presidency to co-ordinate the activities of the Armed Forces. Although this does not fall under Annex 1-A, the lack of a fully functional SCMM hampers OSCE efforts to implement Articles II and IV of Annex 1-A. The SCMM is only as effective as the central government organs, as "the Members of the Presidency shall be members of the Standing Committee."^{xxiv} Perhaps as a reflection of the overall problems with the central government, the SCMM has not been functioning at all. Lack of progress in this arena caused the Madrid PIC to recommend "taking steps together with the Presidency and the entities towards establishing a common security policy and a State dimension for defence. As a part of this the SCMM is to be strengthened with respect to the Constitution."^{xxv}

In spite of the PIC recommendation, the SCMM did not begin to function until July 1999, and only then following intense international community pressure. The SCMM now has a permanent Secretariat comprised of top army officers.

All efforts to establish security and defence begin and end at the level of the three *de facto* entities. If it were two entities, a bipolar configuration would provide some balance. However, with the practical existence of three separate armies, two of which are in theory unified under the Federation Army, efforts at stabilisation and confidence building are bound to meet with limited success, at best.

E. The Federation Armies: HVO and abih

Problems associated with the Federation Army are indicative and symptomatic of problems in other areas of multi-ethnic relations throughout not only the Federation, but also Bosnia and Herzegovina. Although the Croat and Bosniak forces share common uniform patches, the units are ethnically segregated and under separate ethnic chains of command. Despite the fact that the Federation Army is supervised and inspected by SFOR, and its training directly financed by the U.S. through an MPRI-supervised program,^{xxvi} it is ethnically politicised. All personnel are appointed through the two ruling ethnic parties, SDA and HDZ. Criteria for military command typically ignore education or

professional experience. Rather, party loyalty has become the primary criteria for command in the Federation Army.

The reasons for this was explained by the Federation Defence Minister, Miroslav Prce:

"The Croat side does not support a unified army in bih, because we do not want to create another 'mini former JNA' that had consisted of diverse religious, national and cultural characteristics. It may be presumed that it [the army] would be a permanent source of conflict. It seems to me that we have changed the beliefs of all those world elements that wanted to create a unified army of bih: something like that will never happen. We are searching for new concepts, for example co-operation on the humanitarian level, joint participation under UN, a minimum of joint functions, but not joint units because it would be unrealistic at this particular moment."^{xxvii}

General Rasim Delic, nominally the commander of the Federation Army, does not select the officers who work in the Joint HQ, not even those of Bosniak nationality. Instead, this is done by the SDA according to political criteria. Under these criteria it appears more important that an officer attend the mosque on a regular basis, than have military expertise. Formally, these officers are not members of the SDA; however, they act as if they are.^{xxviii}

Duality is obvious in the military hierarchy and the chain of command. When General Delic is absent on leave, he is replaced not by his deputy, the Croat General Curcic, but by the Bosniak general Atif Dudakovic. The same occurs with General Curcic, who is replaced not by his deputy Dudakovic, but by an officer of Croat nationality. This policy was decided not in the Joint HQ of the Federation Army, but rather by the SDA and HDZ.^{xxix} The influence of the two political parties, orchestrated by the members of the Presidency, creates further animosities and obstacles, which run contrary to confidence building or the creation of a functional modern army. The fact that the armies are unified only at the Federation level, and maintain two parallel chains of command as well as ethnically pure units, contributes to this problem. Introducing parliamentary oversight over the army is one of the OSCE's objectives. Unfortunately, this has yet to occur.

F. Funding an Arms Race?

Although "transparency" is a commonly used word in Bosnia these days, it is difficult to understand how defence budgets are financed. It appears that at least 40% of the Federation's Bosniak budget goes toward the military. In addition to this, other sources of outside financing exist, which may or may not be undisclosed. According to documents prepared by the parties in accordance with Annex 1-B, substantial amounts of foreign military aid are entering Bosnia and Herzegovina to arm and train all three sides. Even more troubling, the Bosniaks and Bosnian Serbs appear to be increasing their military spending by at least 30% each.^{xxx}

The Bosniak Army of bih reported that it received 110,796,813 DEM (40% of its total military budget) in foreign military support during 1998. This included funds spent on MPRI by the U.S. government, as well as donations from Brunei, Saudi Arabia, United Arab Emirates, Kuwait, and Malaysia. Of this amount, at least 73,299,079 DEM was used for weapons procurement. For 1999 the Army of bih planned to increase overall military expenditures by 32% to 367,900,000 DEM. Because the level of foreign military aid was to drop to 64,332,925 DEM in 1999, this would mean a substantial increase in revenues from local sources.

The Croat HVO received foreign military support in 1998 equal to 100% of its entire military budget, 141,548,099 DEM, of which 83% (117,200,000 DEM) came from Croatia. In fact, the HVO appears to have no source of funding inside Bosnia and Herzegovina,

which may place it in violation of Annex 1-A's prohibition against "foreign forces." The HVO also received military aid from Brunei, Saudi Arabia, United Arab Emirates, Kuwait, and Malaysia, but at only one third the level given to the Army of BiH.^{xxxii} For 1999 the HVO planned a 14% reduction in funding from Croatia, as well as a 10% reduction in foreign military aid, for a total of 127,252,067 DEM. This continued flow of foreign support keeps the HVO artificially alive and prevents the creation of a unified Federation Army.

The VRS appears to be in much poorer financial and military health than the Federation armies, but it does have a unified chain of command. In 1998 the VRS received 27,988,846 DEM (38% of its total military budget) in foreign military support, all of it coming from Yugoslavia. The same amount is planned for 1999, although it is uncertain how the NATO bombing of FRY will affect levels of funding. In spite of a poor economy, the VRS planned to increase overall military expenditures by approximately 30% to 94,075,699 DEM in 1999.

Whether or not the increased Serb and Bosniak spending marks the beginning of an arms race appears doubtful, as all sides are faced with new budget realities, and have agreed to recommend 15% reductions in "military potential."^{xxxiii} Nonetheless, the relatively high levels of weaponry in a country facing no external threats should prove troubling, as well as contradictory to the spirit of Dayton.

All three parties are fully aware of concessions and compromises they should make in order to create effective professional military establishments. Interest for programs, such as the NATO Partnership for Peace, is high among the three Bosnian armies. However, upon learning that it must be a state-level responsibility, this interest fades. All three sides show an extreme lack of initiative in matters of co-operation. Religious diversity, rather than being minimised, is misused to create even deeper animosity and distrust. Given these problems, which are coupled with diametrically opposed political goals, the goals and objectives of the DPA appear unachievable in the foreseeable future.

G. Sub-regional Arms Control

The Agreement on Sub-regional Arms Control signed in Florence in June 1996 by the State of Bosnia and Herzegovina, the Federation of BiH, Republika Srpska, the Republic of Croatia and the Federal Republic of Yugoslavia was a consequence of Article IV. The overall purpose of Article IV was to create a balance of heavy armaments, by limiting holdings. Under the Florence agreement, the parties are obliged to exchange information on weapons covered under the agreement, reduce holdings to agreed levels, and verify the levels of holdings.^{xxxiii}

Under this system, the parties inspect each other's holdings. This got off to a slow start, because the parties could not separate political from practical military issues,^{xxxiv} data on military forces was inaccurate, and the parties did not notify the OSCE of changes of holdings of 10% or more, as required under the Florence agreement. Over time, however, things have improved somewhat.^{xxxv}

Armaments covered and limited by the Florence agreement include combat aircraft, attack helicopters, battle tanks, armoured combat vehicles and artillery pieces with diameters of 75mm or greater, including mortars. Ceilings have generally been met. Most of the arms that exceeded the limits had been destroyed, but some discrepancies, which fall under the category of "historical collections," and arms held by the Ministry of Interior – special police units – present problems. In spite of these difficulties, this is the only portion of Annex 1-B that has met with general compliance.

H. Agreement on Regional Arms Control

“The OSCE will assist the Parties by designating a special representative to help organise and conduct negotiations under the auspices of the OSCE Forum on Security and Co-operation (“FSC”) with the goal of establishing a regional balance in and around former Yugoslavia.”^{xxxvi} This article has never been implemented and the participating countries have never been identified. The political intricacies of Balkan politics, currently focused on the potential for political instability emanating from Milosevic's Serbia, means that most Balkan countries are hesitant to embrace arms control.

The implications of the Kosovo crisis and recommendations rising from the Stability Pact may prove an incentive for the implementation of this article. Nonetheless, the fact remains that Article V is unimplemented.

IV. ANNEX 2: BOUNDARIES AND BRCKO

A. Boundaries

The majority of this annex – Articles I through IV, and Articles VI and VII – deals with the demarcation of the Inter-entity Boundary Line (IEBL). As such, implementation appears complete. The IEBL is well defined, and the only disputes appear to be extremely minor in detail, concerning individual homes whose owners are upset that that they were left a few meters on the “wrong” side of the IEBL.

B. Brcko: A United District?

Unable to settle the issue of Brcko at Dayton, the parties committed in Article V to submit the issue to binding arbitration. Although the arbitration was to occur within one year of the signing of DPA, it was delayed repeatedly until February 8, 1999, primarily due to international fears that a decision either way could lead to renewed fighting.^{xxxvii}

The arbitrator, Roberts Owen handed down the final award on March 5, 1999. In it he proclaimed Brcko a shared “condominium” between the Federation and Republika Srpska, creating a district that encompassed the entire pre-war Brcko municipality. In this decision Owen united areas which were under the control of the HVO, Bosnia Army of Bosnia and Herzegovina, and the VRS.^{xxxviii}

In spite of the arbitration decision, the three ethnic enclaves within the new Brcko District maintain their own tax collection, tax distribution, health care, police, education, and administrative functions. Refugee return has taken place by and large within the Zone of Separation (ZOS). Returns to the Brcko town centre are still fraught with danger. The OHR office responsible for Brcko is handicapped by the lack of an enforcement mechanism, and has thus far proven unable to effectively integrate the three ethnically controlled areas within the district. Although the Federation expresses willingness to see implementation of this decision, Republika Srpska continues to actively obstruct.^{xxxix} As of yet, no clear target has been set for Brcko's final integration.

V. ANNEX 3: ELECTIONS

A. The Failure of “Democratic” Elections

One of DPA's biggest flaws was its insistence on early elections in a war-torn country with no democratic tradition. Predictably, all post war elections have returned nationalist leaders and parties to office. In many instances these votes mirrored the 1990 election

results. In the Federation opposition parties were marginalised and remain ineffective to this day, while in Republika Srpska, not a single party questions Serb ultra-nationalism.^{xi} In a move that still haunts Bosnian elections, the OSCE-led Provisional Election Commission (PEC) rewarded the ethnic cleansers during the writing of the 1996 and 1997 election rules, by permitting the ruling parties to ethnically gerrymander and pack voting districts where they had only a minority presence prior to the war.

Both entities have diametrically-opposed views on the crucial issue of who should be allowed vote for what municipality and entity. Republika Srpska wants only those RS citizens currently living in the RS (over a million Serbs and less than 50,000 minorities) to have the right to vote for RS government institutions. As such RS officials are completely opposed to: a) absentee voting; b) out-of-country voting; or, more bluntly, the right of ethnically-cleansed Bosniaks and Croats to have any political voice in Republika Srpska. In this regard they directly and openly oppose Article IV of Annex 3. The Bosniaks believe that all those expelled from their homes during the war should have the right to vote for their pre-war Municipalities. The central-Bosnian Croats largely share this belief. However this has more to do with the fact that parallel institutions dominate the contested Cantons 6 and 7, and it is easier for the Federation's Bosniak and Croat partners to come to uneasy trade-offs. The Herzegovinian Croats share opinions similar to those of the Serbs.

Implementation of election results is problematic. In numerous instances democratically elected officials are either unable to take office due to obstruction from hostile ethnic majorities occupying the municipality, or are sidelined from real decision-making when they are actually able to occupy office. Rarely does the international community take action to solve such problems. Today Bosniaks vote for Bosniaks, Serbs for Serbs, and Croats for Croats. The system of voting and ethnic gerrymandering render the concept of a multi-ethnic society a farce. Its impact on refugee return and the long-term future of Bosnia and Herzegovina cannot be underestimated. The new draft Election Law – forced to operate within the framework of the DPA Constitution (Annex 4), will only cement what is now temporary. The outcome will be the permanent enthronement of a *de facto* three-entity system based on mono-ethnic voting blocks.

B. The Fraudulent 1996 Elections: Déjà vu From 1990

DPA's architects decided to hold general elections as soon as possible after the end of the war "in order to lay the foundation for representative government and ensure the progressive achievement of democratic goals throughout bih."^{xi} The general elections were to take place "on a date...no later than nine months after entry into force (of the Agreement)."^{xii} DPA gave the Parties the responsibility to "ensure that conditions exist for the organisation of free and fair elections, in particular a politically neutral environment...ensure freedom of expression and of the press...allow and encourage freedom of association."^{xiii} DPA tasked the OSCE with "supervising" the "preparation and conduct of elections,"^{xiv} and with establishing a Provisional Election Commission (PEC) to formulate electoral rules.^{xv} Annex 3 also foresaw that by election day the return of refugees would "already be well underway."^{xvi}

The 1996 general elections did not live up to the lofty expectations of DPA.^{xvii} The parties did not honour their commitment to "ensure that conditions exist for the organisation of free and fair elections," as they actively intimidated voters of their own and other ethnic groups. The limited voter registration process was characterised by intimidation of displaced persons and refugees to register to vote for their current, or future intended, municipalities, rather than their pre-war municipalities.^{xviii} So widespread was the intimidation and registration fraud among Bosnian Serb refugees in Yugoslavia that it led to the postponement of the municipal ballot across bih.^{xlix} The campaign was dominated by appalling nationalist propaganda on all state-controlled (i.e. Ethnic party-controlled) TV and radio stations.^l bih was saturated with SDA, HDZ and SDS posters and leaflets,

while the three ruling parties prevented the opposition parties from gaining access to the media. Widespread intimidation and terrorist attacks were directed against opposition parties and figures in all three ethnically controlled territories. And tellingly, refugee return had not yet begun.

If one rejects the theory that the very act of voting has a democratising effect on a non-democratic country, then the flawed 1996 general elections in effect turned into a glorified ethnic head count, and proved dangerously counterproductive. In spite of many warnings from senior international community figures – including the Chairman-in-Office of OSCEⁱⁱ – that the conditions for free and fair elections were not present, the Contact Group pressured the OSCE to move ahead, so as to demonstrate progress in implementing DPA.ⁱⁱⁱ The OSCE's lack of experience in organising and preparing for the elections played into the hands of the ruling nationalist parties, who threatened boycotts or lack of co-operation to get their way on the OSCE-established municipal level Local Election Commissions.^{liii}

The 1996 general elections produced similar results to the first multiparty elections in 1990, in that the HDZ, SDS, and SDA secured their grip on power. This occurred because the elections system – and the DPA Constitution – did not force the SDA, HDZ or SDS to compete for votes among other ethnic groups. As in 1990, Croats voted for Croats, Serbs for Serbs, and Bosniaks for Bosniaks. Except this time the vote was charged with ethnic hatreds fuelled by three and a half years of war.

On election day, problems with voters' lists abounded, with as many as 100,000 voters turned away from polling stations. Widespread fraud resulted in a voter turnout of 105% of the eligible electorate. So widespread was voter fraud that the Election Appeals Sub-Commission (EASC) issued an Interim Judgement on 25 September 1999 that the voting had "a significant possibility of double voting, other forms of fraud, or counting irregularities."^{liiv} The EASC recommended a complete recount of all votes cast, which the PEC rejected. One week after certifying the election results, the OSCE hastily destroyed all ballots cast, thus rendering any independent investigation impossible.^{lv} In essence, the 1996 general elections gave the stamp of approval of "democratic" legitimacy to many of those who had led bih into the war, and whose wartime behaviour left many of them with the reputation of gangsters, ethnic cleansers and war criminals. Some observers now accept that it was a fundamental error to hold elections in bih so soon after the end of the war.^{lvi}

C. The 1997 Elections: Gerrymandering Dayton To Death

For the 1997 municipal elections the OSCE planned a nation-wide registration system. This predictably turned into a giant process of ethnically motivated election engineering.^{lvii} Although Article IV required all citizens of Bosnia and Herzegovina ("as a general rule") to vote in their 1991 municipality,^{lviii} the OSCE's Provisional Election Commission (PEC) interpreted this differently. The PEC unilaterally changed the 1991 residency requirement date to 31 July 1996, making a new "general rule" that you vote where you live. Anyone who could prove he lived in his new municipality prior to 31 July 1996, could cast a ballot for elections in that new municipality. As all ethnically motivated population movements and ethnic cleansing occurred significantly prior to this late date, the "proof of residence" process became meaningless.

The message to dps and refugees was clear: you could vote either for your pre-war municipality, where you were now in the ethnic minority, or you could vote in your new municipality in order to nullify the voting power of majority groups ethnically-cleansed from your new region. The OSCE openly supported this policy of ethnic engineering and permitted large numbers of displaced persons in the RS and in Croat-controlled areas, to register *en masse* to vote in their current municipality, thus cementing war time ethnic cleansing.^{lix} This made it difficult if not impossible for the pre-war majority ethnic groups,

particularly Bosniaks, to win majorities in city councils and speed up their return in accordance with Annex 7. Power that was won through ethnic cleansing was now legitimised by the OSCE interpretation of Article IV.

As a result, during the 1997 municipal elections ruling nationalist parties won 129 out of the 136 municipalities that their ethnic groups controlled militarily. This occurred in spite of OSCE financial support to select opposition parties, which totalled \$1.5 million, one third less than was spent for similar purposes in 1996.^{lx} Political parties representing nationalities ethnically cleansed from the RS – such as the SDA – won only one Municipal Assembly in all of the RS, Srebrenica.

Under the new "general rule," by the end of the 1997 voter registration period, 219,000 dps (19% of RS electorate) living in RS had registered to vote in their current municipalities. This represented approximately 65.2% of all DP voters residing in RS.^{lxi} In contrast, in the Federation only 55,000 dps (4% of Federation electorate) had registered to vote in their current municipality. These represented 44.7% of all Federation DP voters,^{lxii} most of whom appear to have been Croats.

By the end of voter registration it had become clear that only a maximum of eight municipalities might be able to switch hands, of which only six actually did. Serb packing of newly arrived Displaced Person voters ensured that 19 municipalities in RS would "stay Serb," even though the original (1991) Serbs from those municipalities represented only a minority of voters who registered to vote. These municipalities included Doboje, Derвента, Bosanski Brod, Prijedor, Brcko, Rogatica, Zvornik, Modrica, Kotor Varos, Vlasenica and Vukosavlje.^{lxiii} In a similar fashion, Croat voter packing ensured that Stolac and Capljina "stayed Croat."^{lxiv}

The remaining RS municipalities were won exclusively by the ultra-nationalist SDS or SRS parties, or, in the western half of RS by a coalition of smaller Serb parties, including the SPRS and SNSD. In the Federation, exceptions to nationalist rule were Drvar, Bosansko Grahovo, Glamoc and Bosanski Petrovac, which political organisations of Serb dps won, as well as Tuzla.^{lxv}

Because the Croats and Serbs packed voters into their new municipalities,^{lxvi} the elections themselves were hardly necessary: one could have predicted most of the results from UNHCR figures on DP movements. Thus, the ruling ethnic group, the Local Election Commissions, and the parties in the municipalities knew in advance of the registration period whether or not they would have to resort to fraud to pack in more of their own voters. At the end of registration, whichever ethnic group had the greater number of registered voters was certain to win. This encouraged widespread fraud in order to increase voter numbers.

Instances of fraud are most clearly seen in the 13 decisions on voter registration fraud handed down by the OSCE-created Election Appeals Sub-Commission in the summer of 1997.^{lxvii} These decisions dealt with issues ranging from falsification of documents (the SDS in 7 RS Municipalities, ME-049, 99-IMP-04; the HDZ in Jajce, ME-065), to preventing of dps of one's own ethnic group from registering for their pre-war municipality (the HDZ in Capljina, ME-058). The Drvar Croats engaged in intimidation to prevent minorities from registering (ME-050). Massive HDZ fraud was uncovered and punished by the OSCE in Zepce.^{lxviii} All these voter registration fraud-related decisions were handed down in municipalities where wartime movements of displaced persons suggested the results would be tight.

In spite of the OSCE ruling, which enabled the RS and the HDZ to conduct pre-election ethnic engineering, in the one instance in Republika Srpska where local ethnic officials were unable to ethnically gerrymander the vote, Srebrenica, the international community failed to support the democratically elected officials. When rock-throwing Serb's greeted

OSCE officials in November 1997 at the inauguration of the Srebrenica Municipal Assembly, the OSCE held off for over a year in implementing the election results. Not until May 1999, following the Bosniak CD Coalition's success in the 1997 Municipal Assembly elections, was the OSCE able to win Serb acquiescence to a multi-ethnic administration. And this occurred only due to intense pressure from Milorad Dodik and the hard work and talent of individual OSCE officials. The fact that this deal took so long highlights the inability – and unwillingness – of the international community to force Bosnians to comply with the DPA. It is worth noting that, in spite of Annex 3's declaration that "the return of refugees should already be underway" by election day in 1996, as of the publication date of this report in late October 1999, none have yet returned to Srebrenica.

D. OSCE Intervention

Hoping to prevent a nationalist sweep of the 1997 municipal elections, similar to that which occurred in 1996, the PEC passed a controversial new rule for the 1997 municipal elections, Article 235.5(4)(b). This rule stated that, as part of the process of successful installation of elected officials, minority parties would have to be represented in all levels of the Municipal Assembly or Council. Prior to the elections, the rule stated that representation would be proportional to the number of seats won in the Council or Assembly. But the PEC dropped this requirement in the face of several obstacles. First, it became obvious that parties with an overall majority simply wouldn't accept it. Second, the body created to judge the implementation of the elections' results, the National Elections Results Implementation Committee (NERIC), realised it would be impossible to decide which positions in the local government would be equivalent to, for example, 40% of the seats in the local council.

In practice, OSCE monitors overseeing implementation in the field had no authority to adjudicate. Farcical situations developed throughout the country, as nationalist majority parties tried to ascertain from OSCE the minimum representation they had to offer minority parties (of a different ethnic group) in order to receive the final certification approval of the PEC and the OSCE Head of Mission. No answers were ever forthcoming, other than that the PEC would decide, in retrospect, as to whether the rule had been respected. After months of main office delay, many OSCE field officers were forced to adopt a role that had not been envisaged for them. This was to actively mediate and threaten parties, and in effect, to decide *themselves* which positions the "majority" parties would have to give the "minority" parties. The winning "majority" parties always complained that pure democracy meant 50% + 1 vote was sufficient to take all power in most modern political systems. They claimed that forcing winning parties to share power with the losing parties was to make a mockery of election results.

E. The 1998 Election: Poplasen Wins

The 1998 General elections did not move Bosnia and Herzegovina closer to real DPA implementation. Hard-line (non)Bosnian Serb Nikola Poplasen, with a "decorated" war career as a Cetnik paramilitary leader, was elected President of RS, the international community's open support for incumbent Biljana Plavsic being as much a factor in Poplasen's victory as any other. In the wake of the Poplasen victory, the OSCE issued pie charts to demonstrate that some progress had occurred. In this instance progress was measured by how much ground the ruling nationalist parties had (or hadn't) lost.^{lxix}

During 1998 it became obvious that OSCE was not acting as the impartial international referee envisioned by DPA. Rather, it was actively involved in the international community's efforts to unseat the SDA, HDZ and the Serb nationalist block, most notably the SDS and SRS.^{lxxx}

In spite of a \$39 million election budget, hundreds of polling stations opened late on polling day in September 1998, due to massive errors in the OSCE-produced voters' lists. On the first day at least 41 polling stations never opened, while others opened late. In Doboj municipality alone, the OSCE and the Local Election Commission estimated that up to 3,000 people^{lxxi} were disenfranchised by the late opening of 41 of the 43 polling stations in that municipality. Many villagers walked kilometres to polling stations that were closed for unexplained reasons, waited for hours, returned home and never returned again.

F. The Potemkin Village Of Multi-ethnic Administration

Today the facade of what the international community calls "multi-ethnic administration" is a farce in most bih municipalities. Ethnic minority officials occupy either meaningless or nominally powerful positions, where they are sidelined and isolated from decision-making. In effect, they are there because the OSCE put them there, and as soon as the international community turns its back, they will certainly be removed. Some of these minority officials – fearing for their safety – live in a different municipality where their majority group holds power, and must travel long distances.^{lxxii} The dangers associated with minority officials working and living in a hostile environment are most clearly seen in the October 7, 1999, assassination attempt of Munib Hasanovic, the assistant secretary of the Srebrenica Municipality, who was brutally beaten and stabbed while in the municipal building restroom.^{lxxiii} Hasanovic and other Bosniaks had been the subject of previous threats from hard line Serbs, and had received no support from the OHR representative in Srebrenica, Bent Jensen.

Young, educated minorities are usually disinterested in giving up career opportunities among their own ethnic group in order to take meaningless low paying jobs in a hostile municipality, where they have no guarantee of returning to their pre-war property.^{lxxiv} When international community donors visit, the ruling nationalist officials often parade minority officials before the visiting foreigners in order to cultivate an image of a non-existent, co-operative, multi-ethnic municipality.

In Odzak/Vukosavlje, where the SDS defeated the KCD bih coalition by 73 votes, and where seat distribution is 18 to 17 in favour of the SDS, the Bosniaks occupy three positions.^{lxxv} If occupied by Serbs, these would be quite influential, particularly the Secretary of Social Affairs, who holds responsibility for issues including both displaced persons and education. However, both the Bosniak Secretary of Social Affairs and the Bosniak Vice-president of the Executive Board have not yet taken up their positions, as hard-line Vukosavlje SDS Mayor Jovisa Kovacevic stalls on issues such as office space, budget, salaries, etc. In spite of numerous interventions by OSCE personnel, and in spite of the fact that both men live in Odzak, less than 10 minutes drive from Vukosavlje, they are unable to assume their functions. In the municipal elections of 1997 the Bosniaks received 48.1% of all votes in Vukosavlje. Yet since then, only minuscule numbers of Bosniaks, out of a total of over 4,000 expelled during the war, have returned to the Vukosavlje municipality villages of Jakes and Modricki Lug, both of which had substantial pre-war Bosniak majorities. The Vukosavlje "multi-ethnic administration" is not yielding the results the international community expected in September 1997.

A few rare exceptions do exist. Doboj's moderate Bosniak Assembly Vice-president Reuf Mehmedagic,^{lxxvi} has achieved notable success in negotiating Bosniak return into the Doboj-Doboj South Zone of Separation with the progressive wing of Doboj's SDS, as well as being the link-man for business deals between Doboj and Tuzla Canton municipalities. Prijedor's Sead Jakupovic and Muharem Muselovic have negotiated housing for 9 KCD bih councillors in Kozarac (although the councillors have not returned for their own reasons), and spontaneous return of Bosniaks to destroyed villages on the RS side of the Zone of Separation continues.^{lxxvii}

But for every rare success story there are many more failures. Parallel institutions exist throughout the two "mixed" Federation Cantons, 6 and 7. Throughout the HDZ Croat-controlled Canton 10 southern municipalities of Kupres, Tomislavgrad and Livno, CD Coalition meets with the same "success" as in the RS, while the Zavicaj Serb coalition only achieves moderate success, in terms of the return of pre-war Serbs, in the northern Canton 10 municipality of Bosansko Grahovo. Even in Drvar, the municipality in the Federation with the third highest numbers of return of its pre-war residents,^{lxxviii} the PEC has revoked Final Certification because of "the municipal authorities' inactivity and failure to fulfil their basic responsibilities."^{lxxix} The former Serb Mayor of Drvar, Mile Marceta, who lived a two and a half hour drive away in Banja Luka, adopted an obstructive role after the HDZ-sponsored anti-Serb riots of April 1998, demanding a proper investigation into those events in which he was severely beaten by Croats. As a result he was removed from his position by OHR on 16 September, 1999.^{lxxx}

Not a single municipality, out of the 136 where elections were held in 1997, has a city council or assembly where a political party representing the votes of an expelled community with a majority of seats, is in a position to exercise real executive power.

G. Boycotts and Threats of Violence

The boycott, coupled with threats of violence, has been used throughout bih by minority councillors, who claim it is futile to attend an Assembly where the ruling majority ethnic group ignores all their requests. So too, majority ethnic groups threaten boycotts when it appears things may not go their way. When the OSCE uncovered massive election fraud in HDZ-controlled Zepce, the Croats boycotted the entire election, fearing an honest vote would unseat them. Their boycott of the entire process, as in Srebrenica by the Serbs, has been rewarded by the international community. In both municipalities, those who lost the elections threatened violence and subsequently were granted half of all relevant positions in the local government.

H. The PEC and the Draft Permanent Election Law

Although DPA initially envisioned that the PEC would formulate Rules and Regulations only for the 1996 general elections, circumstances have forced an extension. The PEC's mandate now lasts until at least the April 2000 Elections. Although Annex 3, Article V clearly states that the entities would formulate a Permanent Election Law for all future elections beyond 1996,^{lxxxi} it was only on 5 August, 1999 that the first draft Permanent Election Law was announced.^{lxxxii}

The only real significant differences between current PEC Rules and Regulations and the draft Permanent Election Law, are that voters will now choose individual candidates from a party's list of candidates. So too, those candidates elected to the bih Presidency will now have to collect a certain number of signatures^{lxxxiii} of support from voters living in a different entity, or gain the support of a Municipal Assembly/Council in the other entity.^{lxxxiv} A preferential voting system will be installed for the bih and RS Presidency races.

Reaction to the publication of the draft law has been varied. A number of bih politicians have commented dryly that if collecting signatures from one's own ethnic group in the other entity is the extent of the attempts to promote multi-ethnicity, then this is not progress. Several prominent opposition figures labelled the new law as "cosmetic changes."^{lxxxv} A gathering of prominent legal experts at the Sarajevo University's Law Faculty stated that the law is "in contradiction with the International Pact on Civil and Political Rights, which is an integral part of the bih Constitution."^{lxxxvi} Although the bih electorate, through the OSCE's Permanent Election Law Public Information Campaign, expressed the desire to be able to vote for individuals rather than simply for parties, the new law emphasises a party list system, which creates a built-in bias in favour of single party voting. This new law appears to represent a move in the wrong direction.

The central problem with the new draft Election Law is that it is based on the constitutional framework imposed under Annex 4, which forces the people of BiH towards ethnic politics. Overall, the draft Permanent Election Law is not likely to achieve the international community's aims in BiH, as Articles VIII, X, and XI legalise ethnic discrimination. This reflects the legal paradox found in the Dayton Constitution (Annex 4), which adopts international human rights standards, while simultaneously breaking them in its very constitutional structures. As a consequence, the draft Election Law represents an OSCE/OHR compromise with the *realpolitik* of the SDA, HDZ and Serb nationalist block, something PEC Chairperson Robert Barry himself confirmed in a recent interview to a leading Sarajevo magazine.^{lxxxvii} And unfortunately, this compromise could result in instituting an election law that permits legal discrimination.

I. Whither Elections?

Of the four sets of OSCE-sponsored post-war elections in BiH, the 1996 general elections, the 1997 Municipal Elections, the 1997 special elections to the Republika Srpska National Assembly and the 1998 general elections, only the latter have slightly reduced the power of the ruling nationalist parties. The rest have not even dented it.^{lxxxviii}

None of the elections has come even close to dislodging the HDZ from absolute control in all Croat-controlled areas.^{lxxxix} The SDA retains an absolute majority in all Bosniak-controlled areas, with the exception of the Tuzla and Velika Kladusa city councils. In both those areas the Cantons have removed much of the decision-making power from the municipal level and transferred it to the Cantonal level, where the SDA has the required majorities. The HDZ and SDA appear to maintain as strong a position in BiH today as ever, and fulfil a role similar to that of the pre-war Communist Party.^{xc}

In Republika Srpska, although the ultra-nationalist SDS/SRS block has lost control of the RS National Assembly and controls few Municipal Assemblies in the western half of the entity, two important points merit mentioning. First, eastern RS (east of Brcko) remains firmly under the control of the SDS/SRS.^{xcii} In this region the prospect of secession remains likely, and has always been the main goal of the SDS and SRS. There is no reason to believe that the Sloga coalition, even should it stay together, will win a significant number of Assemblies in the April 2000 municipal elections. Second, although the Sloga government of Prime Minister Milorad Dodik has been strongly supported by the international community,^{xciii} Sloga maintains a strong nationalist flavour^{xciii} on issues of RS sovereignty, with almost no progress at all on the crucial issue of Bosniak and Croat minority returns to the RS.^{xciv}

Recently the OSCE took action to weaken ultra-nationalist elements in the upcoming April 2000 elections. Reacting to the continued non-compliance of the SRS, the OSCE instructed the party to remove several obstructionist officials from positions of party leadership and resubmit registration documents to the RS courts. Leaders to be removed included former RS president Nikola Poplasen, Mirko Blagojevic, and Ognjen Tadic. Following the SRS' refusal to comply, on 25 October 1999, the OSCE banned the SRS from participating in the April 2000 elections. In addition, the smaller but equally nationalist Serbian Party of RS (SSRS) and its leader Predrag Lazarevic was disqualified from participating in the elections.^{xcv} Although a positive step it does not address the underlying problems of discrimination inherent in the constitution or the PEC rules. And the effect on nationalist extremists -- either positive or negative -- will not be seen until April 2000.

VI. ANNEX 4: THE CONSTITUTION

A. The House of Cards

Judging by Annex 4, the DPA's authors intended to create a multi-ethnic country with rule of law, in which a constitution and democratic elections form the basis of legitimate political authority. The highest international instruments of human rights would form the highest laws in the land.^{xcvi} Poorly formulated, the DPA Constitution may prevent Bosnia and Herzegovina from meeting Council of Europe standards for admission,^{xcvii} and permanently dooms the country to institutionalised ethnic quarrels.

Contrary to the Constitution, there exist *de facto* three – not two – entities. As seen in recent statements by Croatian President Franjo Tudman, the illegal Croat entity "Herzeg-Bosna" receives political support directly from one of the Dayton signatories, a direct violation of DPA.^{xcviii} Although the joint institutions called for in Annex 4 exist, they do so largely on paper. On the infrequent occasions when central institutions meet, they typically prove unable to come to agreement on the agenda.^{xcix} Although the Parliamentary Assembly has actually met and passed some twenty laws, all were forced on it by the international community. Few of these laws are actually implemented or enforced. The Presidency typically achieves its greatest successes by appearing together for visiting heads of states or international conferences. All in all, the performance and functioning of the central government has been described generously by the June 1999 Peace Implementation Council as "inadequate."^c

The only real success under Annex 4 is Article VII, which calls for the creation of a Central Bank, and the imposition of a national currency, the Convertible Mark.

B. Why is it not Implemented?

Article III:1 of the Constitution specifies the responsibilities of the joint institutions as:

"Foreign policy...foreign trade policy...customs policy...monetary policy...finances of the institutions...of bih...immigration (and) refugee...policy, international and inter-entity criminal law enforcement...communications policy,...inter-entity transportation (and) air traffic control."^{ci}

The remainder of Article III deals with relationships between the entities and the joint institutions, the most important statement being: "all governmental functions and powers not expressly assigned in this Constitution to the institutions of bih shall be those of the entities."^{cii}

Annex 4 goes largely unimplemented for five reasons. First, bih is only as strong as its joint institutions. Yet the joint institutions deal primarily with bih's foreign affairs, and have little authority to regulate internal affairs. The Constitution makes the entities *de facto* mini-states within an imaginary central state. This central state has no army, no police force, does not raise taxes (with the exception of passport fees), does not control its own borders, has a judiciary with extremely limited responsibilities that rarely meets, and a legislature that cannot formulate laws without the entities' approval. In essence, the central state is at best an uneasy confederation with no real power.

Second, were the joint institutions to actually function, no state-level enforcement mechanism exists to compel the entities to implement state-level decisions. Inside the Federation, what limited influence the joint institutions have derives from the fact that the Presidents of the SDA and HDZ, Alija Izetbegovic and Ante Jelavic, sit on the central Presidency. In RS, Zivko Radisic's influence derives from his position as President of the Socialist Party, and he is at best, the third most important politician in RS, implicit proof that the joint institutions are irrelevant to internal matters of Republika Srpska. Enforcement depends on the good will of the entities.^{ciii}

Third, because the joint institutions depend on the entities for funding, these institutions are only as strong as the entities permit.^{civ} It is clear that at least one of the entities (RS) and half of the other entity ("Herzeg-Bosna") do not wish the joint institutions to function. Republika Srpska is founded on ethnic cleansing and ethnic inequality, while the Federation consists of an uneasy war time military alliance invented by Washington to present a credible military threat against the Serbs. This entity also saw both ethnic groups, especially the Croats, commit appalling acts of ethnic cleansing. Both separatist movements within bih - the Republika Srpska and the HDZ-controlled Herzegovinian municipalities in the Federation – still receive open support for their separatist policies from the FRY and Croatia, both of whom maintain a hostile, anti-DPA approach to bih sovereignty. In essence, two of the three ethnic groups work actively against the creation of a unified state.

Fourth, the OSCE-approved ethnic gerrymandering during the 1997 municipal elections – which specifically contradicted the text of Annex 3, Article IV – essentially destroyed the functional basis of the DPA Constitution. The municipal election results legitimised via the democratic process the ethnic cleansing that occurred over a gun barrel. Had Annex 3 been implemented as envisioned, it would have resulted in large ethnic minority voter blocks spread throughout both entities, the existence of which would force politicians to compromise. Instead, each ethnic group retreated into its own enclave in pursuit of its own narrow political goals.

Fifth, no treaty enforcement mechanism exists, outside of a reluctant SFOR. Due to the IFOR/SFOR refusal to assist in the implementation of DPA's civilian aspects, the central government fails to function, and the OHR is powerless to force the parties to comply.

C. Three Peoples, Two Entities, One Republic

The DPA was very explicit that the UN-member Republic of Bosnia and Herzegovina would continue to exist, but under a new name: Bosnia and Herzegovina.^{cv} The Serbs rejected the continued existence of Republika bih for three distinct reasons. First, to accept a continuance of Republika bih "with its presently recognised international borders"^{cvi} would have meant, from the Serb point of view, conceding complete defeat to Sarajevo, as the army and state they had fought against three and a half years was that of Republika bih.

Second, all other independent states that have emerged from the former Yugoslavia have established themselves and been recognised internationally as "republics." Namely, the Republic of Slovenia, the Republic of Croatia, the Federal Republic of Yugoslavia, and the (Former Yugoslav) Republic of Macedonia. These all sound more firmly established in international constitutional law than "Bosnia and Herzegovina." At the level of popular perception, and as a potential ground for disputing the very statehood of Bosnia and Herzegovina (a major goal of the Serbs), the negotiated dissolution of "Republika bih" at Dayton allowed the Serbs to return to Pale with the clear message that "victory is ours, the Republic is no more."

Third, out of the three "constituent peoples"^{cvii} only Serbs were given their own "republic" (Republika Srpska), which in traditional Yugoslav political jargon implies statehood.^{cviii} It would of course have been impossible for Republika Srpska to be a composite part of Republika bih, and so the DPA state had to be called something other than a republic. Furthermore, the idea that a state can be anything other than a Republic is new to former Yugoslav traditions. When the Croat-Bosniak conflict began in 1993, the former Croatian *Community* of "Herzeg-Bosna" became the Croatian *Republic* of "Herzeg-Bosna", when Herzegovinian aspirations to *statehood* became violently apparent. Even today, the newly-erected signposts in Croatia giving directions to the bih border crossing at Stara Gradiska/Bosanska Gradiska point the arrows towards "Republika bih", an error which,

one can guess, has been made by Croat officials who simply assume that the bih state is a republic.

The Bosnia and Herzegovina created at Dayton formulated a concept relatively new to international law, an "entity". Bih as a State consists of two entities which have been both given names that are well established categories of international constitutional law: "republic" and "federation." Bosnia and Herzegovina is possibly the only state in the world where a Republic (Republika Srpska) is a constituent part of a state that does not call itself or identify itself as a federation of republics, states, territories, cantons, provinces or other such bodies. The irony is that DPA's bih actually is a very loose federation, and as such should logically be called "The Federation of Bosnia and Herzegovina." However, today's Federation of Bosnia and Herzegovina is not a state, but an entity, within a bih state with "constituent peoples."^{cxix} Therefore, the entire question of bih statehood is thrown into question.

D. Constituent Peoples: Us vs. Them vs. Them

The Preamble to Annex 4 mentions three constituent nations of Serbs, Croats and Bosniaks.^{cx} "Others" are recognised as an afterthought, with mere "citizens" barely worth mentioning.^{cxii} Note that the Serbs, Croats, Bosniaks and Others are not categorised jointly as citizens – the "citizens" are an additional, fifth group of people in the state. It is already evident in the Preamble, therefore, that the DPA bih state was to be hijacked from the citizens and transferred to the three ethnic groups.

But even this rigorous concept does not apply throughout the country because Bosniaks and Croats are not constituent peoples in Republika Srpska.^{cxii} In a similar fashion, Serbs are denied that status in the Federation.^{cxiii} It appears that all three peoples are constituent only at the level of the central state of Bosnia and Herzegovina. Given that the vast majority of state prerogatives, e.g. Military, police and the judiciary are in the hands of the entity governments, the reality is that minorities, be they Serbs in the Federation or Bosniaks and Croats in RS, are legally discriminated against in their dealings with government institutions. This is hardly surprising as they are first and foremost discriminated against in the Constitution.

A further problem of the "constituent nations" philosophy enshrined in the bih constitution is the status afforded to "Others," which is largely ignored. All "Others" who do not belong to any of the three constitutionally recognised nations are left in limbo, wondering about their status in this clearly designed "ethnic" country. Yet this group of "Others" comprised almost 8% of the bih population in 1991,^{cxiv} numbering some 345,786 people, and includes Bosnia's Jewish population. The principle of "constituent peoples" is reinforced in many operative paragraphs of the bih Constitution, where even a formal reference to "Others" or "citizens" cannot be found. The composition of all common institutions (the Parliamentary Assembly, the Presidency, the Council of Ministers, domestic judges of the Constitutional Court) is based on the "two entities - three nations" formula.

The bih Presidency provides an example of this philosophy: it is comprised of one Serb, one Croat and one Bosniak.^{cxv} Whether it is presumed that the 8% of bih citizens from 1991 who had identified themselves as "Others" had died, disappeared or suddenly become one of the three main ethnic groups isn't clear. What is clear is that these people are disenfranchised in the vote for the Presidency of bih. Perhaps a four-person Presidency was deemed unworkable. But for whatever reason, the decision to disenfranchise the "Others" was obviously not given much thought, as the 15 delegates to the House of Peoples were to consist of five Serbs, five Croats and five Bosniaks.^{cxvi}

E. Denial of Individual Human Rights

While it is true that the Constitution lists of all relevant international human rights instruments alongside strong non-discrimination clauses, it is quite certain that, no matter what human rights are proclaimed, they will have to be implemented in an atmosphere of intensive ethnic isolation and mistrust. Members of any of the three distinctive ethnic groups will be protected by the carefully balanced compromise, but only on the basis of their collective (national) identity within the bounds of their separate national enclaves. This leaves no room for those who do not fit into the category of Bosniak, Croat or Serb, or who simply would prefer to exercise their right not to belong to any group.

The Constitution of bih does not favour the protection of individuals in their own right.^{cxvii} In fact, the concept of individual rights, deeply retarded in any formerly socialist country, has been all but obliterated in Bosnia and Herzegovina. Preoccupation with the rights of ethnic groups reflects the transition from communist to nationalist collectivism, where the despotism of the "one and only" ruling party is replaced by the despotism of presupposed ethnic group interests.

The ethnic determinism and discrimination codified in the bih Constitution contradicts modern European democratic values of civil liberty and human rights, where sovereignty rests with the citizens of a state, where positions and jobs in all state institutions are open to all, without discrimination on the ground of ethnicity, religion or otherwise. Such discrimination could make it very difficult for Bosnia and Herzegovina to enter into European institutions such as the Council of Europe and eventually the European Union, without first making major revisions in its constitutional order.^{cxviii}

F. Dayton's Glue: the Weakness of the Joint Institutions

Articles III, IV and V of the Constitution of bih introduce the joint institutions, the Parliamentary Assembly and the Presidency of bih. The other main joint institution, the Council of Ministers, does not merit its own Article in the Constitution, and is instead tucked away in Article V. These Articles demonstrate in detail the level of powerlessness of the joint institutions. So too, they institutionalise the procedures by which various nationalist ethnic leaders can opt out of the state-level law-making process and veto the passing of legislation on the dubious grounds of entity or "national" interest. A brief analysis of the responsibilities and performance of the joint institutions demonstrates that as a result of these clauses, neither the Presidency, the Parliamentary Assembly nor the Council of Ministers, represent the real centres of power in bih. Under the DPA Constitution, the entities have full control over their own armies, police, civil administration and judiciary. They formulate their own laws, the only proviso being that those laws do not contravene the bih Constitution.

G. The Parliamentary Assembly

In addition to implementing Presidency decisions, the Parliamentary Assembly is responsible for creating a budget for itself and the other joint institutions, ratifying treaties as recommended by the Presidency, and performing other duties which the entities may give it.^{cxix} Not only does the Parliamentary Assembly not have the authority to enter into governmental matters within the entities, it doesn't even play a serious role in the bih state structure, other than to regulate its own budget and the budget of the other joint institutions. To date the Assembly's only real function seems to have been enacting whatever legislation is necessary to implement the decisions of the Presidency, essentially as a rubber stamp.

H. The House of ["Constituent"] Peoples: Institutionalised Discrimination

The bih Parliamentary Assembly is a bicameral Parliament.^{cxx} Under this system, the delegates to the House of Peoples from each constituent nationality are chosen on the

basis of a vote by other delegates of the same ethnic group from their entity level legislatures.^{cxxi} Under the "constituent peoples" arrangement, a leading state institution would include an equal number of the three constituent nations.^{cxxii}

In spite of the apparent symbolism, the upper house, the House of Peoples, contributes nothing to the democratic debate, and institutionalises ethnic discrimination. The real purpose of House of Peoples is to give the three ethnic groups the right to veto legislation on the grounds it is against their "national interest."^{cxxiii} Two entities send delegates to it, yet the Federation gets twice as many seats as RS. Furthermore, although both entity parliaments contain minorities, the Republika Srpska National Assembly is only allowed to elect Serbs to the bih House of Peoples, in spite of the fact that only 53% of Republika Srpska's pre-war population was Serb.^{cxxiv} Serbs from the Federation are not represented.

The House of Peoples serves a negating function that plays into the hands of those who wish to keep the joint institutions weak. If a majority of any one ethnic group declares any legislation to be against their national interest, then it is not referred back for changes to the bih House of Representatives, but to the entity parliaments. And in the case of the Bosniaks and Croats, it is referred back to the Federation House of Peoples. The reality is that a mere three deputies of the same ethnic group in the bih House of Peoples can block any legislation in the bih Parliamentary Assembly by declaring it against their national interest. That is, of course, if attempts to ground the legislation have not been mounted in the House of Representatives. The Republika Srpska Delegates, in particular, have not been shy to veto proposed legislation in the House of Representatives under the archaic House "Procedures."^{cxxv} It is clear that the "Sloga" Delegates in the House of Representatives vote together with the ultra-nationalist SDS and SRS as a national block.

I. Legislative Ineffectiveness

Since 1996, the numerous vetoes, squabbles and boycotts in the House of Representatives, have forced the High Representative to impose eight national level laws on an interim basis.^{cxxvi} Of these laws, only four have since been passed by both the House of Representatives and the House of Peoples.^{cxxvii} In one instance, the Law on Citizenship – imposed on an interim basis by High Representative Carlos Westendorp – was not ratified by the Parliamentary Assembly until a full 18 months later.^{cxxviii} To its credit, the Assembly has passed 17 laws that did not need the High Representative's imposition.^{cxxix} The very existence of the High Representative's enhanced powers has left the nationalist political leaders in the Parliamentary Assembly in a comfortable position, where they can block legislation for local political purposes, knowing full well it will be implemented anyway.

In spite of the Parliament's adopting numerous laws, almost all to date have been drafted by OHR/Council of Europe expert working groups. Indeed the only law, which the Bosnians themselves drafted, is the Law on Administrative Taxes, written by the Council of Ministers. Nonetheless, the High Representative was forced to impose it on 31 July, 1999, after the draft failed to make it through the Parliamentary Assembly. Whenever a draft law is put to the Assembly, the various delegates' clubs know that if it is politically unacceptable among hard-line supporters, they can simply wait for the High Representative to impose it. As a result, the Parliamentary Assembly has passed only approximately 25 laws since Dayton, or, on average, 8 laws a year.^{cxxx} In practice, it is the opposition parties, such as SDP bih, that initially propose legislation, and it is the Council of Ministers, in particular co-chairman Haris Silajdzic, that drafts it.

Bosnia and Herzegovina's short term goal appears to be Council of Europe Membership. To achieve this goal, the Council of Europe has set forth a number of criteria, which includes reform of old legislation, and implementation of new.^{cxxxi} Given the current speed

and ineffectiveness of the Assembly, OHR insiders estimate Council of Europe membership could be five to eight years away.

For a country that has aspirations of one day joining the European Union, bih remains remotely distant in terms of legislative reform and productivity. At the present legislative pace, bih is decades away from EU membership, as the EU has numerous legal and regulatory requirements covering wide-ranging issues, such as environmental pollution, workers' rights, women's rights, etc., that must be in place before a country may accede. There is no question that the work of the Parliamentary Assembly has been curtailed by administrative and resource problems,^{cxxxii} which highlights how much the entities disregard the Parliament.^{cxxxiii}

J. The Presidency

Much of the prestige, media coverage, protocol and trappings of statehood are attached to the bih Presidency, and the members of the Presidency are afforded the level of respect due the highest body of government in bih - the heads of state.

The Presidency has responsibilities in the fields of bih foreign policy, such as, appointing Ambassadors,^{cxxxiv} representing bih in international organisations, and ratifying foreign treaties on behalf of bih.^{cxxxv} It is to propose an annual budget for itself and report its expenditures to the Parliamentary Assembly.^{cxxxvi} It has three other vaguely specified functions: to "co-ordinate as necessary" with international organisations, perform other duties, which the Assembly or the entities may give it, and executing decisions of the Parliamentary Assembly.^{cxxxvii} Finally, "each member of Presidency shall, by virtue of the office, have civilian command authority over armed forces."^{cxxxviii} Precisely which armed forces is never specified.^{cxxxix}

The Presidency has no authority whatsoever to govern within the entities. In fact, many of its specified functions seem to deal with regulating its own bureaucracy. The history of the joint institutions shows that the entities have not given any responsibility to either the Presidency or the Parliamentary Assembly. The reality is that the Presidency is only relevant to bih politics because of its individual members. Alija Izetbegovic still fulfils a "Father of the nation"-type role for bih Bosniaks, while the Croat member and current Chairperson of the Presidency, Ante Jelavic, meets regularly with OHR and other international officials in his much more powerful role as President of HDZ bih. The Constitutional confusion regarding whether legislation is to originate with the Presidency or the Parliamentary Assembly, is in practice decided in favour of the Presidency, simply because Izetbegovic and Jelavic are the singularly most powerful members of their respective ethnic groups.^{cxl}

The actual level of agreement between members of the Presidency may be best seen in two recent examples. First, Alija Izetbegovic's visit to Saudi Arabia and Iran, and second, Zivko Radisic's visit to Belgrade to meet with indicted war criminal Slobodan Milosevic. In the case of Izetbegovic's visit, it was initially billed as a state visit, even though the other members of the Presidency had not been informed of it or of its purpose.^{cxli} Eventually, the trip, which caused a media furore, was billed as a private visit. Following public disclaimers from Jelavic and Radisic that it was not a state visit,^{cxlii} Izetbegovic's aid Mirza Hajric attacked Jelavic for his frequent visits to Zagreb to meet with Croatian President Franjo Tudman, for which Jelavic received no official permission from the Presidency.^{cxliii} Jelavic in return stated he never claimed state status for his visits to Zagreb.^{cxliv}

Shortly thereafter Zivko Radisic travelled to Serbia, where he met with indicted war criminal Slobodan Milosevic, in what was billed as an official state visit.^{cxlv} Once again a media furore erupted, caused in part by Radisic's efforts to undermine Bosnia and Herzegovina's international law suit against Yugoslavia for aggression and war crimes. RS Prime Minister Dodik condemned the visit as "irresponsible," as it did not have the approval of any RS organs or institutions.^{cxlvi} This, incidentally, further underlined the weakness of the central Presidency, when a member is expected to receive permission from his entity prior to travelling abroad.

The voting mechanism for the bih Presidency (Annex 4, Article V)^{cxlvii} discriminates against and disenfranchises minority populations in both RS and the Federation (Annex 4, Article II:5).^{cxlviii} Republika Srpska voters, including hundreds of thousands of Bosniaks, Croats and "Others," can only vote for a Serb to the bih Presidency. Serb voters in the Federation can only elect a Bosniak or a Croat.

If the DPA had really envisaged minority refugee return taking place, then only 53% of Republika Srpska would be Serb, with 47% of RS voters from non-Serb minorities. This may indicate that DPA's authors knew refugee return would not take place. It also creates a clear message to all non-Serbs originating from the RS, that Republika Srpska is a Republic first and foremost of the Serb people, and not the multi-ethnic entity that the Preamble to the DPA Constitution and the European Convention on Human Rights had envisaged. So too, it sends a clear message to the Serbs that they are unwelcome in the Federation.

The new draft Permanent Election Law (PEL), anxious to introduce multi-ethnic co-operation, chose the Presidency as the only level of government for experimentation, with a requirement that Presidency candidates seek cross-entity support.^{cxlix} In spite of new mechanisms, which on the surface would indicate an attempt to force politicians to appeal to other ethnic groups, Ambassador Robert Barry of OSCE indicated that this new requirement would have little or no effect on election outcomes. Rather, it is an attempt to cultivate an appearance of authoritative statesmanship in the Presidency.^{cl} It is quite noticeable that the draft PEL does not extend the same requirement to the entity level, but instead keeps it at the one level of government that has no real political power or influence.

K. Co-Presiding: The Council of Ministers

The Council of Ministers^{cli} is not afforded its own Article and is introduced as the fourth out of five points in the Presidency Article. The role of the Council of Ministers is unclear in the bih Constitution. They are given the responsibility for "carrying out the policies and decisions of bih in the fields referred to in Article III(1), (4) and (5)."^{clii} These fields are the "Responsibilities of the Institutions of bih."^{cliii} Given that the Parliamentary Assembly does nothing concrete, other than enact legislation to implement Presidency decisions, it appears the Council of Ministers is to assume the responsibilities of the joint institutions which aren't specifically given to the Presidency. This means foreign trade policy, customs policy, monetary policy, immigration and refugee policy, communications policy, air-traffic control, inter-entity transportation and international and inter-entity law enforcement.^{cliv}

Although it was initially envisaged that the Council of Ministers could expand and establish additional central government Ministries,^{clv} it has created only one new Ministry, as, predictably enough, neither it nor the Parliamentary Assembly have been granted further responsibilities by the entities. Today, the Foreign Ministry and the Foreign Trade Ministry have been joined by a newly created Ministry for Civil Affairs and Communications. A Civil Aviation Department deals with air traffic control, whereas the Central Bank of bih deals with bih-level monetary policy. Although a joint customs policy

was finally signed by the Presidency in April of 1999, the joint institutions depend on the goodwill of the entity customs agencies to implement the policy.

As communications matters and foreign trade policy are dealt with by the relevant Ministries,^{clvi} the only matters where the Council of Ministers, or indeed any of the joint institutions enter into the government of the entities, are in the fields of inter-entity transportation and inter-entity law enforcement.^{clvii} Yet, given the failure to create joint corporations under Annex 9, this remains largely unimplemented. Inter-entity transportation is still limited to a number of private bus routes between Sarajevo and Banja Luka, Bijeljina, Bosanska Dubica, Pale and Brcko. There are no scheduled passenger train services between the Federation and Republika Srpska, in spite of a memorandum signed between both entities' Prime Ministers in Doboj in 1998.

On legal matters, in February 1998 the Presidency established an Inter-entity Legal Commission (IELC), which finally led to a Memorandum of Understanding (mou) on Inter-entity Legal Assistance, eventually signed by both entity Ministers of Justice in May 1998. However the poor performance of both the IELC and the mou, led the Madrid Peace Implementation Council to insist that legislation be passed in both entities by 31 December, 1999. There are few signs that such legislation will be passed by the deadline.

The Council of Ministers is presided over not by the one Chairperson that DPA envisaged,^{clviii} but rather by two Co-Chairs^{clix} and a Vice-Chair,^{clx} as the Parties could not agree which ethnic group would take supremacy. The bih Constitutional Court has ruled that the creation of a co-chair and a vice-chair for the Council of Ministers is unconstitutional, and these positions should in theory be disbanded.

The problem of limited effectiveness of the Council of Ministers is twofold. First, there is the limited role they are given. Second, as with the other joint institutions, there is no enforcement mechanism. Whatever laws, decisions and policies, etc., are passed by the joint institutions must be implemented by the entities. If the entities decide against implementation, there exists no state mechanism to compel compliance. For example, there was no state mechanism to force the RS representatives to fulfil their duties following the start of NATO air strikes on Yugoslavia in March, and 9 weeks were lost in the 1999 programme of work of the Council. When one considers that the current Council of Ministers was not elected until January of 1999, one can see that lacking entity support, the joint institutions are helpless. In short, the roles typically associated with a central government are in the hands of the three entities.

L. The Constitutional Court of bih

Article VI of the bih Constitution introduces the bih Constitutional Court. The Court only has jurisdiction to decide disputes over the Constitution that may arise between the Parties and whether entity laws contradict the bih Constitution.^{clxi} Although the Court also functions as an appellate Court only on constitutional matters, it was only on 24 September 1999, a full three years and ten months after the signing of the DPA, that the Court first reviewed appeals of lower court decisions.^{clxii} It will now be up to the entity courts to decide whether to respect the decisions of the bih Constitutional Court.

The OHR Judicial Reform Strategy has noted the disastrous financial circumstances under which the Court has operated since its establishment. So too, it has recommended the court be merged with the Human Rights Chamber, to clear up the constitutional confusion as to which is the highest appellate court in bih for human rights provisions.^{clxiii}

M. The Failure of Central Institutions

The failure of the implementation of Annex 4 may be seen in one of its successes, the state flag and coat-of-arms, which were implemented by the High Representative.^{clxiv} The only places where bih officials are required to fly the state flag is at the state borders, or at buildings which house state institutions. In Republika Srpska, that means less than 20 bih state flags, as there are no bih state institution buildings. Bih state flags in RS fly at all the official borders with Croatia and FRY, and at Banja Luka airport. In all cases, the Republika Srpska flag flies alongside the bih state flag, and is always at least the same size, if not bigger. Prior to the closure of the Bosanski Brod border crossing bridge in autumn of 1998, the border was clearly identified, on the bih side, as "Republika Srpska, border crossing Srpski Brod." There was no mention of bih, only a large emblem of Republika Srpska, with no sign of bih state emblems. Next to the RS flag, a dirty, tattered bih state flag flew, smaller than the Republika Srpska flag.

Similarly, in the territories of the former "Herzeg-Bosna", bih flags fly at the border crossings alone, and the illegal former flag and emblems of "Herzeg-Bosna" are omnipresent. The bih state flag at the Metkovic border crossing with Croatia, is, quite literally, cut to pieces. The words "Bosna i Hercegovina" have been painted over on the state emblem. Croat authorities throughout western Herzegovina violate this important part of the DPA wantonly. Court and police buildings, particularly throughout Cantons 7, 8 and 10, regularly fly the old "Herzeg-Bosna" flag and shield, and regularly display photographs of officials of foreign countries.^{clxv}

The sad fact is that the joint institutions – as seen in the example of the flag – are only supported by one ethnic group, the Bosniaks. And Annex 4 requires three ethnic groups to function.

VII. ANNEX 5: ARBITRATION

Shortest of them all, Annex 5 commits the two entities to "engage in binding arbitration to resolve disputes between them," and to create a "system of arbitration for the solution of disputes between the two entities." To date this has not occurred. When one entity engages in activities contrary to DPA, such as refusing refugee return or human rights or implementation of national level laws, it does so because these activities are in its perceived interest. It has no desire to submit to binding arbitration, which could force it to change its behaviour. Because the entities have refused to comply with the provisions of this annex, the OHR has attempted to fill the gap, by taking over the mediation function. To date almost all OHR mediation efforts – such as Zepce, Travnik, Brcko, and Mostar – have ended in failure.

VIII. ANNEX 6: HUMAN RIGHTS

Few annexes of the DPA can "boast" such a high level of general non-compliance as Annex 6. None of the ambitious goals of Article I of Chapter 1^{clxvi} have been met: government officials and institutions in Bosnia and Herzegovina continue to systematically discriminate against people on the basis of ethnicity. Many government officials practice discrimination to prevent refugee return, hoping to convince returnees and other minorities that they have no future as an ethnic minority in a given area. Following a tit-for-tat policy, abuses in one ethnic area are followed by abuses in another. This discrimination is subtly endorsed by discriminatory practices in the DPA Constitution of Annex 4.

However, ethnic discrimination does not form the only basis for human rights abuses in today's bih. The inefficient and top heavy administrative structure, coupled with a law

enforcement system that often borders on anarchic, have further fuelled the culture of politically-charged nepotism that the Titoist system fostered even before the war. BiH works on a complicated system of "veze",^{clxxvii} where those with contacts get things done, and those without risk discrimination. People who face discrimination include: minority pensioners,^{clxxviii} minority workers,^{clxxix} displaced persons from majority ethnic groups, political opposition supporters,^{clxxx} pregnant women and mothers,^{clxxxi} and many groups of ordinary citizens who are not politically "connected" to the SDA, HDZ or whichever Serb nationalist political party is in local control in Republika Srpska. To cite individual cases of human rights abuses in BiH today would be to suggest that one can actually quantify the level of non-compliance with Annex 6. One issue does stand out. The vast majority of human rights cases presented under Annex 6 deal with property rights.

A. The Human Rights Chamber

Annex 6 mandated a Human Rights Commission "to assist (the Parties) in honouring their obligations under this Agreement."^{clxxxii} These "obligations" are not only to the European Convention on Human Rights, but also to sixteen other "international agreements listed in the Appendix of this Annex."^{clxxxiii} The Human Rights Commission was to be the lead agency in the defence and promotion of human rights in BiH. Once again, however, the role of the DPA-created body was to "assist," and not to "instruct,"^{clxxxiv} or for that matter to enforce.

The Commission consists of two bodies, the Office of the Ombudsperson, and the Human Rights Chamber. While the Human Rights Chamber is a judicial body whose decisions may not be appealed and – according to DPA – carry the force of law, the Ombudsperson's findings and recommendations carry less weight, and rely on local authorities to comply out of good will.

Levels of compliance by the Parties with the Human Rights Commission's bodies are difficult to gauge. By mid-October 1999, the Human Rights Chamber had registered approximately 2800 cases, reviewed 303, and handed down 160 decisions.^{clxxxv} Only about 10% (approximately 16) of these 160 decisions have been implemented, in spite of DPA instructions that the parties "shall implement fully decisions of the Chamber."^{clxxxvi} Outside of JNA apartment-related cases, the Chamber has only handed down decisions in approximately 40 other cases over the last four years.

Recently, compliance in the Federation has begun to improve slightly, and the Federation has paid six of eight financial awards given plaintiffs by the Human Rights Chamber in 1999 for non-property cases, including one for 30,000 DEM.^{clxxxvii} For corresponding cases in RS, there is complete non-compliance to date.^{clxxxviii} Statistically, compliance with the Chamber's decisions could rise to 80% in the coming year, as recent laws imposed by the High Representative will protect people who purchased apartments from the Yugoslav People's Army (JNA) in 1991 and 1992.^{clxxxix} If local authorities comply with the new legislation, it could lead to compliance with the 120 Chamber decisions handed down on this issue to date. However, the Federation's declaration of compliance has come more than two years after the first decisions on the issue were handed down by the Human Rights Chamber, and only because the High Representative imposed the changes in the law.

B. Speed and Case Load

The Human Rights Chamber faces a busy year before the expiration of its mandate at the end of 2000. Under property laws to repeal war-time abandoned property legislation, many BiH citizens may be forced to take the entity governments to the Human Rights Chamber if they do not receive decisions – or the execution of decisions – on their cases within specified deadlines. In these cases, the Ombudsperson or the Chamber may decide that "silence of the administration" means that all effective legal remedies have

been exhausted, and may admit the cases.^{clxxx} Judging by current patterns of property law implementation, as many as 100,000 new cases could swamp these bodies during the year 2000.^{clxxxii}

Many of the Chamber's 1999 property decisions resulted in financial awards for the plaintiffs. These typically were in amounts ranging from 15 DEM to 6,400 DEM, with an average of 1,000 DEM per case. If past practice is any guide, then the new case load in the year 2000 could present the entities with a total bill of anywhere from 1.5 million DEM to 100 million DEM, depending on the Chamber's ability to deliver decisions. Unfortunately for the plaintiffs, and fortunately for the entity budgets, to date the Chamber has been very unproductive, deciding only 303 of the approximately 2,800 cases registered. This suggests resources may be severely limited, that the Chamber deals inefficiently with its caseload, or both. The Chamber's insistence on devoting so many of its decisions – 120 out of 303 – to the issue of JNA apartments, is questionable, when many other types of cases await precedent-setting decisions.

Because the Human Rights Chamber can take up to two years to decide an issue, the OSCE Human Rights Officers have on occasion not directed complainants to the Chamber, as the complainants simply do not have two years to wait.

C. Ombudsperson

As of 4 October, 1999, the Office of the Ombudsperson had registered over 3,454 cases.^{clxxxii} In addition, "roughly 55,000 individuals sought either advice or intervention from the Ombudsperson" during its first three years of existence.^{clxxxiii} Approximately 50,000 of these cases relating to property were presented as a "class action" by the Ombudsperson against the entities, which led to the High Representative imposing property law changes in 1998.

In spite of these numbers, the success in implementing the Ombudsperson's decisions is more difficult to assess. Indeed, neither the Ombudsperson's Annual Reports nor the Case Summaries include statistics on how many of the recommendations have actually been implemented.^{clxxxiv} However, reason exists to suspect that non-compliance is a major problem. The Ombudsperson makes the point – in the most recent Annual Report – that an evaluation of the role and performance of the Office should not concentrate too much on the issue of the Parties' compliance with its decisions.^{clxxxv} In spite of the Ombudsperson's statements, the only real criterion for success is implementation of recommendations. And non-compliance seems to be the rule, rather than the exception, as seen by the Ombudsperson's criticism of the various governments for almost complete non-compliance with its recommendations.^{clxxxvi} Although the Office of the Ombudsperson has stated that "the vast majority of the Ombudsperson's requests for an interim measure...have been respected by the authorities,"^{clxxxvii} requests for interim measures, such as a postponement of an eviction, are just that – interim.

Of the 3,454 cases registered for action, only 1,300 actual decisions have been rendered.^{clxxxviii} The International Human Rights Law Group has noted that:

"Taking into account...the backlog in cases, the lack of co-operation with the Ombudsperson's Office that the government of bih and the governments of the two entities have demonstrated, and the absence, in any event, of an obligation on the part of the respondent parties to act in accordance with the Ombudsperson's recommendations, the Law Group is gravely concerned that both the relevance and the role of this mechanism has been substantially compromised."^{clxxxix}

The true state of compliance with the Ombudsperson's recommendations is difficult to assess, as the Office of the Ombudsperson maintains an air of secrecy about its work, by not publishing full data on compliance.

Nonetheless, there is reason to believe some things might be improving. The OHR Judicial Reform Strategy noted that "compliance with the...recommendations of the Office of the Ombudsperson has been increasing in the first half of 1999."^{cxv} Indeed outside of the property arena, it appears that compliance in Bosniak areas has substantially improved since the appointment of the entity "Agents," who liaise between the Commission and the entities. Yet progress, whether real or imagined, will prove difficult to assess until the Office of the Ombudsperson operates more openly.

D. Why is the Commission Ineffective?

When looking at the effectiveness of the Human Rights Commission since Dayton, the first major problem, as elsewhere throughout the Peace Agreement, is the lack of an enforcement mechanism. Indeed the bih Human Rights Commission is modelled on the Council of Europe Strasbourg model. Both the European Court of Human Rights (the European equivalent of the bih Human Rights Chamber) and the now-defunct European Commission for Human Rights (the European equivalent of the bih Office of the Ombudsperson) experienced difficulties with regards to implementation of their decisions. Yet they operate in a European culture where the rule of law is afforded more respect than in Bosnia and Herzegovina.

Second, the Commission is a small body working in a country where the task facing it is enormous:

"Unfortunately, due to its limited capacity and institutional weaknesses, the Human Rights Commission has barely tackled even a small fraction of the many human rights violations that continue to be committed throughout the country with...impunity."^{cxvi}

Third, the complexity of the human rights structure in bih limits the effectiveness of the Human Rights Commission. Because the Ombudsperson's decisions are not final and binding and the Human Rights Chamber's are, this seriously weakens the authority of the Ombudsperson. Indeed the Ombudsperson works more as a negotiation-based mechanism for the resolution of cases. In light of this, many local officials refuse to implement the Ombudsperson's recommendations unless ordered to do so, aware that it is politically easier to be seen to be implementing something when ordered to do so – as by the Human Rights Chamber – than to voluntarily comply – as with an Ombudsperson's recommendation.^{cxvii}

E. The Confusion of Bureaucracy

Many citizens, particularly in the Federation, are uncertain which body to turn to first. The natural tendency of many bih citizens to seek intervention from an international organisation results in many cases passed from IPTF Human Rights Officers to OSCE Human Rights Officers. This occurs when the complaint does not directly involve alleged police malpractice, or when the complaint originates in Republika Srpska, where the existing SFRJ Law on Criminal Procedure does not provide citizens with adequate human rights protection and fails to force the police to act on violations of law.^{cxviii} RS police forces, therefore, wash their hands of action and conveniently force complainants to go to court to realise their rights. This procedure takes months, if not years, and there is no guarantee that the plaintiff will see the court order implemented in the case of a victory.

OSCE will, in many instances, direct the complainant to the Federation Ombudsmen or to the Office of the bih Ombudsperson (if the complaint originates in RS, where an Ombudsmen office has not yet been established), particularly when they receive no co-operation in solving the case from local authorities. Unfortunately, too many of these interventions end up simply as letters appealing to an offending body, asking it to reverse its course of action.

To avail themselves of a judicial body operating under the auspices of the DPA, i.e. The Human Rights Chamber, applicants must first exhaust all available judicial remedies before them.^{cxciiv} In the Federation the "exhaustion of domestic remedies" involves the eventual

"Successive intervention of a municipal court, a Cantonal court, the Supreme Court, the Human Rights Court (with a possible intervention of the Constitutional Court of fbih), and then the Ombudsperson of bih before reaching, finally, the Constitutional Court of bih or the Human Rights Chamber."^{cxciv}

Given the glacial slowness of the bih legal system and the expenses involved, this presents a wholly unsatisfactory situation. With regards to simplifying the human rights appeals structure in bih, the Venice Commission has observed that

"It seems both logical and highly desirable...[that] competence on all final appeals in human rights cases [should be with]...a single jurisdictional body at the state level...and it is highly advisable that this takes the form of a merger of the Constitutional Court with the Human Rights Chamber."^{cxciiv}

F. Human Rights Soldiers

There are few countries in the world where so much information is gathered on human rights, and so little achieved with that information. Bosnia and Herzegovina often seems to have a human rights monitoring overload, yet ironically many international community actors will argue that there are far too few "foot soldiers" conducting field monitoring. In addition to agencies monitoring human rights under the DPA (The Human Rights Commission, unmibh, OSCE, OHR, IPTF, UNHCR, the Council of Europe) or local law (The Federation Ombudsmen), there exist numerous Bosnian non-governmental organisations (NGO's) that monitor human rights and provide legal advice and free legal aid. All told, there are some 194 international and local organisations active in the field of human rights monitoring, promotion or intervention inside of Bosnia and Herzegovina.^{cxciiv} Given the difficulties they encounter in their relations with local authorities, few of these organisations would state that the entities have generated the human rights environment DPA required of them.^{cxciiv}

G. Human Rights - What They Could Be

The largest human rights monitoring mechanism in bih is the OSCE Human Rights Department, which maintains 27 Human Rights Officers in 25 Field Offices and Regional Centres.^{cxciix} If Annex 6 were being implemented, the OSCE Human Rights Officers would be able to solve at least some of these cases, as they are empowered – under the *spirit* of Annex 6 – to instruct local officials to cease any practices of discrimination and implement their DPA obligations.^{cc} Moreover, the bih Constitution gives them even more authority.^{cci} However, as with so much of DPA, the spirit of the Agreement counts for little. OSCE Human Rights Officers constantly deal with uncooperative local government officials, and as they have no power to enforce human rights, they are to a large extent ignored. Indeed, there are countless cases of local officials sending citizens to OSCE for "clarifications" on matters that the officials themselves are obliged to know. The local attitude seems to be that once there is a toothless international organisation present in the vicinity, then responsibility for realising the rights of these ordinary citizens can fall into

their hands. Whatever success OSCE Officers do achieve is usually the result of their own talents. More often, when local officials do co-operate it is because it is in their interest to be seen to be in compliance with Annex 6, albeit at the absolute minimum level necessary to assuage the anger of more senior international community officials.

H. Whither Human Rights

Human rights were deemed so important in the writing of the bih Constitution that a separate article was devoted to them, Article II on Human Rights and Fundamental Freedoms. Suffice it to say that there has been general non-compliance with the Constitutional provisions on human rights as found in Annex 4, Article II:3,^{ccii} Article II: 4,^{cciii} Article II: 6^{cciv} and Article II:8.^{ccv}

Notwithstanding the evidence of increased co-operation with the Human Rights Commission in 1999, which appears directly related to bih's attempts to secure accession to the Council of Europe, there is little evidence to suggest that bih's human rights record will significantly improve in the short to medium term. Evidence of the continued wholesale and systematic violation of human rights in bih continues to appear with regularity, both in the local media and through international organisations. This leads one to question what – if any – progress Annex 6 institutions have made implementing the human rights provisions of the bih Constitution.

IX. ANNEX 7: REFUGEE RETURN – THE KEY TO DAYTON

The key to the successful implementation of the DPA is the ability of refugees to return to their pre-war place of occupancy. All other annexes either depend on refugee return, or were created to assist in implementing refugee return. The creation of a fully functioning multi-ethnic Bosnia and Herzegovina depends on Annex 7, and Article II:5 of the bih Constitution,^{ccvi} being implemented in its entirety. Indeed, the best measure of DPA implementation is refugee return. Tellingly, nearly four years after the signing of DPA, Annex 7 has not been implemented, except in numerically insignificant instances.^{ccvii} Some DPA signatories, such as Croatia's Franjo Tudman, continue to publicly oppose refugee returns to pre-war homes, hoping to consolidate control over ethnically clean territories.^{ccviii} It appears that some international agencies responsible for implementing DPA, such as SFOR, have chosen the path of least resistance and distanced themselves from playing a role in its implementation, in spite of their authority under Annex 1A, thus playing to the ethnic cleansers. If the current slow pace of returns continues, the last Bosniak will not return to Republika Srpska until the year 2117. Had the Bosniak leadership known in November 1995 that minority return to Republika Srpska would be so obstructed four years later, the Peace Agreement might never have been signed.

A. How Many Have Actually “Returned?”

According to UNHCR figures, as of 31 August 1999, only 340,919 refugees have returned to bih since the signing of the DPA.^{ccix} Of these, 93.3% returned to the Federation, and only 0.7% -- 2,435 people -- were non-Serbs returning to Republika Srpska. A further 270,001 displaced persons (dps) “returned” to municipalities within Bosnia and Herzegovina over the same time period. Of these dps, 70% either returned to or within the Federation. Therefore, since Dayton, a grand total of 610,920 “returns” have taken place. Given that the war displaced 2.2 million people, it would be tempting to claim a 27.8% return figure.^{ccx}

However, these figures are misleading.^{ccxi} The vast majority of these 600,000 returnees are not returns to pre-war homes, but returns to areas where their ethnic group exercises military control. In a large number of cases, these “returns” are either to temporarily

rented accommodation, to the homes of relatives or friends, or to properties which they have illegally occupied. "Returnees" have also been allocated property which belongs to other refugees or dps, usually members of a minority ethnic group whose home was declared abandoned during the war.^{ccxii} In many instances these are refugees whose pre-war homes are held by a hostile ethnic group, which will not permit returns. Such "returnees" have often been forcibly returned by their European host countries.

A true picture of refugee return to pre-war homes of origin is available by viewing "minority" return^{ccxiii} figures, as minorities are far less likely to return to rented accommodation or to live with families or friends in areas where they form a minority. And such persons are almost certain not to have been allocated abandoned property by majority politicians. As of 31 August 1999, minority returns numbered a mere 100,714 throughout all of Bosnia and Herzegovina. In other words, the number of minority returns represents less than 5% of all the refugees and displaced persons created by the war.

The result is that approximately 1,189,150 people, including 836,500 internally displaced persons,^{ccxiv} are still without a permanent solution nearly four years after the cessation of hostilities.^{ccxv}

B. Republika Srpska: The Ethnic Cleansers Win

As of 31 August 1999, UNHCR figures show that Republika Srpska had permitted a mere 13,586 Bosniaks and Croats to return to their homes since the cessation of hostilities in 1995. Put more graphically, the 13,125 Bosniaks who have returned to RS represent a mere 2.7% of the 479,054 Bosniaks expelled from the territories that make up present-day RS during the war. This is in spite of Republika Srpska Prime Minister Milorad Dodik's as yet unfulfilled 1988 promise to return 70,000 Bosniaks and Croats to their pre-war homes by the end of that year. At such a slow rate of return, the last Bosniak will not return to his pre-war home in RS until 2117.

C. Federation: Croat Obstruction, Bosniak Semi-Obstruction

To date the Bosniaks have a far better record of refugee and DP returns than both the Croats and the Serbs. In the Federation, 35.3% of the 87,128 minority returns have been Serbs and Croats returning to Sarajevo Canton. These 30,747 returnees represent 30.5% of all minority returns in bih to date. This is mainly due to the pressure on Sarajevo authorities to implement the Sarajevo declaration, the success of the UNHCR-led Sarajevo Housing Committee, and the far greater job opportunities in the capital than elsewhere.

Throughout bih, almost two out of three minority returns that have taken place since Dayton (64.7%) have been to Bosniak-controlled municipalities (65,159 people). In addition, approximately 25.3% (40,299) of the 158,952 Croat refugees and dps from Bosniak-controlled municipalities have returned since Dayton.

In contrast, since 1995 only 11.8% (5,317) of the 44,881 Bosniak refugees and dps have returned to Croat-controlled municipalities in Herzegovina. In central Bosnia the situation is slightly better, as approximately 16,652 Bosniaks have returned to Croat municipalities.

The ratio of Bosniak to Croat returns is illuminating. While a total of 22,000 Bosniaks have returned to Croat-controlled municipalities, 40,000 Croats have returned in the opposite direction. Significantly, the Croat returns to Bosniak areas have taken place in spite of intense official pressure from the ruling HDZ not to return. The HDZ fears that if Croats return to Bosniak areas they will a) free up housing for Bosniaks to return to Croat areas, and b) reduce their Croat majorities in those municipalities.

It is also illuminating that the HDZ will accept higher levels of Bosniak return in central Bosnia, where Croats could not realistically expect to gain military control in a future armed conflict. Western Herzegovina, however, is the area where a future Croat secession remains most likely. Therefore, the Croats strive to keep this area "pure" from Bosniaks.

D. 1999 Returns

In spite of the Return and Reconstruction Task Force (RRTF) 1999 Action Plan, which called for 120,000 minority returns by year's end, returns to and within bih have slowed during 1999. As of 31 August, only 13,916 minority returns had been registered with the UNHCR.^{ccxvi} Serb returns to the Federation represent approximately 42.7%^{ccxvii} of all registered minority returns in 1999, while the 1,800 Bosniak returns to the RS equal a paltry 24%.

According to the RRTF office in Zvornik, 2,000 Bosniaks have begun a phased process of return to villages in the Zvornik and Milici municipalities.^{ccxviii} Only 170 returned to Banja Luka, despite 7,565 applications for the return of property in the RS capital.

Given the current rate of return,^{ccxix} it is conceivable that by the end of 1999, as many as 20,000 minority returns may have taken place throughout Bosnia and Herzegovina during the course of the entire year. Unfortunately, even if this optimistic number is achieved, it will represent only 50.6% of the total number of minority returns in 1998 (41,275).

The single greatest area of failure in implementing the DPA has been Annex 7. The numbers speak for themselves. Minority return in bih has more or less failed. There has been substantial, systematic and well-organised non-compliance with Annex 7, including practically every sub-clause and sub-paragraph of practically every Article.^{ccxx} Bosniaks, Croats and Serbs who cannot return to pre-war areas of residence are unable to do so purely and simply because of their nationality.

E. The Escape Clause: Chapter 1

DPA required the Parties to: create a secure and welcoming environment,^{ccxxi} repeal discriminatory legislation,^{ccxxii} suppress incitement to hatred,^{ccxxiii} advertise punitive actions against those intending to commit acts of violence against returnees,^{ccxxiv} pro-actively promote protective measures for returning refugees and DP's,^{ccxxv} and "prosecute, dismiss or transfer" armed individuals for human rights violations.^{ccxxvi} The non-fulfilment of these clauses in 1999 is self-evident, especially given the lack of an enforcement mechanism within the treaty itself. Examples of violations and non-implementation are to numerous to be catalogued in this report.

Article I:4 of Chapter 1 has been used by local officials as an escape clause, primarily in Republika Srpska.^{ccxxvii} In this article the right not to return was enshrined, which resulted in three and a half years of obstruction and obfuscation, as local authorities gave primacy to the rights of majority dps to remain in their currently assigned housing, over that of minority dps to return to pre-war housing.^{ccxxviii} Under Chapter 1, Article I:4 the rights of the potential returnee and the current housing occupant may appear equal.

F. The Ill-fated Commission

How did DPA envisage minority return taking place? DPA called for the establishment of an "independent Commission for Displaced Persons and Refugees".^{ccxxix} As the Annex was divided into two Chapters, with one whole Chapter given to the Commission, it was clear that the Commission was going to be a major part of the implementing mechanism for Annex 7. The mandate of the Commission was to "receive and decide any claims for

real property in bih...and where the claimant does not now enjoy possession of that property. Claims may be for return of the property or for just compensation in lieu of return.^{ccxxx} It was envisaged that "any person requesting the return of property who is found by the Commission to be the lawful owner of that property shall be awarded its return."^{ccxxx}

This would be possible in that "the Parties shall co-operate with the work of the Commission, and shall respect and implement its decisions expeditiously and in good faith, in co-operation with relevant international and non-governmental organisations having responsibility for the return of and reintegration of refugees and displaced persons."^{ccxxxii} DPA was unequivocal that local authorities would respect and honour the independent work of the Commission for Displaced Persons and Refugees. As part of the General Framework Agreement for Peace, the Commission would act as a legal instrument higher than any law of the land, a point further reiterated in the Commission's defining Articles:

"Commission decisions shall be final, and any title, deed, mortgage, or other legal instrument created or awarded by the Commission shall be recognised as lawful throughout bih."^{ccxxxiii}

G. Results

Few bodies established under DPA have been so widely ignored as the Annex 7 Commission. Nowhere have there been such flagrant and brazen violations of the DPA as in the Parties attitudes in dealing with the Commission. Re-named as the Commission for Real Property Claims (CRPC),^{ccxxxiv} the Commission has issued approximately 65,000 decisions on over 167,000 applications relating to over 185,000 properties.^{ccxxxv} Yet a mere fraction of these decisions have resulted in the owner of the property being awarded his or her property back, so few in fact that CRPC officials claim not to be aware of the figure.^{ccxxxvi} Because the CRPC does not keep information regarding compliance, an educated guess by ICG staffers suggests that 3% would be a generous estimate. Local officials have simply ignored CRPC decisions.

The problem is not that the Parties dispute the decisions of the Commission. On the contrary, out of the 60,000 awards only 41 have been appealed by local authorities. The problem is simple – a lack of political will to return the properties to ethnic minorities. CRPC certificates, without an enforcement mechanism to combat the brazen violations of the DPA by local officials, are useless.^{ccxxxvii} Although local authorities claim legislation is necessary to provide a legal framework for implementing CRPC decisions, the DPA hold legal supremacy over existing bih laws. Furthermore, the Constitution of bih is clear on the matter:

All refugees and displaced persons...shall have the right, in accordance with Annex 7 to the General Framework Agreement, to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them.^{ccxxxviii} (author's italics)

Contrary to obfuscating claims by local officials, no new legislation is necessary to implement CRPC decisions. Legislation to repeal abandoned property laws, or indeed any legislation in force in either entity, should be irrelevant in cases where the CRPC has determined property ownership. Nonetheless, the CRPC attempted to overcome local obfuscation by presenting the governments of both entities with draft legislation to implement CRPC decisions. The CRPC's efforts constituted a form of appeasement of the ethnic cleansers, and violated Annex 7, Article XII:7, which states: "Commission decisions shall be final, and... shall be recognised as lawful throughout bih." Under the legislation, the CRPC certificate was no longer sufficient, and further certificates would be required from local authorities, presenting the possibility for further obstruction. Yet, even

this proved too much for local authorities, and passage of these laws was blocked. Because these laws were not implemented by a Council of Europe imposed September deadline, the High Representative imposed them in both entities on 27 October, 1999.

This follows an overall evolution of international community strategy during the post-war years, under which the international community has focused attention on creating a legislative framework in both entities that will outlast international community engagement in BiH. This is in harmony with the Council of Europe's Venice Commission,^{ccxxxix} which declared "it would not be possible to integrate this Commission in the legal order of BiH without subjecting its decisions to judicial or, at least, constitutional control."^{ccxli} Unfortunately, in attempting to follow such a course, the CRPC has clearly violated DPA.

H. The Property Fund

DPA also envisaged two further major roles for the CRPC. First, the CRPC would be an agency through which the entity governments could allocate "abandoned" or other empty properties.^{ccxlii} The Commission never assumed this role, as the Parties simply ignored it.

Second, the Commission was to administer the means by which refugees and dps would be compensated for properties that could not be restored to them, the so-called Property Fund.^{ccxliii} The Property Fund was never established, due to a combination of factors, the most fundamental of which was, and remains, the lack of money. The international community is not prepared to pay for destroyed or other properties, which cannot be returned to their rightful owners. And needless to say, Bosnian governments have neither the will nor the money. Yet this Fund remains a crucially important element in Annex 7.

I. Refugee Return and Security Issues

No one should under-estimate the influence of strategic and military issues on minority returns. For example, Serb returns to Croat controlled western Herzegovina and western Bosnia (Drvar) don't represent a strategic threat to Croats, whereas Bosniak returns do. In the event of a future conflict, a few thousand isolated Serbs in Drvar or Grahovo would not present Croats with nearly as much problem as thousands of Bosniaks in West Mostar, separated from their now well-armed brothers by a matter of several hundred metres. This is the main reason why approximately 4,800 Serbs have returned to Drvar and Grahovo municipalities, while Bosniak returns to west Mostar, Stolac and Capljina number only 1,600.

In Republika Srpska, the return of Bosniaks, so the Serb rationale goes, means the return of Muslim fighting men who could kill Serbs in the next war. A substantial majority of all minority returns to Republika Srpska have been elderly people to destroyed rural villages. The most notable are returns to destroyed villages near Brcko, Doboj,^{ccxliv} the Zvornik-area, and isolated villages deep in the Teslic municipality. These particular returns have been cost-free to RS authorities, and represent something of an experiment. The RS officials decide to allow Bosniaks back to a destroyed village so that they can see how much money they'll get from international donors.

But return of young, educated, military age non-Serbs to urban areas has thus far proven non-negotiable. During the war the Serbs carried out their most vicious ethnic cleansing in the cities and towns, against not only other ethnic groups, but also against one particular class: the urban elite. This included the eastern RS urban centres of Zvornik, Foca, Visegrad, Rogatica, Bijeljina and Srebrenica. Only mere handfuls of people have successfully returned to these towns. As during the war, these urban elite are still considered the most "dangerous" Bosniaks, as they have the intellectual wherewithal to be able to organise their people politically. As pointed out in one recent interim evaluation of the RRTF,^{ccxlv} in RS there remains a vast gap between politically acceptable Bosniak returns to destroyed villages, and politically unacceptable Bosniak returns to urban areas.

Such politically unacceptable returns typically involve the eviction of Serb DP's and the politically-connected from confiscated or stolen Bosniak and Croat apartments and businesses.

J. Minority Return Minimalism

For Bosnian Serbs and Herzegovinian Croats, who fought the war primarily so that they wouldn't have to live with Bosniaks ever again, the entire premise of refugee return is unacceptable. The whole *raison d'être* of Republika Srpska and the Croatian Republic of "Herzeg-Bosna" was to establish ethnically pure states: to ask them to accept Bosniak return is to ask them to deny the very reasons for the war in the first place.

Both the Serbs and the Herzegovinian Croats left Dayton with no intention to implement Annex 7. In the instances where Bosniaks refuse to permit returns, this has occurred due to a combination of bitterness, gangsterism, fear of blinking first, and because of the presence of a disturbing hard-line Muslim element in the SDA which really does want the Bosniaks to control bih.

There are secondary reasons why significant minority return has not taken place in bih since Dayton, which are not directly related to the nationalist politics of hatred. The most significant of these are:

- The presence of displaced persons in the houses/apartments of potential returnees. Because many of these people have nowhere to go, authorities refuse to evict them onto the streets;
- The houses/apartments of potential returnees are destroyed, so they have no habitable residence.

Although powerful arguments that prove convenient for ruling ethnic elites throughout bih to hide behind, they do not stand up to close scrutiny. In spite of the fact that up to 50% of the entire housing stock was destroyed during the war, there are literally thousands of unutilised housing units throughout bih. Thousands of cases exist of double occupancy, where rural residents occupied minority apartments in the towns while keeping their homes in the village. Other cases exist of politically connected strongmen "managing" stolen apartments. When one adds numerous self-contained apartments in large private homes, the large selection of apartments available to international community personnel, and politically connected individuals occupying spacious minority residences, it becomes obvious that bih has numerous housing options not pursued by the local authorities. Many of these could be freed up to accommodate DP's occupying properties to which the owners wish to return.

In addition, OHR sources indicate that in Central Bosnia Canton alone, the number of empty, repaired houses to which the original owners have not returned has recently dropped from 4,000 to 3,000. No doubt thousands of similar cases exist all over bih. This is due to a reluctance of the owners to move out of the minority properties they currently occupy, a continued reluctance to move back to areas where they may have been brutally ethnically-cleansed from, and a lack of political will to evict them.^{ccxlv}

K. Refugee Return Opportunities

Since 1992, the vast majority of socially owned apartments have been re-allocated.^{ccxlv} Successful enforcement of legislation repealing war time abandoned property laws^{ccxlvii} is crucial to the implementation of Annex 7 and the creation of a multi-ethnic bih. Yet, as expected, implementation is not going well. Figures quoted in an Interim Evaluation of the RRTF^{ccxlviii} show that of the 68,000 applications submitted in the Federation to restore occupancy rights in socially-owned apartments, only 12,000 decisions have been issued,

of which there have been only 3,000 reinstatements, a total of 4.4% of all applications. A greater number of reinstatements – 2,500 out of 17,000 (15%) – has been registered for privately owned property.

Bosniak-controlled municipalities are processing, deciding on and reinstating far more cases than Croat-controlled municipalities, where in some instances, for example Stolac and Capljina, either the appropriate municipal office has not been established, or has not issued a single decision. Sarajevo dominates the figures in respect to positive decisions and reinstatements.

In Republika Srpska, where the process started in 1999, only 100 reinstatements have taken place as a result of 500 positive decisions from 10,000 applications for restoration of occupancy rights in socially-owned apartments. This represents 1% of all applications. For the return of private property, 500 reinstatements have come on the basis of 2,500 positive decisions, which are the result of 28,000 applications (1.8%).

Latest international community efforts have been focused on establishing Double Occupancy Commissions with local authorities,^{ccxlix} as it is now accepted that these are the first category of evictions which should take place, following the success of the Sarajevo Housing Committee model.^{cci}

L. Refugee Return Strategies

There are an estimated 12,000 Dobojs Bosniaks in Zenica-Doboj Canton, and 10,000 Zenica-Doboj Serbs in Doboj. If the Mayor of Doboj and the Governor of Zenica-Doboj Canton were really prepared to return large numbers of their pre-war populations, then they would get on the telephone and arrange to transfer hundreds, if not thousands, of their displaced person populations. It could be done in a matter of weeks, with practically no need for international community assistance. A list would be sent to Zenica of Ze-Do Canton Serb DP's occupying apartments or houses in Doboj. A similar list, of Doboj Bosniaks occupying apartments or houses in Ze-Do Canton, would go to Doboj. A cross-tabulation would be done, and it would uncover that, for example, 5,000 DP's could be transferred in both directions. Both leaders would sign declarations guaranteeing human rights, fair education for minority children, a return to pre-war jobs, etc. In short, "sustainable return" would be achieved in that no distinction would be made between those departing to go home and those incoming to return home. Yet, in spite of estimates that as many as 4,000 Serbs are prepared to return to Maglaj if their houses are freed up,^{ccli} Serb nationalist hard-liners in Doboj discourage and prevent Serb DP's from returning, so as to prevent properties being freed up for Bosniak returns.

In the meantime, thanks to Serb intransigence, the Zenica-Doboj Canton received significant donor monies^{cclii} without having to make serious concessions for minority return. Maglaj continues to protect the Mujahadeen settlement in the pre-war Serb village of Bocinja, a presence Maglaj Mayor Ismet Mustabasic refers to as an "insurance policy" against Serb return.^{ccliii} The removal of the Mujahadeen from Bocinja is a pre-condition for Serb return to Maglaj. Numerous such examples abound throughout Bosnia and Herzegovina.

M. The High Representative Acts

In response to the lack of substantive refugee return and continued obstruction by local officials, High Representative Wolfgang Petritsch recently took decisive and long-awaited action. On 27 October, 1999, Petritsch -- using his authority under Annex 10 of DPA, as well as Article XI of the Peace Implementation Council's Bonn Conclusions -- unilaterally implemented a series of changes to several property-related laws in both the Federation and RS.^{ccliv} These changes, which include

financial penalties for governmental bodies and individuals who violate the new laws, also include specific time frames for eviction and re-instatement. In addition, the High Representative made veiled threats to remove obstructionist officials during a nationwide television address on the evening of 27 October, 1999, stating he would take "appropriate measures" to ensure compliance.^{cclv} These changes will, in theory, speed the return of refugees to their pre-war property, while at the same time increasing the power of CRPC decisions. While ambitious and well intentioned, the High Representative's latest actions may suffer from the fatal flaw that has hampered the implementation of previous decisions: the lack of an enforcement mechanism. In any event, the outcome and efficacy of implementation will not be seen for several months.

N. The Fear of What May Develop

Lack of an effective enforcement mechanism in the DPA has left displaced persons and refugees – who represent nearly one third of all bih citizens – "out in the cold" in the Bosnian peace process. Many have now adopted the position that is very convenient for the international community - they have given up on return, particularly those who have moved to cities controlled by their own ethnic group. But although most educated young people from the Drina river valley (Foca, Visegrad, Srebrenica) probably wouldn't leave Sarajevo to return home, it is naive to believe that they will abandon the right to dispose of or utilise their property. There is a sense amongst the bih public that the international community wishes the DP population – in spite of the heroic efforts of many UNHCR, RRTF, and NGO officials – would simply give up on the idea of returning to their pre-war homes.

A DPA process that does not implement Annex 7 has resulted in polarised, ethnocentric power blocs in Bosnia. The longer that refugee and DP rights to return are not realised, the more bent on revenge the same refugee and DP populations may become. It is not inconceivable to envisage terrorist attacks being carried out against the very properties that people cannot return to, the local administrative bodies preventing the return, or the international organisations who, under the current system, choose not to enforce DPA (SFOR) and occasionally appear to collude with the ethnic cleansers.

X. ANNEX 8: PRESERVING NATIONAL MONUMENTS

One of the less-noticed but nonetheless important annexes of DPA attempts to preserve the country's war-ravaged cultural heritage. In an effort to protect those national and cultural monuments not destroyed during the war, Article I provided for the creation of an independent Commission to Preserve National Monuments. The Commission was charged to "promulgate such rules and regulations...necessary to carry out its functions." The Commission was to be financed by contributions from the budgets of the two entities, and was to consist of one Serb, one Croat, one Bosniak, and two members appointed by the United Nations Educational, Scientific and Cultural Organisation (UNESCO). The Commission was to compile a list of designated properties having "cultural, historic, religious or ethnic importance as National Monuments."

A. The List and the Law

To date, the Commission has met 13 times, and has compiled a list of approximately 582 protected sites throughout the country.^{cclvi} The list reflects Bosnia and Herzegovina's multi-ethnic and multicultural heritage. At this stage the Commission is unwilling to publicise the contents of the list, due to the well-founded fear that ultra-nationalist groups or individuals might attempt to destroy monuments and sites that reflect a different

group's heritage. In spite of the relative secrecy of the list, four prominent sites have already been officially announced. These are the Mostar bridge, the site of the Ferhadija Mosque in Banja Luka, the Vranduk castle near Zenica, and the Radimlja necropolis near Stolac.

Another barrier to publishing the list is the lack of an adequate national level law to protect monuments. Although the Commission completed a draft law to protect monuments in January 1999, the national parliament has yet to bring it to a vote. On the entity level, the laws for protection of national monuments are also problematic. In the Federation the old inadequate Yugoslav law remains in strength. Republika Srpska has passed a new law, which, although better than the Federation law, still presents significant weaknesses. In order to fully protect Bosnia and Herzegovina's national monuments, the new national level law must be passed, the Federation must pass a new law, and Republika Srpska must amend its current law.

B. The Need For Protection: Radimlja Necropolis And The "Bogomil" Stecci

The need for a Commission is best seen in the case of the Radimlja Necropolis in Herzegovina near Stolac. This site – given official protection at the fourth session of the Commission on May 12-13 1997 – is home to numerous Stecci, the famous "Bogomil" tombstones from medieval Bosnia's 14th and 15th centuries. In spite of the obvious historical and cultural value of this site and its approximately 133 tombstones, in July 1999 a powerful local Croat businessman Ante Raguz, began building a warehouse on the neighbouring property. In spite of numerous letters from the Commission, the OHR's regional chief Richard Ellerkmann and the Federation Minister of Culture Fahrudin Rizvanbegovic, local Croat officials refused to halt the construction of this facility.^{cclvii} The behaviour of the local Croat officials, while demonstrating a clear disregard for national and cultural monuments, also pointed out the lack of an effective legal framework to protect these monuments. Ironically, the Croats claim the Stecci as part of their Croat cultural heritage.

C. Non-compliance and Extinction

Although Article III specifically calls for the entities to bear all expenses of the Commission, to date the entities have refused to fund its activities. In spite of letters sent to the Council of Ministers, funding remains unavailable. As a result, up until now UNESCO – whose director receives only a symbolic \$1 salary – has borne the entire financial burden of the Commission. Given the possibility of donor fatigue and impending changes in UNESCO's leadership, this funding might soon cease, endangering the further work of the Commission. While the Commission functions satisfactorily, with good co-operation among its Serb, Croat and Bosniak members, its work is threatened by the lack of laws, and the refusal of the entity governments to fund its activities. Other serious problems are encountered on the Cantonal and municipal levels, where the Commission experiences difficulty obtaining adequate documentation of sites. As such, non-compliance by the entities may destroy what progress has been made to date.

XI. ANNEX 9: PUBLIC CORPORATIONS

As part of the effort to create a united country, DPA provided for the establishment of public corporations in such areas as "utility, energy, postal and communication facilities." Unfortunately, these corporations are suffering from the same lack of co-operation that hamstring the central institutions created by Annex 4. As a result, compliance with this provision of DPA is problematic.

A. Commission on Public Corporations

The inter-entity body created by Article I to consider establishing Public Corporations, is the Commission on Public Corporations (CPC). The CPC is comprised of five members, three appointed by the entities – one from each major ethnic group – and two appointed by the European Bank for Reconstruction and Development. Today the three Bosnian members are Milorad Dodik (RS Prime Minister), Edhem Bicakcic (Federation Prime Minister), and Dragan Covic (Federation deputy Prime Minister). This CPC is not on the level of the central institutions specified under the Constitution in Annex 4. Rather, it is a joint effort of the two entities, outside the framework of the national government. Under this arrangement, the two entities are to decide on everything, including budget and finance matters, and allocation of resources and property.

B. Transportation Commission and Railway Corporation

Article II established a Transportation Corporation. To date, this Transportation Corporation exists only on paper, as the entities are still unable to agree on its mandate and responsibilities. Until Dodik took over as Prime Minister, Republika Srpska blocked all work of the Transportation Commission. Since that time, the three groups have initiated discussion, but have yet to agree on the scope and powers of the Transportation Corporation. The Serbs favour a toothless institution with all power vested in the entities, while the Bosniaks favour a functional body with the ability to act independently at the central level. As a result, the Transportation Corporation still lacks a specific purpose as well as a board of directors.

In spite of the fact that the Transportation Commission does not function as such, the entities have been able to co-operate sufficiently to form a sub-corporation, which is the Railway Corporation. The Railway Corporation – similar to most inter-ethnic bodies in Bosnia and Herzegovina – has no real managerial power, even though the entity Ministers of Transportation sit on its board. It also supervises compliance with international and state railway regulations. It has no independent budget or source of income. The Corporation is, however, the common international railway representative of the entities, and has the power to receive donations and borrow money. To date it has been the main interlocutor of the European Investment Bank. The Railway Corporation also supervises compliance with international and state railway regulations. It has served primarily to harmonise timetables, signals, and fees for infrastructure. The Corporation pays particular attention to two rail lines of international significance: Ploce-Mostar-Sarajevo-Doboj-Samac (Budapest); and Zagreb-Banja Luka-Doboj-Tuzla Zvornik (Belgrade).

The few actual successes of the Railway Corporation may nevertheless be somewhat ephemeral. There is no regularly scheduled freight traffic between the entities. International and inter-entity freight trains operate on demand only. These are primarily from Ploce to Sarajevo (Energopetrol) and Czech Republic to Sarajevo (Volkswagen/Skoda). There is no regularly scheduled passenger service between the two entities, and the passenger line from Sarajevo to Ploce operates at a minimal level. Serb and Croat intransigence blocked initial attempts to bring trains from the Czech Republic, and Republika Srpska continues to obstruct the introduction of inter-entity passenger service.

C. The Electric Company and Other Non-Existent Corporations

In spite of Article III, which allows for the creation of other corporations, specifically utility, energy, postal, communications, etc., no other corporations have been established. Although the entities have proven unwilling to create a joint corporation for transmission of electric power, the three ethnically based state-owned power companies have. On

October 28, 1998 the three Elektroprivredas formed a business association registered in Sarajevo, to co-ordinate the joint transmission of electrical energy. Interestingly enough, the creation of this association occurred as a result of work undertaken by the CPC, even though it did not adopt the formula of a public corporation as should have been created under Annex 9.

The CPC is now discussing the activation of the Transportation Corporation and the creation of other public corporations under Annex 9. These include: roads and ports (under the non-functioning Transportation Commission); postal service, which is being blocked due to Serb intransigence; and a media transmission infrastructure. As of yet, nothing has occurred in these areas, other than the meetings of working groups. Due to the overall levels of co-operation between the three *de facto* entities, much remains to be done before Annex 9 can be considered even partially implemented.

XII. ANNEX 10: THE OFFICE OF THE HIGH REPRESENTATIVE

A. What Is It?

To discuss the workings, successes and failures of the Office of the High Representative (OHR) is a massive undertaking deserving of an entire book. Therefore, this section will attempt to briefly synopsis its functions and responsibilities. Annex 10 called for the "designation of a High Representative...to facilitate...mobilize...and, as appropriate coordinate the activities of the organizations and agencies involved in the civilian aspects of the peace settlement." Article III of Annex 10 allows the High Representative to "appoint staff, as he or she deems necessary." The OHR as it exists today consists of 722 employees, of which 255 are foreign nationals.

B. Authority + No Power = Non-Implementation

The OHR has – at least on paper – "final authority" to interpret and implement the DPA. Since Dayton, the somewhat vague and undefined authority of the OHR has been supplemented by the decisions of two key Peace Implementation Council (PIC) meetings, most notably Sintra (30 May 1997) and Bonn (10 December 1997). The latter conference explicitly mentioned the High Representative's use of "final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement."^{cclviii} In some regards the OHR constitutes the highest legal authority in Bosnia and Herzegovina, higher even than the Annex 4 constitution. Nonetheless, the OHR's authority does not translate into actual power. Lacking an enforcement mechanism, such as a loyal constabulary, the OHR is forced to rely on the goodwill and full co-operation of the parties to implement its decisions, as well as to implement DPA. Often, the High Representative is reluctant to remove obstructionist officials, fearing that the OHR's lack of power will become apparent when those officials remain in office. The result is an implementing body that lacks the ability to implement.

A clear example of the OHR's conundrum is the continuing fiasco with Nikola Poplasen. Officially removed from office as President of RS on March 5, 1999, by the High Representative, Poplasen continued to occupy the President's office until September 1999. Even today, he is still referred to in some RS and all Serbian press as the President of RS, and he still attends the RS parliament as President. In other areas the OHR's inability to implement DPA can be found in its unsuccessful attempts to reunite the divided municipalities of Zepce, Travnik, Brcko, and Mostar. So too, after two years of intensive work, the OHR's RRTF has proven unable to begin the large-scale refugee returns so eagerly sought by dps and refugees, and so clearly called for in Annex 7. Lacking an enforcement mechanism, the OHR is forced to beg, plead, negotiate endlessly, and occasionally "bribe" local officials with the promise of donor funds. In all

these cases the OHR has failed, not due to a lack of effort, but rather due to the reluctance or outright refusal of local authorities to comply, and due to the OHR's inability to force compliance, which stems from the lack of an enforcement mechanism.

XIII. ANNEX 11: INTERNATIONAL POLICE TASK FORCE (IPTF)

Today Bosnia and Herzegovina maintains three separate ethnically based police forces. Each police force typically operates under the direct control of its respective ruling ethnically based political party (HDZ, SDA, SNSD or SDS), and according to the directives given by party leaders. The primary purpose of the police forces is to enforce social and political order, as defined by the ruling political parties. Crime prevention is a secondary, and often, largely overlooked function. Police forces maintain a reputation for corruption, brutality, lawlessness, and often, as the private armies of ruling ethnic parties. Police regularly disregard and often flagrantly violate the laws of BiH, human rights, and the DPA. In some areas, particularly western Herzegovina and Republika Srpska, police often operate with impunity, sheltering war criminals, refusing to investigate ethnically motivated crimes, and occasionally committing crimes against minority groups. Police regularly refuse to comply with directives of the international community, including the High Representative. In spite of the fact that eight of ten Federation Cantonal police forces have been officially certified by the IPTF for multi-ethnicity, the only real success has occurred in Bosniak majority areas. Republika Srpska and western Herzegovina present special problems of non-compliance.

In spite of its mandate to maintain oversight over the judicial system, IPTF has to date achieved little. Handicapped by a limited mandate under DPA, and lacking executive powers, the IPTF is forced to fight an uphill battle by relying on the good will of those it attempts to teach and discipline for compliance. So too, a lack of UN funding and IPTF aggressiveness in pursuing its mandate, coupled with personnel problems, have undermined the implementation of Annex 11.

A. The Purpose of Annex 11

Annex 11 of DPA created the IPTF to assist the Parties to:

Provide a safe and secure environment for all persons in their respective jurisdictions, by maintaining civilian law enforcement agencies operating in accordance with internationally recognised standards and with respect for internationally recognised human rights and fundamental freedoms, and by taking such other measures as appropriate.^{cclix}

The IPTF was given various responsibilities under Annex 11, which included:

Monitoring, observing, and inspecting law enforcement activities and facilities, including associated judicial organisations, structures, and proceedings...advising law enforcement personnel and forces...training of law enforcement personnel...facilitating, within the IPTF's mission of assistance, the Parties' law enforcement activities...assessing threats to public order and advising on the capability of law enforcement agencies to deal with such threats...advising governmental authorities in Bosnia and Herzegovina on the organisation of effective civilian law enforcement agencies...and assisting by accompanying the Parties' law enforcement personnel as they carry out their responsibilities, as the IPTF deems appropriate.^{cclix}

The Parties committed themselves to adhere to and co-operate fully with the IPTF,^{cclxi} and DPA clearly spells out what that co-operation should entail.^{cclxii}

In response to the DPA, IPTF developed a three-point plan, which concentrated on:

1. Restructuring a post-communist and post-paramilitary police force;
2. Reforming the police through training, selection, certification and de-certification procedures;
3. Democratizing the police forces by establishing a de-politicised, impartial, accountable, multi-ethnic police force, that abides by the principles of community policing.^{cclxiii}

B. Republika Srpska: Defiance and Reluctance

RS police have significant ground to cover, as the war left them with an appalling reputation as little more than "storm troopers" for the SDS. Although the December 9, 1998, Framework Agreement on Police Restructuring Reform and Democratization in Republika Srpska^{cclxiv} tried to rectify this situation, progress is glacial or non-existent. In this agreement, all RS legislation and regulations relating to civilian law enforcement not consistent with the GFAP, the Constitution of BiH or the Agreement had to be amended.

The Agreement determined the number of police officers in Republika Srpska should not exceed a maximum level of 8,500, and the ethnic composition "must reflect an equitable representation of all three constituent peoples and others" on the basis of the 1997 municipal election results. According to this agreement, by the end of the year 2000, 25% of all new RS police recruits (21% Bosniak, 3% Croat) should be minorities. The agreement also enshrined the right of 1991 RS residents to be eligible to apply as police officers, demanded that all RS police officers be trained and certified by IPTF,^{cclxv} and affirmed the obligation of the RS Ministry of Interior (RSMUP) to maintain the police force free from political influence. In spring of this year, according to IPTF information, RSMUP had 8,391 police officers,^{cclxvi} below the maximum number of 8,500 agreed in the December Framework Agreement. An unwillingness and inability to recruit minority police officers appears to be the main cause for the shortfall in official numbers.^{cclxvii}

At the present rate, the RSMUP will not meet the agreed deadlines and limits by the year 2000. To make room for 2,000 new minority officers by the end of 1999, approximately 1500 existing Serb officers must be let go or reassigned to other governmental duties. To assist RS officials, the IPTF submitted a list of 600 non-Serb candidates to the Ministry of Interior. Of these, 46 passed the initial testing and began training at the RS Police Academy in July 1999. Having exhausted almost all local "loyal" Croats and Muslims, the RS is now faced with a situation where each new minority hire is a returnee. The IPTF has tried to find police officers in the Federation who were originally from RS, who are interested in returning and working in the RS police force. Yet in September 1999 the RS government decided that, nearly four years after Dayton, it is "too early" to hire Federation officers.

Although practice is far from perfect, on paper things appear somewhat better. The ICITAP has reviewed the RSMUP internal book of rules and has declared them to be consistent with the practices of democratic policing.^{cclxviii} The fact that little attention is paid to these rules by the RS police force is overlooked.

As of June 1999, almost 99% of all RS police officers have finished IPTF human dignity training, while 38.5% have completed transitional training.^{cclxix} The constant presence of the IPTF in most of the police stations throughout RS (91 out of 158),^{cclxx} as well as in the RSMUP itself, and the practical use and execution of IPTF powers appear to have decreased incidents of police misconduct. However, RS police still resort to torture to obtain statements and testimonies from suspects and witnesses, as in the August 1998 murder of Srdjan Knezevic in Pale.^{cclxxi} In this case IPTF successfully blocked the admittance of testimony obtained under torture at the trial. So too, RSMUP has failed to

provide security for refugee returns, and has failed to act when organised demonstrations ransack international property in RS.

In comparison to the Federation, RS police salaries are much lower^{cclxxii} and often are months late. Such a situation creates a fertile ground for corruption. Low salaries result in traffic police accepting bribes on an almost systematic basis at speed checkpoints throughout RS. The police are notorious for extorting bribes from Bosniaks at RS border crossings with Croatia. So too, RS police took particular advantage of the plight of Muslim and Albanian refugees fleeing the NATO bombing of Yugoslavia. Brcko Supervisor Robert Farrand dismissed the Chief of Brcko Uniformed Police Subotic and suspended the Chief of the Multi-ethnic Police Gavric on 9 August, 1999. Although not giving details, Farrand made clear that they were involved in criminal activities.^{cclxxiii}

C. The Federation: A House Divided...

In December of 1995 a U.N. advance mission determined that 32,750 police officers were on duty in the Federation, including 29,750 in the Bosniak areas and 3,000 in the Croat areas. The Bonn-Petersberg Agreement^{cclxxiv} called for a common uniform, the demobilisation of excess police officers, and a commitment to the principle that the composition of the police should reflect that of the population under the 1991 census. The Croat and Bosniak areas of the Federation agreed to reduce their combined police forces to 11,500, a goal attained in 1998. After having downsized the police in the Federation, the main focus of IPTF's efforts has been "assisting" the cantons to establish multi-ethnic police forces. Minority Police Working Groups have been established in every Canton and are responsible for identifying minority candidates for inclusion in Cantonal police forces. The working groups are also focusing on identifying experienced minority officers who are available for transfer within the Federation police service or between entities.^{cclxxv}

In eight (8) out of ten (10) Cantons, the IPTF inaugurated new police forces, which fulfilled the basic policing criteria established by the IPTF. Agreement on neutral insignia for the Predominantly Croat Cantons 8 and 10, and the political will to recruit minority police officers in Canton 10 remain stumbling blocks, although unmibh has recently come to an agreement with Canton 10 Interior Minister Barisic on the issue. However, it remains to be seen whether or not this will be realised. Croat obstructionism was clearly displayed when neither Canton 8 nor 10 sent minority recruits to attend the Police Academy class that started in April 1999, despite having been allocated slots. Although Canton 10 has hired 17 minority police officers,^{cclxxvi} primarily in Drvar, it still remains non-compliant, in other areas, as it has not yet removed the Croat "checkerboard" insignia from its shields and uniforms, in violation of IPTF inauguration criteria.

Today in the Federation the police operate independently at both the Federation and the Cantonal, and occasionally the municipal levels, reflecting the ethnic divide between Croats and Bosniaks. The Federal level Ministry of Internal Affairs (FMUP) is currently responsible primarily for dealing with Federation-level crimes, as well as the protection of dignitaries.^{cclxxvii} It consists of approximately 805 officers. IPTF has proposed restructuring the FMUP to create a 200-strong Crime Unit responsible for investigating Federation level crimes.

All current FMUP officers have been subjected to a series of background checks, including reviews by the ICTY, psychological and skills testing, as well as mandatory police training. As of spring 1999, 79% of police officers in the Federation had completed the transitional training course and 94% had completed human dignity training. The Federation Police Academy emphasised minority recruits and women. This was seen in the makeup of the first class, which started in April, 1999: 66 Serbs, 29 Croats, 4 Bosniaks, and 11 Others.^{cclxxviii} The Federation has actually made little progress toward

the requirement to hire some 20% Serbs and 8% "Others" in its police force. In particular, only 5% of the required number of Serbs have been hired.

So far 10,627 Federation police officers have been registered by IPTF and provisionally certified.^{cclxxix} Yet many individuals remain on police payrolls, receive benefits, but do not wear uniforms. It is thought that, due to heavy SFOR control over the number of soldiers permitted in the military, that the Parties are trying to circumvent DPA manpower regulations. The Federation police possess heavy armaments unknown to police work in western Europe. This is justified under the heading of "counter-terrorism" units.

A serious problem for unified policing remains the existence of the two separate Bosniak and Croat secret intelligence services, AID and SIS/HIS. Despite repeated unmihb protests, both are co-located in police stations throughout the Federation. Disturbingly, the SIS works as an integral part of the Republic of Croatia's state intelligence service, HIS, a possible violation of Annex 1-A. So too, the Croat and Bosniak police forces demonstrate clearly unprofessional behaviour, extreme politicisation, and unwillingness to integrate into unified Federation organs. Although the unmihb has begun a new initiative to unify the police forces in Canton 6,^{cclxxx} it is too early to state whether or not concrete results have occurred.

D. Un-Federated Federation: Stolac and Croat Separatism

In spite of "successful" training programs, serious problems persist. In operational terms it is clear that only Cantons controlled by one ethnic group are actually integrated operationally. The presence of common uniforms and insignia, weapons, certifications, courses and forced inaugurations, have not unified the Federation police's internal organisation, chain of command, or hierarchy. In essence, the Federation consists of two separate police forces: one Croat, the other Bosniak.

In some instances, police departments openly or covertly support illegal activities or defiantly work against agreements signed by their own ethnic authorities. The Croats in Herzegovina appear to be particularly obstructionist, often openly backing secessionist aims. Nowhere is this more clearly seen than in Stolac.

Due to a large number of incidents in Stolac, as well as an inadequate police response, IPTF carried out an Operational Performance Scrutiny of the Stolac Police Administration from between December 7 and 11, 1998. The audit included interviews with the police officers, inspection of premises and facilities, examination of investigation files, employment records, arms registries, official correspondence and administrative files and a review of equipment inventories. So too, the IPTF accompanied the Stolac police on patrols and other duties, and conducted interviews with local officials and citizens concerning police performance.

At the Stolac police station, the IPTF team discovered rooms to which they were denied access, as they allegedly belonged to the Ministry of Defence. After inquiring of SFOR and discovering those premises were not a designated military area, IPTF entered the premises, to find that Croat officials from the illegal Canton 7 Ministry of Defence were conducting intelligence gathering activities through an organised club of radio amateurs. On the walls hung pictures of the President of Croatia Franjo Tudman, the deceased Croatian Minister of Defence Gojko Susak, and an NDH map of "Greater Croatia," which included the entire territory of bih.^{cclxxxi}

The IPTF's general findings were that the Stolac police violated almost all principles of modern democratic law enforcement. Furthermore, inappropriate influences both formal and informal, such as communicating with local criminals, wearing emblems of "Herzeg-

Bosna", and displaying the former "Herzeg-Bosna" flag pointed to the level of unification and co-operation with their Bosniak counterparts. The Stolac police had far more officers than were required, the large majority of whom were demobilised HVO officers.^{cclxxxii}

The example of Stolac, while showing how IPTF could and can act, also showed how illusory is its success. Although Stolac typifies the situation in Croat areas of Canton 7, it is quite likely that similar behaviour would be found in other Croat majority municipalities in Herzegovina. Although the whole station was placed on probation for three months and improvements made, many serious problems remain unresolved.^{cclxxxiii}

As the result of the Stolac action, unmibh initiated a 100-day Agenda for Action that outlined the necessary steps for the establishment and functioning of professional civilian law enforcement agencies in the canton, including clear objectives and clear deadlines.^{cclxxxiv} Whether this will have any effect in "Herzeg-Bosna" remains to be seen.

In areas where reorganisation is progressing as planned and where minorities are being included in the policing, differences in salaries between Bosniak and Croat policemen often create animosity. In Mostar, for example, the salary difference is almost 2:1 in the Croat's favour, through a variety of measures such as housing allowance supplements which ensure that Croat policeman receive higher salaries. The ethnically based division of budgets and tax collection, all symptoms of the country's payment bureau system, allow this practice to continue unchecked, and reflect the overall division of Mostar and the Federation.

E. Training

All police officers in bih have to be trained and certified by IPTF. To become certified by IPTF, a police officer must complete both a transition course and a human dignity course. IPTF and OSCE also jointly train Federation police on the new Criminal Code and Criminal Procedure Code in the Federation. The Council of Europe provide ECHR-orienting human rights training materials and the United States Government ICITAP^{cclxxxv} program has trained Federation and RS police in crowd control, forensics, crime scene techniques, fingerprinting, traffic investigations, and other areas. The Swedish International Development Agency (SIDA) is financing a training project for 15 RS and 25 Federation Police instructors in conflict resolution.

Both entity Police Academies are now up and running. The twelve-month curriculum developed by the Federation Police Academy staff in co-operation with IPTF includes six months of classroom studies and six months of field training. Unmibh is now seeking funding to continue to upgrade the facility and expand the capacity of the Academy from 120 students to 500.

Following the 1997 Bonn Peace Implementation Conference, the IPTF has established training programs in areas such as crowd control, emergency response, crisis management, negotiations, drug awareness, intelligence reporting systems, dog handling, traffic control and management. The IPTF also provides material support, which primarily consists of police equipment but also can include the reconstruction of police stations. This assistance is conditional on the co-operation of local police.

F. IPTF Limitations: Weak Enforcement Mechanisms

The IPTF mandate has evolved over the years. The IPTF started life with no enforcement mechanisms, executive powers or any other means or instruments to make the Parties comply. Failure to co-operate with IPTF would result in IPTF notifying OHR of the guilty party's behaviour. The OHR would then notify everybody else.^{cclxxxvi} As with the other DPA provisions, an executive mandate was missing. This flaw in the structural nature of IPTF necessitated United Nations Security Council Resolution 1088, which, along with the

tasks outlined in Annex 11, extended IPTF's tasks as "referred to in the conclusion of the London Conference and agreed by the authorities of Bosnia and Herzegovina."^{cclxxxvii}

The 1996 London Peace Implementation Council explicitly requested IPTF to "carry out investigations of human rights abuses by law enforcement officers" or assist authorities in investigating allegations of such abuses. Specifically, the PIC conclusions welcomed "the agreement of the authorities of Bosnia and Herzegovina to investigate urgently with the assistance of the IPTF, or to facilitate an IPTF investigation into, cases in which a police officer or an official of any other law enforcement or judicial agency is accused of involvement in any violation of human rights or fundamental freedoms. The results of such investigations will be reported to the concerned entity and relevant international bodies." As a result of this mandate, IPTF deployed 120 human rights officers throughout Bosnia and Herzegovina.

However a lack of serious enforcement mechanisms still allows the local police to continue with clear violations. It is clear that many police forces in bih still act as little more than an armed ethnic militia for the ruling nationalist political parties. On occasions, the High Representative has been forced to invoke his Bonn PIC powers to remove senior police officials acting on behalf of politicians.^{cclxxxviii} But a rigorous day-to-day approach is still needed in many areas, for which reason IPTF has introduced micro-auditing of the police administration, a procedure that includes comprehensive inspection and examination of all aspects of police work, investigation files, employment records, arms registries, official correspondence and administrative files including premises and facilities, equipment inventories, even accompanying police while performing their duties.^{cclxxxix}

With regard to the situation in the field on a day-to-day basis, the "Non-compliance Report" represents the full extent of the IPTF's powers, and reflects the organisation's lack of an executive mandate. Repeated receipt of a non-compliance report can result in a police officer, at whatever level, being de-certified. The IPTF Certification and De-certification process involves initially an evaluation to determine if the individual police officer fulfils certain criteria, among them completion of mandatory training programs and screening by the International Criminal Tribunal for the former Yugoslavia (ICTY). The authority to decertify local police officers is clearly a powerful tool, and was recognised as such by the PIC in the Madrid Declaration, where the head of IPTF was encouraged to make "robust use of his powers to decertify police officers who violate provisions of the GFAP and related documents."

As of June 1999, 18 individuals had been recommended for de-certification.^{ccxc} So far eleven of the law enforcement officials involved in human rights violations have been decertified, while on the base of background checks with the International Criminal Tribunal for Former Yugoslavia six officers currently serving were recommended for de-certification.^{ccxci} The shortcoming of this policy is that there is currently no way to dismiss de-certified police officials, although mechanisms are being developed. Only if mechanisms to enforce de-certifications are found, will positive effects be seen.

G. Problems in Practice and Public Perception

A major problem for IPTF is public perception. In spite of its limited mandate under DPA, most bih citizens view the IPTF as a police force, and expect them to perform police functions and to actively intervene when the local police refuse. Because IPTF's mandate is oriented towards reforming local police practices, many bih citizens have been disappointed with what they view as the unwillingness of the IPTF to get involved in halting major transgressions. Unlike SFOR, who have shown on rare occasion the ability and determination to act decisively, the IPTF are armed only with non-compliance reports. This affects the ability and willingness of many IPTF monitors to aggressively intervene when non-compliance arises. This unwillingness has contributed to a public perception

that IPTF does very little. In an attempt to combat this, IPTF co-location programs are being aggressively pursued by new Special Representative of the Secretary-General (SRSG) of the United Nations, Jacques Klein. He has ordered all IPTF stations to move either into or next to local police stations. Although this is meeting resistance from certain hard-line forces, such as the RSMUP in Visegrad and Foca, it should increase the IPTF's effectiveness and profile.^{ccxcii}

Staffing policies of the UN also affect public perception of the IPTF. Due to sexist and racist attitudes that pervade Bosnian society, many local police officers, as well as ordinary citizens, have difficulty respecting the authority and mandate of police officers from certain African and Asian countries, or females. As is the case with SFOR, further problems appear when the officers come from countries that had an alliance or sympathies towards one or more of the bih nationalities.

A number of IPTF officers come from countries with appalling human rights records. Many of these officers lack credibility among local police forces and the bih public, particularly when one considers the IPTF mandate to teach the local police forces proper international standards of policing and respect for human rights. Some of these officers are poorly trained, and have paid bribes to gain the posting to bih. Some are completely unqualified and are themselves in need of IPTF training and certification. Such personnel issues detract from IPTF's image and effectiveness, as well as its credibility.

Some IPTF officers have difficulty adjusting to Bosnia's relative sexual openness. As opposed to SFOR soldiers, who spend much of their time locked down on base, IPTF officers live in the local Bosnian communities, where they are in constant contact with Bosnian culture. Numerous reports abound of IPTF officers frequenting brothels, thereby contributing to the problem of trafficking of women. Although patronage of brothels is rife among international community members, the Bosnian public perceives it to be a greater problem amongst IPTF monitors than in other civilian implementation bodies.

The limited fixed-term secondment of IPTF monitors creates a constant outflow of experienced monitors from bih, just at the time when they are beginning to develop a thorough understanding of the country and their role in it. They are typically replaced with inexperienced newcomers, unfamiliar with the language, culture, or preceding political difficulties in implementing DPA.

To solve some of these personnel-related issues, the new SRSG Klein has followed the policy of former Commissioner Monk in appealing to member states to vet and train IPTF officers thoroughly, in an attempt to prevent IPTF officers who are clearly inexperienced being deployed. Klein has also urged member states to second more experienced police monitors in order to fulfil IPTF's obligation to advise and train the local police on difficult tasks, such as fighting organised crime, drug trafficking, and crowd control. Due to the recent redeployment of many experienced IPTF monitors to Kosovo, Klein has asked member states to approve a more liberal regime for extension of IPTF officers who have an admirable service record. This request has met the approval of many member-states.^{ccxciii} Hopefully these new measures will prove more effective.

H. And Finally...The Courts

Article VII of Annex 11 was explicit that IPTF would have authority over all law enforcement agencies in bih, including the court structure.^{ccxciv} In retrospect, as IPTF was to be made up primarily of police officers, it was a major oversight to assign it a watchdog role for the court system. Clearly, court monitoring should be carried out by legal specialists, not police.

IPTF initially took only a passing interest role in the workings of the courts in Bosnia, usually through trial monitoring on an ad hoc basis. Because political influence over the

judiciary is a long-standing problem in bih,^{ccxcv} the unmibh eventually expanded its human rights department to include more court monitoring and other legal issues. In 1998, the UN Security Council adopted Resolution No. 1184 which established the unmibh Judicial System Assessment Programme (JSAP).^{ccxcvi}

Following the December 1998 Madrid PIC, JSAP became completely integrated into the work of the OHR Judicial Reform Strategy Programme, which was itself mandated by the PIC. Under this plan JSAP has identified a need for review of judicial officials, and is now considering implementing a "vetting" process, which would include certification, selection, compliance, and de-certification procedures. As a result, this portion of Annex 11 remains unimplemented.

I. Whither IPTF?

In spite of a myriad of programs that deal with the symptoms, little real change has occurred. The three bih police forces operate under the financial and political control of their respective ethnically based political parties. Their primary loyalties lie not to the central or entity governments, but rather towards their own national programs. For all its efforts, IPTF has succeeded only in changing the facade of policing in bih. Little substantive change has occurred, and little will occur given the lack of an enforcement mechanism in DPA, and the existence of the three single party political systems. Much of Annex 11 remains unimplemented. Hopefully the reforms of the new SRSG will bear fruit in this regard.

XIV. CONCLUSION

A. The International Community's Uphill Struggle

Since Dayton the international community has struggled to implement the civilian aspects of DPA and to change the underlying structures and problems that contributed to the war. Programs to restructure the financial system, payments bureaux, judiciary, media, police, armed forces, customs, tax policies, investment laws, electoral system, privatise state-owned assets and assist refugee return are all under way and meeting determined and well-organised resistance from obstructionist local authorities.^{ccxcvii} In some instances, progress is measured in geologic time.

The continued success of this policy is now threatened, as the international community begins to reduce donor aid for Bosnia.^{ccxcviii} This aid, which may equal at least 30% of Bosnian GDP, is responsible for most of the country's post-war economic growth. A reduction in aid may cause a severe economic downturn and negative GDP growth, which will result in social unrest. Already, pensions are regularly in arrears several months.^{ccxcix} Unemployment in the Federation hovers around 39%, while in Republika Srpska's Yugoslavia-dependent economy it may run as high as 60%.^{ccc} Unemployment would likely increase in the short term if privatisation gains steam. The costs of antiquated health care and retirement systems are enormous. The ratio of employed workers to pensioners in the Federation may be as high as 1:1. In short, Bosnia's governments lack cash to support the large number of socially threatened citizens.

Social discontent has already burst into open unrest. Demonstrators from all ethnic groups regularly block major highways throughout Bosnia in protest, clamouring for unpaid wages, pensions, and benefits.^{ccci} Ominously, in the past some local politicians channelled this unrest into nationalism, which led to the war in the first place. And two of

the ultra-nationalist based political parties that started the war – the HDZ and SDS – remain in absolute power in parts of the country.

The reality the international community must now face is that, given the current policies for implementing DPA, a reduction in donor aid may only bring increased social and economic problems, further destabilising Bosnia and the DPA. This reduction will also threaten the only major success to date of DPA: peace.

B. Why Isn't It Working?

DPA is not being implemented due in part to structural problems inherent in the treaty itself. One of DPA's flaws is its failure to address one of the primary causes of the wars of Yugoslav dissolution (1991-present), which was the inability of Yugoslavia's economic and political structures to provide economic growth, prosperity, and free political expression. This politico-economic system, notorious for capital destruction, proved unable to create a self-sustaining economy in resource-rich Yugoslavia. The resulting problems created fertile ground for nationalist extremists – such as Slobodan Milosevic – to exploit. The Titoist economic, political and legal system, which placed all economic, political and legal power in the hands of one ruling political party, remains in place, relatively unchanged. Little actual reform has occurred since 1992, and three one party political systems are still in place, rendering the notion of meaningful democratic elections dubious. The Peace Implementation Council is now actively pressing forward with numerous programs to rectify this situation, in the face of determined local resistance.^{cccii}

A second flaw was the hope that the three warring Bosnian factions would put aside their differences, co-operate, and live together in peace and harmony in a unified state. The Bosnians were expected to move beyond the war-time atrocities, large scale economic plunder and organised crime from which so many in the nationalist ruling parties benefited. Since Dayton there has been little ethnic reconciliation, and at least two of the three factions have yet to achieve and continue to pursue their wartime goals. The HDZ Croat goal, supported by Zagreb, is eventual union with Croatia, while the Serb nationalist goal, supported by Belgrade, is eventual union with Serbia. Both parties are attempting to now realise by peaceful means the goals they could not achieve through force of arms.^{ccciii} Meanwhile, much to their anger and frustration, the now well armed Bosniaks, see wholesale sections of the DPA go unimplemented.

The third and most significant flaw relates to enforcement. Because the U.S. – fearing American casualties – refused to allow NATO troops to fulfil their mandate under Annex 1A, Article VI:2,3, and robustly enforce civilian aspects of the DPA, no enforcement mechanism exists to implement the civilian aspects of the Accords.

Lacking an enforcement mechanism, the agency responsible for implementing the civilian aspects of DPA – the Office of the High Representative – began life permanently handicapped. The OHR, along with the UN, OSCE, and the donors have been forced to rely largely on the good will of Bosnia's ruling ethnically-based political parties to voluntarily comply with DPA, the same parties who agreed to DPA in the first place. This has led to an international community policy of pleading, cajoling, and begging in order to achieve DPA implementation. Local Bosnian politicians will typically co-operate only when it is in the direct interest of their political party. These politicians typically require the international community to undertake expensive and occasionally unwarranted projects, prior to complying with DPA. Unfortunately, after receiving international community aid, Bosnian politicians often refuse to comply with DPA or structural reform efforts.^{ccciv} This is especially true of Croats, Serbs and to a lesser extent, the Bosniaks.

A fourth problem arises from the lack of an enforcement mechanism: international appeasement of local officials. Lacking an enforcement mechanism, and anxious to achieve anything that could be categorised as progress, officials in many organisations

often follow the path of least resistance. Rather than enforce DPA, they reinterpret it to fit the political distortions that they lack the political will to change, particularly the refusal of local officials to co-operate with DPA implementation.

In essence, the international community's failure to implement DPA is primarily political in nature. NATO governments have yet to display the will to enforce DPA obligations, due to the fear of casualties. This has weakened the hand of key international officials assigned to facilitate implementation in Bosnia. Primarily due to a lack of political will in the NATO capitals and SFOR's resultant non-compliance, DPA is failing.

XV. POLICY OPTIONS

In spite of the uncertainty and general instability in the region, local realities seem to suggest possible trends and potential outcomes. As severe social and economic problems loom against a backdrop of donor dependency, decreasing donor aid, and unreformed economic and political systems, DPA appears set to fail entirely given the current policies for implementation. Given that DPA is not being implemented, and given the impending social catastrophe which may accompany the reduction in donor aid, is there hope for this natural resource rich country? And does that hope lie within the confines of the DPA?

Given the inefficient and selective implementation of the DPA to date, the international community must now examine seriously its options for Bosnia and Herzegovina's future. These policy options include:

1. Pulling out immediately;
2. Maintaining the present approach;
3. Rewriting the DPA;
4. Enforcing DPA more robustly;
5. Creating an international protectorate for Bosnia and Herzegovina.

A. Option 1) Pull Out Immediately

The international community must decide if DPA is worth salvaging, and whether or not a complete pullout is warranted, as isolationist forces in some countries urge. The socio-economic tensions caused by international community withdrawal from a donor dependent economy may cause local leaders to channel frustrations into nationalist channels. If the international community decides to pull out, then it must face the very real possibility that the Serbs, Croats and Bosniaks will eventually attempt to achieve their unrealised war aims through violence. All hard-won progress made to date will be lost. If the international community chooses this option, it must then decide if it is willing to pay the social, political, economic, and military costs associated with a renewed war in the Balkans, as well as its implications for European stability. So too, it must realise a pull out will have a ripple effect, possibly strengthening Slobodan Milosevic in the short term, and creating a flood of Serb refugees from Bosnia in the long term. Such a policy will also strengthen the hand of Islamic and Croat hard liners, and could possibly lead to war between the Bosniaks and Croatia proper.

B. Option 2) Continue Present Strategies

The international community could avail itself of two variations on this policy option. First, it could continue with present strategies at current funding levels. Second, it could continue with present strategies at reduced funding levels.

If the international community continues using current strategies, DPA might possibly succeed, provided donor aid and SFOR troop strength remain at present levels for the foreseeable future. This would require donor aid of at least \$10 billion over the next ten years, not to mention costs incurred by NATO. Yet, as seen by this report's analysis, there is no guarantee that DPA could be effectively implemented in its entirety, as even now, numerous programmes have not been funded at adequate levels, thereby limiting the "carrot and stick" approach. Unfortunately for the current strategy, "international aid is at its height. It will now begin to reduce in the near future."^{CCCV}

Although some in the international community hope that current policies will eventually lead to a Cyprus-type of stalemate, this hope is not borne out by the current local political realities. As attention turns to other crisis areas – such as Kosovo and East Timor – and donor aid decreases, under current international community strategies Bosnian authorities will possibly cease co-operating with structural reform efforts and the implementation of DPA. The reduction in donor aid may directly affect the donor dependent economy, resulting in increased social unrest. Local politicians might then repeat earlier patterns and attempt to channel social frustrations into nationalism. This could manifest itself in a series of low-level "guerrilla" type actions, which might force safety-conscious SFOR – particularly the United States – to leave, for fear of incurring casualties.

Croat and Serb politicians, sensing the financial and political impotence of the international community, may well seek to join their respective regions – the still functioning "Herzeg-Bosna" and Republika Srpska – to a "greater" national homeland. Bosniaks, incensed that Serbs and Croats are taking cities which historically had Bosniak majorities (e.g. Pocitelj, Zvornik, Doboj, Visegrad, Foca, Bratunac, Prijedor, Srebrenica, Stolac), may resort to "politics by other means"^{CCCVI} to resolve differences. In this scenario, DPA could fail completely, resulting in war and a new tide of refugees for Europe.

Given the unwillingness of the international community to maintain an expensive, long-term presence in Bosnia, as well as the impending reduction in donor aid, continuation of the present strategies might prove counterproductive, and actually lead to renewed hostilities, similar to Option 1. Once again, all the hard-won gains could be lost.

C. Option 3) Rewrite DPA

As seen in the analysis of Annex 4, the DPA constitution presents a barrier to the future entry of Bosnia and Herzegovina into the Council of Europe and the European Union. In order for Bosnia and Herzegovina to enter these institutions, its constitution will have to be rewritten eventually. However, this revision of DPA need not go beyond limited changes to Annex 4.

If the international community permits the revision of DPA beyond Annex 4, it will open a Pandora's Box of competing nationalist claims, many of which may prove mutually un-resolvable. These claims could lead to strains in the fragile socio-political fabric of Bosnia and Herzegovina. It could well provoke a strong local response and lead to the same outcome as options 1 and 2.

If the international community permitted the revision of DPA beyond Annex 4, it would likely do so according to its own interests. Such revision could abolish all entities, all armies, and the concept of "constitutionality of nationalities." Bosnia and Herzegovina could be cantonalised and governed by a central government presiding over relatively strong cantons. Eventually, it might resemble the 1993 Vance-Owen Peace Plan. Such an option could conceivably lock in the gains made to date, while allowing for a more rapid return of refugees and displaced persons. So too, it could permit more responsible local politics and reduce the possibility of Croat and Serb cessation. In any event, the success of this option would depend on the political will of the international community.

D. Option 4) Enforce DPA More Robustly

DPA can succeed if implemented properly. Yet, to do so the international community needs an executive implementing mechanism. The DPA Articles II and III of Annex 1-A give SFOR the right to assist in enforcing civilian implementation. NATO has, up until now, chosen to ignore this section of its mandate. As a result, SFOR has never been properly utilised. If NATO can be persuaded to live up to its DPA obligations, then the DPA can be fully enforced: obstructionist officials could be removed, war criminals arrested, and refugee returns could occur rapidly over an 18 month period. This would lead to the creation of stable, self-sustaining, multi-ethnic institutions, as well as multi-ethnic democracy. And it would occur far more rapidly and less expensively than continuing with current policies.

In order to fulfil its obligations under DPA, NATO could create a lightly-armed SFOR Auxiliary under its existing Annex 1-A mandate. This would be comprised of local, multi-ethnic personnel, commanded by SFOR officers, and would concentrate on implementing the civilian aspects of DPA, while also assisting SFOR with the military and security aspects. Such a force could also serve as the nucleus of a self-defence force for a united Bosnia and Herzegovina, following the eventual withdrawal of NATO and the international community. Acting as a loyal constabulary, this force would enable SFOR and the international community to enforce DPA more vigorously, while enabling western politicians to avoid the domestic political fallout of body bags.

With SFOR support, the OHR and other civilian implementing bodies could act more authoritatively in removing intransigent local officials. Increased OHR activities could include travel bans on non-compliant officials and the seizure of assets of non-compliant organisations. So too, the uncertain position IPTF as a police force without policing power could be re-examined, with an eye to increasing its executive mandate. The overall outcome of such a policy would not only lock in the gains made to date, but also push ahead with rapid and secure implementation of all annexes. Once again, as in Option 3, the success of this option depends largely on the political will of the international community.

E. Option 5) Create an International Protectorate

A careful reading of the Peace Implementation Council's Bonn and Sintra Declarations shows that the highest legal and executive authority in Bosnia and Herzegovina is vested in the High Representative. In other words, on paper Bosnia and Herzegovina is already a protectorate, but a dysfunctional one. Most Bosnians view their country as an international protectorate and complain about it bitterly. Their complaint is not that a protectorate exists, but rather, that it does not protect them. In other words, Bosnians themselves are not averse to the notion of a protectorate, as their experience under the Austro-Hungarian protectorate from 1878 to 1908 was largely positive.

If the international community regards the DPA framework as an unpalatable option, it could transform Bosnia and Herzegovina into a protectorate under international auspices, governed by the OHR. Similar to Option 3, a protectorate would do away with all three *de facto* entities, armies, police forces, and administrative structures. It would cantonalise Bosnia and Herzegovina along the lines of the 1993 Vance Owen Peace Plan. A protectorate might also place a short-term moratorium on elections, and disband all nationalist political parties and groups. Similar to Option 4, a protectorate would also create a lightly-armed SFOR Auxiliary to act as a loyal constabulary. Such a protectorate would not be limited by time restrictions: rather, its demise would be contingent upon achieving clearly defined benchmarks.

A protectorate could implement rapid refugee returns, remove obstructionist officials, institute the rule of law, restructure communist-era economic and political structures, and prepare Bosnia and Herzegovina for entry into the Council of Europe and the European Union. The added expense would probably be slight, given the already large numbers of international officials already involved in ineffective activities. Although this option would probably prove politically unpalatable in western capitals, where the very word "protectorate" rings of colonialism, it would prove less expensive and more effective – both short and long term – than option 2. And as with the preceding two Options, success depends on the political will of the international community.

F. Whither Bosnia and Herzegovina?

As the situation now stands, the international community has not implemented DPA in a manner that locks in the security and political gains, and prepares the ground for an eventual withdrawal. Given this failure, the international community must now decide which of the above options meets its interests, as well as which is politically feasible. If the international community wishes to avoid the break-up of Bosnia and Herzegovina and renewed war, it must design a strategy that will create a self-sustaining multi-ethnic country and society. And it must create social and political mechanisms that will allow Bosnia and Herzegovina to continue to change and evolve as a modern European country, based on concepts of individual human rights, as opposed to the collective group/national rights which have torn the country apart.

Policy makers should apply the lessons of Bosnia to Bosnia, creating new political will to enable the international community and Bosnians to work together to construct a viable, prosperous, and peaceful future for all citizens, regardless of nationality or religious background. The choices are difficult. The task is large. But the rewards are great, and include the opportunity to bring lasting peace to a region that has seen undeservingly three major wars in the twentieth century. Most importantly, if the international community gets it right, it can eventually pull out without fear of renewed ethnic violence. And only then can the international community begin to speak of an adequate exit strategy.

GLOSSARY OF ABBREVIATIONS

CAFAO	European Commission Customs and Financial Assistance Office
CE	Council of Europe
CPC	Commission on Public Corporations
CRPC	Commission for Real Property Claims of Displaced Persons and Refugees
DPA	Dayton Peace Agreement
Dps	Displaced persons
DRS	OSCE Department of Regional Stabilisation
EASC	OSCE Election Appeals Sub-Commission
EU	European Union
FMUP	Federal Ministry of Internal Affairs
FRY	Federal Republic of Yugoslavia
FSC	OSCE Forum on Security and Co-operation
GFAP	General Framework Agreement for Peace in Bosnia and Herzegovina
HDZ	Hrvatska Demokratska Zajednica
HVIDRA	Hrvatski veterani i invalidi domovinskog rata
HVO	Hrvatsko Vijeće Obrane
IC	International Community
ICITAP	International Criminal Investigation Training and Assistance Program
ICTY	International Criminal Tribunal for the former Yugoslavia
IEBL	Inter-entity Boundary Line
IELC	Inter-entity Legal Commission
IFOR	Implementation Force
IPTF	International Police Task Force
JCC	Joint Consultative Commission
JSAP	unmibh Judicial System Assessment Programme
Mou	Memorandum of Understanding
NATO	North Atlantic Treaty Organisation
NERIC	National Elections Results Implementation Committee
OSCE	Organisation for Security and Co-operation in Europe
OHR	Office of the High Representative
PEC	OSCE-led Provisional Election Commission
PEL	Permanent Election Law
PIC	Peace Implementation Council
RRTF	Return and Reconstruction Task Force
RS	Republika Srpska
RSMUP	Ministry of Interior of Republika Srpska
SCMM	Standing Committee on Military Matters
SDA	Stranka Demokratske Akcije
SDP bih	Socialdemokratska Partija Bosne i Hercegovine
SDS	Srpska Demokratska Stranka
SFOR	Stabilisation Force
SIDA	Swedish International Development Agency
SRS	Srpska Radikalna Stranka
SRSG	Special Representative of the Secretary-General
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNHCR	United Nations High Commissioner for Refugees
Unmibh	United Nations Mission in Bosnia and Herzegovina
USAID	United States Agency for International Development
VJ	Vojska Jugoslavije
VRS	Vojska Republike Srpske
WB	World Bank
ZOS	Zone of Separation

-
- ⁱ This is most clearly seen in the Agreed Basic Principles of 8 September 1995, which formed the negotiating basis for the Dayton Peace Talks.
- ⁱⁱ Croat-controlled "Herzeg-Bosna", Republika Srpska, and the Bosniak-controlled "Republika BiH."
- ⁱⁱⁱ In a recent press conference, Tudman stated: "Bosnia can be maintained only as a country of three entities." "Hrvatski generali nece u Hag," *Oslobodenje*, 19 October 1999, p.17. "Tudmanov novi udar na Dejton," *Dnevni Avaz*, 19 October 1999. p.1
- ^{iv} "Minobacacima na Fazlagagica Kulu," *Dnevni Avaz*, 9 September 1999.
- ^v See 'Building Civilian Law Enforcement in Stolac and throughout the Herzegovina-Neretva Canton' UNMiBH HRO 2/99, December 1998-May 1999.
- ^{vi} See "Why Will No One Invest in Bosnia and Herzegovina?" 21 April 1999, ICG Balkans Report No. 64.
- ^{vii} "Inozemna ulaganja u BiH: Slučaj Volkswagen," *Slobodna Bosna*, 14, August 1999, pp.31-33.
- ^{viii} "Update August 1999", UNHCR Sarajevo Office of the Chief of Mission.
- ^{ix} Madrid Peace Implementation Council, December 16 1998.
- ^x "Reshaping International Priorities in Bosnia and Herzegovina," European Stability Initiative, 14 October 1999, p.10.
- ^{xi} See: "Mehrez Amdouni između Bosne i Turske i Italije," *Slobodna Bosna*, 25 September 1999, pp.5-9. "I Osama Bin Laden ima bosanski pasosa!" *Dani*, 24 September 1999, pp.16-19.
- ^{xii} According to information voluntarily presented under Annex 1-B by the parties, in 1998 the HVO received a total of 141,548,099 DEM in foreign military support, of which 117,200,000 DEM came from Croatia. This information also stated that 100% per cent of HVO funding came from foreign sources. Because these figures were self-reported, the possibility exists that the real amounts are much higher.
- ^{xiii} In 1998, the VRS received 27,988,846 DEM, all of which came from Yugoslavia.
- ^{xiv} ICG analysts have seen VJ and VRS trucks cross the border between FRY and RS without stopping for any customs inspection or inspection by SFOR. See also "Rakete VJ u BiH," *Dani*, 1 October 1999.
- ^{xv} "Od ukupno 14 akcija hapšenje ratnih zlocinaca...." *Slobodna Bosna*, 10 July 1999, pp.22-24.
- ^{xvi} Although Krajisnik is not publicly indicted his name allegedly appears on a secret list of indictments. Fearing arrest, he now appears to have either left Bosnia and Herzegovina or gone underground. See "Bjezanje," *Reporter*, 6 October 1999, p.4.
- ^{xvii} Transcript COMSFOR Press Conference, 11 October 1999.
- ^{xviii} See "Zaplijenjeni dosjei tajnih službi," *Oslobodenje*, 16 October 1999, p.1.
- ^{xix} Annex 1-B, Article I.
- ^{xx} OSCE Mission to Bosnia and Herzegovina, Plans and policy section briefing to ICG.
- ^{xxi} "Vojska otpusta 6.750 zaposlenih," *Dnevni Avaz*, 13 October 1999, p.1.
- ^{xxii} Annex 1-B, Article II.
- ^{xxiii} OSCE Mission to Bosnia and Herzegovina, Plans and policy section briefing to ICG.
- ^{xxiv} Annex 4, Article V.
- ^{xxv} Peace Implementation Council Declaration, Madrid, 16 December 1998.
- ^{xxvi} Initially known as "Train and Equip," the name of the program appears to have now been changed to "Train and Integrate."
- ^{xxvii} *Oslobodenje*, 20 August 1999.

-
- xxviii "Ukidanje glomaznog prozdrljivca", *Dani*, 13 September 1999.
- xxix Ibid.
- xxx The International Crisis Group has obtained copies of these documents.
- xxxi The HVO is one third the size of the ABiH.
- xxxii Minutes of the 12 October 1999 Standing Committee on Military Matters Working Group Meeting.
- xxxiii See The Agreement on Sub-regional Arms Control, Florence Agreement.
- xxxiv OSCE Mission to Bosnia and Herzegovina, Plans and policy section briefing to ICG.
- xxxv The number of successful inspections has improved to 91 out of 96 scheduled, and arms reduction goals have generally been achieved. 62 reduction events took place during phases I and II, and 46 inspections were completed. During the residual level validation period 52 inspections were completed. Out of 29 inspections scheduled for 1999, 19 have been conducted.
- xxxvi Annex 1-B, Article V.
- xxxvii For more detailed information on Brcko issue, see the ICG reports: "Brcko: What Bosnia Could Be," 10 February, 1988, Balkan Report No.31.; "Brcko: A Comprehensive Solution." 8 February 1999, Balkan Report No.55.
- xxxviii See the ICG report "Republika Srpska – Poplasen, Brcko and Kosovo: Three Crises and Out?" 6 April 1999, Balkans Report No.62.
- xxxix "Dok je FBiH za implementaciju, RS trazi odgodu," *Oslobodenje*, 16 October 1999, p.3.
- xl Republika Srpska economics professor Mladen Ivanic created a new political party in early October which is allegedly for all Bosnians. However, this party is very small, and it is still too new to the political scene to be regarded as a serious political force.
- xli Annex 3, Preamble.
- xlii Annex 3, Article II:4.
- xliii Annex 3, Article I:1.
- xliv Annex 3, Article II:2.
- xlvi See Annex 3, Article III:2 for the PEC's mandate.
- xlvii See "Elections in BiH," 22 September 1996, ICG Balkans Report No. 16.
- xlviii "Elections in BiH," pg. 19-21.
- xlix The pattern was clear – pack voters into municipalities where Bosniaks had a pre-war majority, and where their expulsion had been brutal. In this manner 31,278 Serb refugees were "registered" using the P-2 form, in Brcko, 19,746 for Srebrenica. OSCE Report on Refugee Voter Registration, Annex B4, as quoted in "Elections in BiH", pg. 21.
- ¹ "Elections in BiH", pg. 13-19. For weeks prior to the elections, The SDS-controlled SRT ran successive news clips of foreign Mujahadeen soldiers praying, Republika BiH President Alija Izetbegovic praying, and Armija BiH soldiers with "Allahu ekber" patches on their uniforms praying. To the Serb mind it seemed that all the Muslims in Bosnia did, besides killing Serbs, was pray. The message was clear – Islamic Jihad was on the way – vote SDS.
- li "Minimal prerequisite conditions must be met so that 'free, fair and democratic elections' can take place.' [These preconditions]...have not been fulfilled", Certification of the Elections in BiH, Declaration of the Chairman-in-Office, Federal Councillor Flavio Cotti, at the Permanent Council of the OSCE, 25 June 1996, pg. 4.
- lii "Elections in BiH", pg. 10

^{liii} Ibid., pg.9.

^{liv} EASC, Case No. 96-195, 96-193, 96-183, Interim Judgement, 25 September 1996.

^{lv} "Addendum to the 22 September 1996 ICG Report on Elections in Bosnia and Herzegovina," 30 October 1996.

^{lvi} Elections in BiH", pg.10. See also "Addendum to the 22 September 1996, ICG Report on Elections in Bosnia and Herzegovina," 30 October 1996.

^{lvii} For a detailed overview of the conditions leading up to the 1997 elections, see "Beyond Ballot Boxes (Municipal Elections in Bosnia and Herzegovina), ICG Balkans Report No.26, 10 September 1997.

^{lviii} Annex 3, Article VI:1 "A citizen who no longer lives in the municipality in which he or she resided in 1991 shall, as a general rule, be expected to vote in person or by absentee ballot, in that municipality."

^{lix} The only areas of the Federation where Serb DP's registered in large numbers for their pre-war municipalities were ones where they were sure they would win on the basis of 1991 census figures - Drvar, Bosansko Grahovo, Glamoc and Bosanski Petrovac. Serbs registered in minuscule numbers for municipalities where they knew they would be a minority, which was not helped by the fact that Serb political parties only registered, in the vast majority of cases, for RS municipalities.

^{lx} In 1997 the Federation government allocated 600,000 DM for political parties, of which 307,217 DEM went to the SDA, 193,171 DEM to the HDZ, and 14,634 DEM to the SDP. "Beyond Ballot Boxes: Municipal Elections in BiH", ICG Balkans Report, 10 September 1997, pg. 16.

^{lxi} Ibid., pg. 8.

^{lxii} Ibid.

^{lxiii} "Local Elections in BiH: Democracy and Peacebuilding", University of Plymouth International Studies Centre, May 1999, pg. 27.

^{lxiv} Ibid.

^{lxv} The ruling nationalist party also won in Velika Kladusa, however in that case it was Fikret Abdic's DNZ, and not the SDA. In Glamoc, the Serb DP "Zavicaj" movement teamed up with the Bosniak CD Coalition to vest control from the ruling HDZ.

^{lxvi} And similar Bosniak tactics in Maglaj, Zavidovici and Zepce.

^{lxvii} Case numbers ME-049, ME-050, ME-058, ME-065, ME-073, ME-073A, ME-074, ME-087, ME-101, ME-103, ME-108, ME-109, ME-113.

^{lxviii} EASC decisions ME-073, ME-073A and ME-087.

^{lxix} For example, Gradimir Gojer's success in garnering 31.8% of the vote for the Croat representative of the BiH Presidency was presented in comparison to the paltry 10.11% received by Ivo Komsic in 1996. This was offered as evidence that Bosnian Croat voters were turning away from the HDZ. However what the pie chart failed to explain is that Gojer's votes were mostly received from Bosniaks who realised that a vote either for or against Alija Izetbegovic was a wasted one, as he was guaranteed to win the Bosniak seat anyway. A vote for Gojer was primarily a Bosniak anti-HDZ vote, and not a moderate Croat vote. This was clearly seen with the drop in the numbers voting for Izetbegovic, from 730,592 (80% votes for Bosniak candidates) in 1996, to 511,541 (86.7% of votes for Bosniak candidates) in 1998. This indicates that although the number of Bosniak voters remained the same, the numbers of Bosniaks voting for Bosniak candidates dropped sharply, as many of them crossed ethnic lines to influence the Croat HDZ vote. In 1996, 29% of Federation voters voted for the Croat, rather than the Bosniak, member of the Presidency. In 1998, that figure jumped to 37.8%.

^{lxx} For example, at an OSCE Democratisation Branch Seminar in Teslic in October

1998, an official OSCE internal document was circulated on detailed strategies to help the SDP win. It outlined a "project priority" for 1999, which is to build up the SDP to a position where they could legitimately challenge the SDA at all electoral levels in BiH, leading to the defeat of the SDA.

^{lxxi} Out of a total electorate of approximately 45,000 resident Dobojski voters.

^{lxxii} Modrica's third Executive Board Vice-president Hamdija Tursic, an elderly former municipal official of 20 years, travels each day from Gradacac to Modrica, where he is completely excluded from all important meetings by ultra-nationalist, anti-Dayton SDS Mayor Novak Gojkovic. The presence of both Tursic and Bosniak Assembly Vice-president Dzevad Dzambic in Modrica has done, in their own words, "precisely nothing" for Dayton implementation.

^{lxxiii} "Pokusaj ubistva Muniba Hasanovica," *Oslobodenje*, 8 October 1999, p.1.

^{lxxiv} The expelled "Nacelnik Opcinskog Poglavarstva (Mayor) of Bosanski Brod" Ivo Mijic (HDZ), had the choice, following the joint OSCE/OHR arbitration, to take up the position of second Vice-President of the Municipal Assembly (salary 150 DM per month), which his lead role in the party negotiations suggested he would, or to stay in his exiled position in Slavonski Brod, Croatia (salary 3,000 DM per month). Needless to say, Mijic, a likeable moderate acceptable to the ruling Serb parties in Bosanski Brod and on good terms with all international community personnel, left the position to a much less influential, unknown Croat. Another HDZ councillor in Bosanski Brod, the young and talented economist Drazen Kopljar, seemed an obvious choice for a position in the local government, which the OSCE/OHR arbitration decision awarded to the HDZ. However, a job offer from Zagrebacka Banka in Zagreb worth an estimated 11,000 DM per month plus apartment swayed him away from returning to Bosanski Brod.

^{lxxv} The Vice-president of the Municipal Assembly (Deputy-Mayor), second Vice-president of the Executive Board, and Secretary for Social Affairs.

^{lxxvi} Along with the now-deceased Secretary for Inter-Entity Economic Co-operation Mustafa Ahmic.

^{lxxvii} Spontaneous returns refer to DPs and refugees who return to their pre-war place of residence without support or encouragement from the international community, and typically without permission of local municipal authorities. Typically these returnees do not register with local authorities or report their movements to supervising organisations or governmental organs.

^{lxxviii} After Odzak and Novi Grad Sarajevo.

^{lxxix} OSCE BiH Press Release, 3 August 1999. The Release continues: "Presently, Drvar's municipal executive body is non-functioning, the municipal assembly has met only once, and the municipal bodies established after the 1997 municipal elections have failed to assume their duties."

^{lxxx} The OHR press release announcing Marceta's dismissal was a tragi-comic piece of international community obfuscation and hypocrisy. Marceta was being removed, according to the press release, for "not being able to carry out the duty of his office on a day-to-day basis due to an incident last year in which he was physically attacked, and continuing threats to his security." OHR and OSCE's reward to Marceta for his "great contribution to the return of refugees and displaced persons to Drvar" was, "with regret", to fire him.

^{lxxxi} "The Parties agree to create a permanent Election Commission with responsibilities to conduct future elections in BiH".

^{lxxxii} The joint OHR/ OSCE Working Group was made up of 7 BiH elections experts

appointed by both entities as well as international community experts.

^{lxxxiii} 500 is the suggested figure.

^{lxxxiv} Any hard-line Serb candidate should not find it too difficult to get the support of one of the four Municipal Councils currently in Serb hands in the Federation, and any Bosniak should not find it too difficult to get the support of Srebrenica.

^{lxxxv} "Opozicija zeli vise od kozmetickih izmjena," *Dnevni Avaz*, 13 August 1999, p.4.; "OSCE nije imao dovoljno hrabrosti," *Dnevni Avaz*, 12 August 1999, p.4.

^{lxxxvi} "Zakon suprotan Evropskoj konvenciji," *Oslobodenje*, 20 October 1999, p.8.

^{lxxxvii} "Novi izborni zakon nije ni OHR-ov ni OSCE-ov," *Dani*, 20 August 1999.

^{lxxxviii} For example, ICG's earlier Bosnia elections reports, "Beyond Ballot Boxes (Municipal Elections in BiH", no. 26, 22 September, 1997 and "Doing Democracy a Disservice: 1998 Elections in Bosnia and Herzegovina", no. 42, September 1998.

^{lxxxix} With the exception of the small, insignificant Municipality of Usora, where HDZ and NHI share the Municipal Council with 6 seats each.

^{xc} "Reshaping International Priorities in Bosnia and Herzegovina," European Stability Initiative, 14, October 1999.

^{xcii} With the exception of Zvornik and Srebrenica Municipal Assemblies, and the illegal yet *de facto* municipality in Milici.

^{xciii} For example, see ICG Bosnia paper no. 71 "RS in the Post-Kosovo Era: Collateral Damage and Transformation," 5 July 1999, which details cash gifts to the RS government from the international community as a means to help Dodik maintain power in the RS following the start of NATO air strikes on Yugoslavia in March 1999.

^{xciv} For example, "It is through Republika Srpska that we will open the door to our own statehood, but for the time being it is in our best interests to act within the institutions of BiH", Zivko Radisic, "moderate" Serb member of the tri-partite BiH Presidency, at an SPRS elections celebration dinner in Doboje on 25 October 1998. Cross-party disapproval of the Brcko arbitration decision and the temporary withdrawal of RS representatives from the BiH State institutions only highlights the fact that RS politicians, echoing the sentiments of RS citizens, continue to view many issues in terms of a zero-sum military-strategic game.

^{xcv} The Islamic Community of BiH and Merhamet presented figures to the visiting Federation government delegation in Banja Luka on 4 August 1999, in which they claim that there are currently 35,450 Bosniaks living in Republika Srpska. This represents 3.5% of the total RS population, and a mere 7.4% of the pre-war Bosniak population of RS. *Dnevni Avaz*, 5 August 1999, pg. 4. UNHCR figures show a 2.2% return rate of Bosniaks to Republika Srpska from Dayton as of 31 May 1999. *Slobodna Bosna*, 7 August 1999, pg. 25.

^{xcvi} "Lokalni izbori bez radikala i Srpske stranke RS," *Dnevni Avaz*, 26 October, 1999, p.3.

^{xcvii} Annex 4, Preamble. "These include the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, as well as other human rights instruments."

^{xcviii} To see exact Council of Europe criteria, see "Memorandum on the Rapporteur's visits to BiH on 19-23 July 1999 and on 17-20 August 1999." Council of Europe.

^{xcix} In a recent press conference, Tudman stated that "Bosnia can be maintained only as a country of three entities." "Hrvatski generali nece u Hag," *Oslobodenje*, 17 October 1999, p.17.

^{xcix} OHR estimates suggest that up to 25% of all sessions of the joint institutions are wasted squabbling over the agenda. A recent session of the House of Representatives, on 31 August 1999, lasted from 11:00 until to 19:00. Delegates debated the work programme for the year. They agreed on nothing.

^c June 1999 PIC meeting.

^{ci} Annex 4, Article III:1.

^{cii} Annex 4, Article III:3(a).

^{ciii} For example, at the end of April 1999, the Republika Srpska National Assembly passed a resolution, which said that Republika Srpska officials in the BiH joint institutions had to consult with the entity before making policy decisions. This resolution was unconstitutional, which led OHR to declare it illegal. At the same time, OHR officials discovered that the Republika Srpska liaison office in Vienna was issuing passports. Again, this was completely illegal, as only BiH embassies are allowed issue passports outside BiH.

^{civ} Annex 4, Article VIII:3 notes that the Federation is to provide two-thirds of the finances for the BiH joint institutions.

^{cv} "The Republic of Bosnia and Herzegovina, the official name of which shall henceforth be 'Bosnia and Herzegovina', shall continue its legal existence under international law as a state," Annex 4, Article I:1.

^{cvi} Annex 4, Article I:1. *ibid.*

^{cvii} Annex 4, Preamble, last paragraph.

^{cviii} All the republics of SFRJ had the position of a quasi-state, and the SFRJ 1974 Constitution gave them numerous state powers. Article 3 of the SFRJ Constitution of 1974 defined socialist republics as "states where working people and citizens enjoy their sovereign rights." This formulation was further elaborated in each republic's constitution.

^{cix} When events from the Federation are reported in Republika Srpska media, they are correctly advertised as events from "Federacije Bosne i Hercegovine", which certainly does sound like another country, a concept pleasing to most Serbs.

^{cx} "Bosniak" ("Bošnjak") is the name introduced in the political vocabulary by the leading Muslim political party, SDA, during the war. It can be questioned as unpractical and etymologically inconsistent because the name of the region (Bosnia), historically speaking, has a much broader national and historical base, and this new usage creates the risk of shrinking that foundation. Implicitly, this new name tends to eliminate the traditional label, which used to embrace, quite comfortably, all inhabitants of that region and was free of any national or political connotations.

^{cxii} "Bosniaks, Croats, Serbs, as constituent peoples (along with Others), and citizens of BiH hereby determine that the Constitution of BiH is as follows.." Annex 4, Preamble, last paragraph.

^{cxiii} Even the amended Article 1 of the Constitution of the Republika Srpska (amended in 1994 from the original text of 1992) reads "Republika Srpska shall be the State of Serb people and of all its citizens."

^{cxiiii} "Bosniacs and Croats as constituent peoples, together with Others, and citizens of Bosnia and Herzegovina from the territory of the Federation of Bosnia and Herzegovina...reform the internal establishment of the Federation territories...." Constitution of the Federation of Bosnia and Herzegovina, Article 1:1 (amended).

^{cxv} 5.5% of the BiH population declared themselves as "Yugoslav" and 2.4% as "Others" in the April 1991 census. In reality both these categories were almost the same thing – the Jewish community and other religious minorities, the offspring of Bosnian mixed marriages, the offspring of Yugoslavia-wide mixed marriages, and naturalised foreigners or the offspring of naturalised foreigners.

^{cxvi} Annex 4, Article V.

^{cxvii} Annex 4, Article IV:1.

^{cxviii} For an in depth look at how the BiH Constitution denies basic human rights, see "A Critical Appraisal of Human Rights Provisions of the Dayton Constitution of Bosnia

and Herzegovina," *Human Rights Quarterly*, 20 (1988), pp.125-138.

^{cxviii} See the Statute of the Council of Europe, Chapter II, Article III.

^{cxix} Annex 4, Article IV:4.

^{cxx} "The Parliamentary Assembly shall have two chambers: the House of People and the House of Representatives...All legislation shall require the approval of both chambers." Annex 4, Article IV, Preamble and Article IV:3(c). As with elsewhere in the Constitution, both Entities send Delegates, but the Federation has twice as many seats in the House of Representatives (Annex 4, Article IV:2).

^{cxxi} "The designated Croat and Bosniak Delegates...shall be selected...by the Croat and Bosniak Delegates to the House of Peoples of the Federation. Delegates from RS shall be selected by the National Assembly of RS." Annex 4, Article IV: 1(a).

^{cxixii} The House of Peoples shall comprise 15 Delegates...including five Croats, five Bosniaks...and five Serbs." Annex 4, Article IV:1.

^{cxixiii} "A proposed decision of the Parliamentary Assembly may be declared to be destructive of a vital interest of the Bosniak, Croat or Serb people by a majority of...the Bosniak, Croat or Serb Delegates..." Annex 4, Article IV: 3(e). The ethnic clause has actually been used only once, by the Bosniaks. This is because Republika Srpska Delegates veto in the House of Representatives, as in the lower house there is an entity, rather than an ethnic veto clause.

^{cxixiv} 1991 census figures.

^{cxixv} Annex 4, Article IV:3(d).

^{cxixvi} Law on Citizenship, Law on the Policy of Direct Foreign Investment, Law on the Flag, Law on the Seal, General Law on the Privatisation of Companies and Banks, Law on Telecommunications, Law on the State Hymn, Law on Administrative Taxes. Letter of 19 October 1999, to ICG from Secretariat of the Parliamentary Assembly.

^{cxixvii} Law on the Flag, Law on the Seal, Law on the State Hymn, Law on Administrative Taxes.

^{cxixviii} Imposed 16 December, 1997, under the enhanced authority given to the High Representative by the December 1997 Bonn Peace Implementation Council. Adopted by Parliament 27 July 1999.

^{cxixix} The Laws adopted by the Parliament are: Law on Foreign Debt, Law on Central Bank, Law on Foreign Trade Policy, Law on Customs Policy, Law on Customs Tariffs (1997), Law on Official Gazette, Law on Immunity, Law on the 1997 Budget, Law on the Council of Ministers and Ministries, Law on Travel Documents, Law on Customs Tariffs (1998), Law on the 1998 Budget, Law on changes and additions to the Customs Policy, Law on the Seal of BiH, Law on the Policy of Direct Foreign Investment, Law on Customs Policy (1988), Law on changes to the Law on Travel Documents, Law on changes and amendments to the Law on Immunity, Law on the 1999 Budget, Law on Implementing the Budget of 1999, Law on Telecommunications, Law on Privatisation of Companies and Banks, Law on Citizenship, Law on Y2K, Law on the Revision of Financial Dealings of BiH Institutions.

^{cxixxx} The Parliament has also adopted slightly more than 15 "decisions", which do not have the force of law. The Council of Ministers has also adopted by-laws and decisions.

^{cxixxxi} For the detailed requirements, see Council of Europe documents "Bosnia and Herzegovina's request for membership to the Council of Europe," 31 August 1999, and "Bosnia and Herzegovina's application for membership of the Council of Europe," 24 August 1999.

^{cxixxxii} "Parliament is indeed hampered by internal organisation problems (there is no work programme, rules of procedure are outdated, etc.) Material problems (severe shortage of equipment and premises) and the lack of human resources are also

sources of difficulty." "Bosnia and Herzegovina's application for membership of the Council of Europe, Memorandum on the visits made to BiH from 29 June to 1 July 1999, Council of Europe Political Affairs Committee, August 1999.

^{cxxxiii} The Parliament currently has a full-time Secretariat of 6 people, with 7 or so sub-contractors. It is planned eventually to have 50 people.

^{cxxxiv} Only two-thirds of whom can be "from the territory of the Federation", Annex 4, Article V:3(b).

^{cxxxv} The embassies of Bosnia and Herzegovina do not represent the central government. Rather, they represent their own ethnic group/entity. As such, the BiH embassy in Moscow acts more or less in the interests of Republika Srpska, while the BiH embassy in Tehran acts in the interests of the Bosniaks.

^{cxxxvi} Annex 4, Article V:3.

^{cxxxvii} It is worth noting that although the Presidency has the responsibility to execute decisions of the Parliamentary Assembly, the Parliamentary Assembly has the responsibility to "enact legislation as may be necessary to implement decisions of the Presidency" (Annex 4, Article IV:4(a)). Who's in charge?

^{cxxxviii} Annex 4, Article V:5(a). Yet it is difficult for three members of the Presidency to have authority over two armies. This appears to be implicit proof, in the very constitution of BiH, that the Dayton architects knew that the HVO and ABiH would always be separate, regardless of their joint "Federation Army" title.

^{cxxxix} The OHR is currently attempting to get the members of the Presidency in an effort to resolve the issue over command of the armed forces. The High Representative has declared the central government's Presidency has supremacy in commanding the armed forces, and not the entity governments. In particular, the High Representative declared the final civilian authority rests with the Presidency as a body, and not with its members. That the entities will respect this decision is doubtful. OHR Press Release, "Decision on Civilian Command of the Armed Forces," 20 February 1999.

^{cxl} The Serb member of the Presidency, Zivko Radisic, is always described, by Radio Television RS as "the Member of the BiH Presidency from RS." This is incorrect. He is the "Serb Member of the BiH Presidency." Yet RTRS is permitted to violate this portion of the Dayton Agreement, which further fuels the idea that RS has even more autonomy than it actually has.

^{cxli} "Izetbegovic u radnoj posjeti u Turskoj," *Dnevni Avaz*, 24 September 1999; "Privatna posjeta u drzavnom interesu," *Oslobodenje*, 24 September 1999.

^{cxlii} "Izetbegovic je privatno u arapskim zemljama," *Dnevni Avaz*, 25 September 1999.

^{cxliii} "Ni Jelavic se ne dogovara o posjetama Zagrebu," *Oslobodenje*, 24 September 1999.

^{cxliv} "Odlazak u Zagreb ne prolasavam posjetama drzavnog izaslanstva BiH," *Dnevni Avaz*, 25 September 1999; Bezuspjesan pokusaj pravdanja Izetbegoviceve posjete," *Oslobodenje*, 25 September 1999.

^{cxlv} "Radisic je s Milosevicem razgovarao kao clan Predsjedništva BiH," *Dnevni Avaz*, 11 October 1999.

^{cxlvi} "Destruktivan cin za Republiku Srpsku," *Oslobodenje*, 11 October 1999.

^{cxlvii} "The Presidency of BiH 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".

^{cxlviii} "All refugees have the right to return freely to their home of origin...."

^{cxlix} Candidates will have to gather either 500 signatures from the other entity, or win the support of two Municipal Councils/ Assemblies in the other entity.

^{cl} "I think that that (signatures requirement) is not that important and I think that it won't drastically change the result of the voting, but it is more a symbolic gesture which needs to show that the members of the Presidency are bosses of the whole

country and not just its individual segments." *Dani*, 20 August 1999.

^{cli} Only two-thirds of the Ministers on the Council can come from the "territory of the Federation". Annex 4, Article V:4(b).

^{clii} Annex 4, Article V:4(a).

^{cliii} Annex 4, Article III:1.

^{cliv} *Ibid.*

^{clv} "The Chair shall nominate a Foreign Minister, a Minister for Foreign Trade, and other Ministers as may be appropriate...." Annex 4, Article V:4.

^{clvi} Ministry for Civil Affairs and Communications and Ministry of Foreign Trade.

^{clvii} Annex 4, Article III:1(g) and (i).

^{clviii} "The Presidency shall nominate the Chair of the Council of Ministers..." Annex 4, Article V:4.

^{clix} Dr. Haris Silajdzic and Svetozar Mihajlovic.

^{clx} Neven Tomic.

^{clxi} Annex 4, Article VI:3.

^{clxii} *Dnevni Avaz*, 27 September 1999, pg. 3.

^{clxiii} "A Comprehensive Judicial Reform Strategy for Bosnia and Herzegovina", OHR, Sarajevo, July 1999, pg. 12.

^{clxiv} See OHR Press Statement, 12 January 1998, and OHR Press Statement "Flags Commission proposes three models," 26 January 1998.

^{clxv} Officials of international diplomatic organisations, e.g. OSCE, have to register with local police forces in Croat-controlled "West" Mostar, which is an illegal act as those officials are already registered with the BiH Foreign Ministry in Sarajevo. One of the questions on the registration form is: "When did you arrive in BiH, Hrvatska Republika "Herzeg-Bosna"?" If one registers in the police HQ in Mostar Jugo-zapad, then one must walk past the large photograph of the President of Croatia, the deceased Croatian Minister of Defence, the statue of the Virgin Mary and the framed paintings of HVO soldiers.

^{clxvi} "The Parties shall secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms provided in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols...[including] without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

^{clxvii} A Serbo-Croatian colloquialism meaning "connections" or "contacts." Success in dealing with almost all of the BiH government and administrative institutions, from getting a passport issued to getting allocated an apartment, depends on knowing the right people. This "veze" system is endemic throughout society.

^{clxviii} The OSCE's report on pensions in BiH mentions numerous examples of ethnic discrimination against pensioners. "The RS (pension) fund should immediately release the contents of its database to the Federation (pension) funds. Its consistent refusal to do so has...provided a convenient excuse for discrimination against those pensioners returning from the RS who wish to register with a Federation fund." It is obvious that the majority of those returnees will be Serb. See "Falling through the Cracks: The Bosnian Pension System and its Current Problems," OSCE Mission to Bosnia and Herzegovina Human Rights Department, Sarajevo, March 1999, pg. 34.

^{clxix} In a now celebrated case, non-Croat workers of Livno Bus are involved in a court procedure against their pre-war employers. Pre-war Bosniak workers from the Aluminiji factory in Mostar too are attempting to exercise their rights.

^{clxx} See "Minority Employment Principles," ICG Proposal, 1 December 1998.

^{clxxi} The International Human Rights Law Group released a report on "Non-payment of Maternity Leave Allowance – Violation of Human Rights and Discrimination" (Sarajevo, September 1999). The report finds that "The current status of law and practice relating to the payment of maternity leave benefit...breaches all of the relevant international instruments to which BiH is a party...and the relevant provisions in each of the domestic Constitutions" pg. 9.

^{clxxii} Annex 6, Chapter 2, Part A, Article II:1. The Commission is scheduled to operate in its present form for five years after entry into force of the GFAP (14 December 1995). The responsibility for the continued operation of the Commission on Human Rights will then be transferred to the joint institutions of BiH, "unless the Parties agree otherwise."

^{clxxiii} Annex 6, Chapter 1, Article I. These 16 agreements include the 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto, the 1965 International Convention on the Elimination of all Forms of Racial Discrimination and the 1994 Framework Convention for the Protection of National Minorities.

^{clxxiv} "To assist in honouring their obligations under this Agreement, the Parties hereby establish a Commission on Human Rights...The Commission shall consist of two parts: the Office of the Ombudsperson and the Human Rights Chamber." Annex 6, Chapter 2, Article II:1.

^{clxxv} Conversation with OHR officials, 19 October 1999.

^{clxxvi} Annex 6, Chapter 2, Article XI:6.

^{clxxvii} *Marceta v FBiH*, Case no. 97/41, October 1998.

^{clxxviii} "In the RS, payment has been made in 0 out of 3 cases, but the RS passed a government resolution to pay on 21 July. Payment is now with the Finance Ministry." Human Rights Chamber Decisions, Status of Compliance, October 1999, OHR Sarajevo.

^{clxxix} "The Federation Ministry of Defence has agreed to implement the Decisions of the Human Rights Chamber and recognise the contracts concluded with the JNA in 1991/92." OHR Press Release, 2 July 1999.

^{clxxx} "Silence of the Administration" refers to a common and pernicious practice in BiH whereby administrative organs, rather than refuse a request or give a negative decision, simply refuse to answer, thereby denying the petitioner the right to have his or her case reviewed.

^{clxxxi} See Annex 7.

^{clxxxii} Office of the Human Rights Ombudsperson for BiH - Case Summary, 4 October 1999.

^{clxxxiii} Office of the Human Rights Ombudsperson for BiH, Newsletter, May 1999, pg. 2.

^{clxxxiv} Although the Case Summaries inform the public on cases where the authorities have complied, they do not inform the public on cases where the authorities have not complied.

^{clxxxv} "The State created by the GFAP is still in the process of strengthening and establishing its institutions, building up democracy and the Rule of Law culture. Therefore, the Office and its results cannot be blindly compared with those existing in developed democracies." Office of the Human Rights Ombudsperson for BiH, Third Annual Report, May 1998-April 1999, pg. 16.

^{clxxxvi} Up until April 1998 "the State of BiH had ignored all recommendations addressed to it by the Ombudsperson," and the Federation had similarly ignored its requests, with the exception of one Special Report. In the RS, "if not satisfactory, [compliance is] at least not as disappointing as for the Federation and the State." Office of the Human Rights Ombudsperson, Second Annual Report, May 1997-April 1998, pg. 17.

^{clxxxvii} Comments of the Office of the Human Rights Ombudsperson on the International Human Rights Law Group Discussion Paper and Roundtable on "Human Rights Protection Mechanisms in BiH: Effectiveness of the Human Rights Commission", 27 November 1998, on file with the IHRLG, Sarajevo.

^{clxxxviii} 527 final reports, 122 cases closed, Special Reports on 17 issues, 110 cases referred to the Chamber before adoption of the final report, 524 investigations not opened. Case Summary, 4 October 1999.

^{clxxxix} "Human Rights Protection Mechanisms in BiH: The Effectiveness of the Human Rights Commission", International Human Rights Law Group Discussion Paper, Sarajevo, 17 May 1999, pg. 13.

^{cx} "A Comprehensive Judicial Reform Strategy for Bosnia and Herzegovina", OHR, July 1999, pg. 13. It is claimed that "This relative increase in compliance has been due in large part to the establishment of the offices for legal representation of the governments in both the RS and the Federation," in late 1998 and early 1999. The Strategy goes on to say that OHR believes "the respective governments now appear to be aware of the necessity to implement Chamber decisions because it has been made a condition for accession to the Council of Europe" pg. 14.

^{cxci} *Ibid.*, pg. 1.

^{cxcii} Nonetheless, compliance with Chamber decisions remains at 10%.

^{cxci} "A Comprehensive Judicial Reform Strategy for BiH", OHR, July 1999, pg. 5.

^{cxci} Annex 6, Chapter 2, part C, Article VIII:2(a).

^{cxci} Venice Commission Opinion on the Constitutional Situation in BiH with Particular Regard to Human Rights Protection mechanisms, November 1996, Council of Europe. CDL-INF(96)9, pg. 18. The Federation Constitution-mandated Federation Human Rights Court has recently been "established," in spite of the Council of Europe's decision not to appoint the four judges it needs to legitimise it under the Constitution. The Venice Commission believes it to be a duplicative, unnecessary court which should be brought under the aegis of the Supreme or Constitutional Courts of the Federation.

^{cxci} "Preliminary Proposal for the Restructuring of Human Rights Mechanisms in Bosnia and Herzegovina", the Council of Europe (Venice) Commission on Democracy Through Law. The Chamber itself rejects this idea. See "The Future of the Human Rights Chamber," Human Rights Chamber, 8 October 1999.

^{cxci} "The ICVA Directory of Humanitarian and Development Agencies in BiH", Sarajevo, April 1999, pg. VI.

^{cxci} These include the Helsinki Committee for Human Rights in BiH and the Helsinki Committee for Human Rights in Republika Srpska. Dayton stated: "the Parties shall promote and encourage the activities of non-governmental and international organisations for the protection and promotion of human rights." Annex 6, Chapter 3, Article XIII:1. Also: "The Parties shall allow full and effective access to NGO's for purposes of investigating and monitoring human rights conditions in BiH and shall refrain from hindering or impeding them in the exercise of these functions." Annex 6, Chapter 3, Article XIII:3.

^{cxci} OSCE estimates that 70% of its Human Rights Officers caseload deals with property issues.

^{cc} "The parties join in inviting the UNCHR, OSCE, UNHCHR and other intergovernmental or regional human rights missions or organisations to monitor closely the human rights situation in BiH...and to provide them with full and effective facilitation, assistance and access." Annex 6, Chapter 3, Article XIII:2. Also "All competent authorities in BiH shall co-operate with and provide unrestricted access to the organisations established in this Agreement; any international human rights monitoring mechanisms established for BiH; the ICTY; and any other organisation authorised by the UN SC [United Nations Security Council] with a mandate concerning human rights or humanitarian law." Chapter 3, Article XIII:4.

^{cci} "All...authorities in BiH shall co-operate with and provide unrestricted access

to...any international human rights monitoring mechanisms established for BiH", Annex 4, Article II:8.

^{ccii} "All persons...shall enjoy...the right to (a) home...the right to property...the right to liberty of movement and residence...freedom of peaceful assembly and freedom of association with others." Annex 4, Article II:3.

^{cciii} The enjoyment of the rights and freedoms provided for in this Article or in the international agreements...to this Constitution shall be secured...without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

^{cciv} "BiH, and all courts, agencies, governmental organs, and instrumentalities operated by or within the entities, shall apply and conform to the human rights and fundamental freedoms referred to in paragraph 2 (ECHR and its Protocols) above."

^{ccv} Article II:8: "co-operate with...international human rights monitoring mechanisms established for BiH; supervisory bodies established by any of the international agreements listed in Annex 1; ICTY...any other organisation authorised by the UN SC with a mandate concerning human rights or humanitarian law."

^{ccvi} "All refugees and displaced persons have the right freely to return to their homes of origin. They have the right...to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any such property that cannot be restored to them."

^{ccvii} ICG has published ten reports on refugee return in Bosnia and Herzegovina. These include: Going Nowhere Fast: Refugees and Displaced Persons in Bosnia and Herzegovina (1 May 1997); A Hollow Promise? The Return of Bosnian Serb Displaced Persons to Drvar, Bosansko Grahovo and Glamoc (January 1998); Minority Returns or Mass Relocation (14 May 1998); Impunity in Drvar (20 August 1998); Too Little too Late: Implementation of the Sarajevo Declaration (9 September 1998); Preventing Minority Return in Bosnia and Herzegovina: The Anatomy of Hate and Fear (2 August 1999).

^{ccviii} Croatian President Franjo Tudman recently gave a speech to 6,000 Bosnian Croat refugees occupying Serb homes in Croatia's Krajina region, telling them they should stay where they are. In the event they decide to return to BiH, they should do so only to areas where the Croats maintained majority control, otherwise they would receive no support from the Croatian government. "Tudman u Lici rusio Dejton," *Oslobodenje*, 19 October 1999, p.36.

^{ccix} "Statistics Package", UNHCR Sarajevo Operations Unit, 1 October 1999.

^{ccx} For a detailed report of the numbers of persons displaced by the war, refer to the United Nations Development Programme "Bosnia and Herzegovina Human Development Report 1998", Independent Bureau for Humanitarian Issues/UNDP, Sarajevo, 1999, pg. 79-87.

^{ccxi} Methodological note: the UNHCR and all major international agencies working with refugee return realise that official return figures are unreliable. UNHCR relies on data submitted by local authorities. "Registered returns," therefore, are based on returnees registering with local authorities. Often, authorities prevent returnees from receiving new identity cards, without which a whole range of benefits cannot be accessed. Such municipalities understate actual levels of return in order not to draw the attention of their own ethnic electorate that minorities are returning. Dobojski SDS Executive Board President Boro Paravac finally admitted, in May 1999, that 2,000 Bosniaks had returned to destroyed villages in Dobojski. Up to then, the Dobojski Ministry of Refugees always filled in "0" when UNHCR presented forms to them requesting returns figures. Despite the Jusici and Dugi Dio returns in early 1997, many official

documents from Zvornik do not mention these returns. In other cases, returnees deliberately fail to register, as a loss of their old identity card may deprive them of health and pension benefits from their own majority ethnic municipality from which they are returning. This problem frequently arises in return areas close to the Inter-entity Boundary Line. Other issues, such as access to education or compulsory military service in the army of another entity also prevent returnees from registering. As a result, it is possible that some returnees are not counted at all. In other cases, municipalities may overstate their return levels so as to appear co-operative with Dayton as a means of receiving higher levels of international aid. Many cases exist of Sarajevo Serb DP's in RS registering for ID cards so that other documents can be accessed more easily, without any intention of returning. Conveniently, Sarajevo authorities count these as "returns".

^{ccxii} This practice continued until the repeal of the respective "abandoned property" legislation in both entities in 1998. The reality is that the international community has no idea how many displaced Bosnians have actually returned to their pre-war homes of origins.

^{ccxiii} These are defined as return to areas where a different ethnic group retains military control and a population majority.

^{ccxiv} The latest figures available are from 31 May, 1999: 490,000 in the Federation and 346,500 in Republika Srpska.

^{ccxv} "Update August, 1999", UNHCR Sarajevo Office of the Chief of Mission. A sizeable majority of these people, particularly RS Serbs, are not searching very hard for a permanent solution. They are perfectly happy to live in other people's property while concealing the fact that they have sold their property in the other entity so as to continue as DP's in their new entity.

^{ccxvi} "Statistics Package", UNHCR Sarajevo Operations Unit, 1 October, 1999.

^{ccxvii} 5,943 people.

^{ccxviii} Indeed, in Zvornik, approximately 1,500 Bosniaks have spontaneously returned to the villages of Klisa, Setici and hamlets around Krizevici. Informal SFOR and IPTF estimates place 2,500-3,000 Bosniaks cleaning/camping overnight in 29 villages in the Zvornik region.

^{ccxix} Approximately 1,740 minority returns occurred per month between January and August 1999. When this rate of return is extrapolated over a twelve-month period, as many as 20,874 minority returns could conceivably occur. However, during autumn months the pace of returns slows due to cold weather. Therefore, the real number could be somewhat lower.

^{ccxx} "All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them. The Parties confirm that they will accept the return of such persons who have left their territory." Chapter 1, Article I:1.

^{ccxxi} Annex 7, Chapter 1, Article I:1.

^{ccxxii} Ibid., Article I:3(a).

^{ccxxiii} Ibid., Article I:3(b).

^{ccxxiv} Ibid., Article I:3(c).

^{ccxxv} Ibid., Article I:3(d).

^{ccxxvi} Ibid., Article I:3(e).

^{ccxxvii} "Choice of destination shall be up to the individual or family. The Parties shall not...compel them [returnees] to remain in or move to situations of serious danger or insecurity, or to areas lacking in the basic infrastructure necessary to resume a normal life." Annex 7, Chapter 1, Article I:4.

^{ccxxviii} Three and a half years after Dayton it appears that the vast majority of Serb DP's in RS wish to stay in RS, and that a majority of Croat DP's wish to remain in Croat-controlled areas. In contrast, a majority of Bosniak DP's, particularly the elderly, wish to return to their pre-war homes.

^{ccxxix} Chapter 2, Article VII.

^{ccxxx} Chapter 2, Article XI.

^{ccxxxi} Chapter 2, Article XII:2.

^{ccxxxii} Chapter 2, Article VIII.

^{ccxxxiii} Chapter 2, Article XII:7.

^{ccxxxiv} Shortly after the establishment of the Commission for Displaced Persons and Refugees, its name was changed to the Commission for Real Property Claims of Displaced Persons and Refugees. The previous name was seen as too all-encompassing, and could create confusion among BiH citizens, who would approach it for assistance on issues outside of its competency.

^{ccxxxv} CRPC Press Release, 28 October, 1999. See also *Dnevni Avaz*, 17 September 1999, pg. 5. The CRPC averages between 5,000-6,000 decisions a month. For October there were 7,351, the largest number to date.

^{ccxxxvi} Steven Segal, Executive Director of the CRPC, quoted in *Dnevni Avaz*, 16 September 1999: "I don't know the exact figure. According to our information, the majority of the decisions are not implemented, but at the moment we're working on a project to monitor the execution of certificates."

^{ccxxxvii} "Our task is only to pass decisions, say, the same way a court does. It is up to the Federal and RS authorities to implement them. Local officials and organs of government in BiH are responsible for the disregard of CRPC certificates." Steven Segal, *ibid*.

^{ccxxxviii} Annex 4, Article II:5.

^{ccxxxix} The Venice Commission is a body created by the Council of Europe, which comprises "independent experts who have achieved international fame through their experience in democratic institutions or by their contribution to the enhancement of law and political science." "The work of the European Commission for Democracy through Law," <http://www.coe.fr/venice/venice.htm>.

^{ccxl} "Preliminary Proposal for the Restructuring of Human Rights Mechanisms in Bosnia and Herzegovina."

^{ccxli} "The Parties, after notification to the Commission and in co-ordination with UNHCR and other international NGO's contributing to relief and reconstruction, may temporarily house refugees and DP's in vacant property, subject to final determination of ownership by the Commission and to such temporary lease provisions as it may require." Annex 7, Chapter 2, Article XIII.

^{ccxlii} "A Refugees' and DP's Property Fund shall be established in the Central Bank of BiH to be administered by the Commission." Annex 7, Chapter 2, Article XIV.

^{ccxliii} e.g. Miljkovac, Makljenovac, Sevarlije.

^{ccxliv} "Interim Evaluation of Return and Reconstruction Task Force Minority Return Programmes in 1999," European Stability Initiative, Sarajevo, 14 September, 1999, pg. 5.

^{ccxlv} For a detailed study of obstacles to refugee return, see "Preventing Minority Return in Bosnia and Herzegovina: The Anatomy of Hate and Fear," ICG Report No. 73, 2 August 1999.

^{ccxlvi} 69,000 of these are in Sarajevo. Prior to the war 80% of housing stock in BiH was privately owned. Only 20% of all housing units consisted of socially owned apartments (approximately 250,000 units).

^{ccxlvi} Under legislation recently amended by the High Representative, which repealed war time abandoned property laws, pre-war holders of occupancy rights in socially-owned apartments in RS had until 19 February, 2000, to submit an application to have their rights restored. In the Federation, 2 September 1999, was the deadline for applicants who received a negative answer from local municipal authorities, to apply to the CRPC as a second-instance body. This followed the initial closing date of 4 July 1999. Neither the Federation nor RS maintain a deadline for the return of privately owned property.

^{ccxlviii} "Interim Evaluation of Return and Reconstruction Task Force Minority Return Programmes in 1999", European Stability Initiative, Sarajevo, 14 September 1999.

^{ccxlix} Such as in Zvornik, Mostar, Jablanica, Konjic, etc.

^{cccl} See "Interim Evaluation of Reconstruction and Return Task Force (RRTF) Minority Return Programmes in 1999," ESI Report, 14 September 1999.

^{cccli} UNHCR Doboj estimates.

^{ccclii} It is estimated by UNHCR officials in Doboj, that Maglaj and Tesanj received approximately 70,000,000 DM in international community aid in 1997, for the combined return of one displaced Serb.

^{cccliii} Taken from discussions with Doboj UNHCR officials, summer, 1998. The Bocinja Mujahadeen are also believed to be protected by BiH Presidency Member Alija Izetbegovic. "Mehrez Amdouni između Bosne i Turske i Italije," *Slobodna Bosna*, 25 September 1999, pp.5-9. "I Osama Bin Laden ima bosanski pasos!" *Dani*, 24 September 1999, pp.16-19.

^{cccliv} In Republika Srpska these include: The Law on Cessation of Application of the Law on the Use of Abandoned Property; The Law on Further Amendments to the Law on Cessation of Application of the Law on the Use of Abandoned Property; and The Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons. In the Federation these include: The Law on the Repeal of Articles to the Law on the Amendment to the Law on Housing relations; The Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees; The Law on Amendments to the Law on Cessation of the Application of the Law on Temporarily Abandoned Real Property Owned by Citizens; The Instruction on Application of the Law on Cessation of the Application of the Law on Temporarily Abandoned Real Property Owned by Citizens and The Law on Cessation of the Application of the Law on Abandoned Apartments.

^{ccclv} "The High Representative's TV Address on Return and Property Repossession," OHR Press Release, 27 October, 1999.

^{ccclvi} "Stari grad Vranduk za sjećanje," *Oslobodenje*, 16 October 1999, p.3.

^{ccclvii} "Zasto samo UNESCO i Bosnjaci to smatraju kulturnim skandalom?" *Slobodna Bosna*, 4 September 1999, pp.20-21.; "Na nekropoli stecaka Radimlja Ante Raguz gradi skladiste," *Dnevni Avaz*, 28 August 1999, p.4.

^{ccclviii} Bonn PIC Declaration, 10 December, 1997, Article XI:2.

^{ccclix} Annex 11, Article I:1.

^{ccclx} *Ibid.*, Article III:1.

^{ccclxi} "The Parties shall co-operate fully with the IPTF and shall so instruct all their law enforcement agencies." *Ibid.*, Article IV:1.

^{ccclxii} "The Parties shall not impede the movement of IPTF personnel or in any way hinder, obstruct, or delay them in the performance of their responsibilities. They shall allow IPTF personnel immediate and complete access to any site, person, activity, proceeding, record, or other item or event in Bosnia and Herzegovina as requested by the IPTF in carrying out its responsibilities under this Agreement. This shall include the right to monitor, observe, and inspect any site or facility at which it believes that police, law enforcement, detention, or judicial activities are taking place." *Ibid.*, Article IV:3.

^{ccclxiii} United Nations Mission in Bosnia and Herzegovina, The United Nations Police

Assistance Trust Fund, "Building the Pillars of Rule of Law and Sustainable Peace in Bosnia and Herzegovina", January 1999.

^{cclxiv} 9 December 1998 between UNMiBH and RS MUP. All RS police forces are directed by one Ministry of the Interior. All local police stations report to nine regional Public Security Centres, in Banja Luka, Mrkonjic Grad, Prijedor, Doboj, Bijeljina/Brcko, Zvornik, Serb Sarajevo, "Srbinja" (Foca) and Trebinje.

^{cclxv} To give an example of the importance of IPTF training, 674 former anti-terrorist brigade officers have applied for the RS police force. Although they have completed the necessary required courses, IPTF is evaluating whether they would need full academy courses to be eligible.

^{cclxvi} IPTF Police Assessment Unit LPTA, 6 February 1999.

^{cclxvii} The inability refers to the pay discrepancy between RS and Federation police. As of late 1998 police in the RS earned as little as 80 DM per month, while those in the Bosniak parts of the Federation earned 400 DM per month. Because of this, few Federation police wish to leave their jobs to relocate to an ethnically hostile environment.

^{cclxviii} IPTF Police Assessment Unit LPTA, 6 February 1999.

^{cclxix} *Ibid.*

^{cclxx} *Ibid.*

^{cclxxi} see S/1999/284

^{cclxxii} As late as summer 1998, the Commander of the IPTF Regional HQ in Doboj informed other international organisations at an SFOR co-ordination meeting, that the starting salary for a police officer in Doboj South Municipality in the Federation was 400 DM per month, while the corresponding salary in Doboj town (RS) was 80 DM per month. 400 DM was the salary paid to Mirko Slavuljica, Chief of the Doboj Public Security Centre, the highest-ranking RS police officer in all of Posavina.

^{cclxxiii} *Oslobodenje*, 10 August 1999.

^{cclxxiv} Agreement on Restructuring the Police Federation of Bosnia and Herzegovina, Bonn, 25 April 1996.

^{cclxxv} The IPTF Commissioner and deputy Commissioner have begun to address the issue of inter-entity transfers of Police officers at their regular meetings with the Ministers of and Deputy Minister of Interior in the Republika Srpska and the Federation.

^{cclxxvi} 15 Serbs and 2 Bosniaks. This is the result of an agreement reached between Minister Barisic and UNMiBH in June. Barisic was one month late with these first hires, and is obliged to hire an additional 33 Serbs and 4 "Others" by the end of 1999.

^{cclxxvii} These included: terrorism, narcotics, organised crime and inter-Cantonal crime. Judicial Police services have also been established in a number of cantons and at the Federation level. However, international community support for the judicial police is limited. The Federation adopted the Law on the Judicial Police in October 1996, as the Federation Constitution gave the judicial police responsibility for securing information for each court, ensuring the presence of witnesses, maintaining the security of court premises, and in carrying out court orders. However, the international community believes that "securing information" and conducting searches and seizures duplicates the mandate of existing police at the Canton and Federation levels. The OHR Judicial Reform Strategy believes the mandate of both the Federation Judicial Police force and any future judicial police force in RS should be limited to essential courthouse security tasks which do not overlap with the mandates of the regular police forces. This would require an amendment to existing legislation and possibly the Federation Constitution.

^{cclxxviii} In Sarajevo Canton nearly 80 % of all new recruits in the police-academy are non-Bosniaks, UNMiBH, 26 March 1998.

^{cclxxix} S/1999/670

^{cclxxx} See "From Joint to Unified Policing: Continuing Police Development in Central Bosnia, UNMiBH, HRO 5/99 External.

cclxxxi Nezavisna Drzava Hrvatske, the independent Croat Fascist puppet-state created by Nazi Germany during World War Two.

cclxxxii For details see 'Building Civilian Law Enforcement in Stolac and throughout the Herzegovina-Neretva Canton' UNMiBH HRO 2/99, December 1998-May 1999.

cclxxxiii Ibid., e.g. the police are not yet integrated, surplus officers were not removed from the payroll, the chain of command is not unified, inappropriate symbols are still used, the internal administration of Bosnian and Croat police officers is still divided, the office of the Ministry of Defence is still in the police building, etc.

cclxxxiv UNMiBH HRO 2/99.

cclxxxv International Criminal Investigation Training and Assistance Program. The U.S. State Department, through the Embassy, complements the ICITAP training with equipment donations. An important part of ICITAP's work has been to develop police rules and procedures and the establishment of Internal Affairs units.

cclxxxvi "The IPTF Commissioner may request that the High Representative take appropriate steps upon receiving such notifications (of non-compliance), including calling such failures to the attention of the Parties, convening the Joint Civilian Commission, and consulting with the United Nations, relevant states, and international organisations on further responses." Annex 11, Article V:2. This was in line with the IPTF Commissioner's subservient role to the High Representative: "The IPTF Commissioner shall receive guidance from the High Representative." Annex 11, Article II:3.

cclxxxvii S/RES/1088, 1996

cclxxxviii As part of the decision to remove the Canton 10 Croat Minister of Justice, High Representative Wolfgang Petrisch sanctioned Interior Minister Barisic for remarks made during the summer, where he allegedly threatened that he would "deport" returnees from Canton 10. On 29 April 1999, HR Westendorp removed the Interior Minister of Canton 3 Hodzic for "direct interference with several ongoing investigations into allegations of fraud, corruption, racketeering and abuse of official office" in Canton 3.

cclxxxix See Building Civilian Law Enforcement in Stolac and throughout Herzegovina-Neretva Canton, UNMiBH, HRO2/99, external.

ccxc UNMiBH S/1999/670

ccxci Ibid.

ccxcii A recent attempt to erect containers for IPTF officers next to the police station in Visegrad by the UNMiBH engineer resulted in he and the Bosniak construction staff receiving a hostile verbal "welcome".

ccxciii SRSG Klein is also downsizing the IPTF HQ and Regional HQ's to get more IPTF officers out of the office and into the field. This new management structure was approved by UNMiBH on 15 September 1999.

ccxciv "This Agreement applies throughout Bosnia and Herzegovina to law enforcement agencies and personnel of Bosnia and Herzegovina, the Entities, and any agency, subdivision, or instrumentality thereof. Law enforcement agencies are those with a mandate including law enforcement, criminal investigations, public and state security, or detention or judicial activities."

ccxcv See ICG Balkans Report No. 72, "Rule over Law - Obstacles to the Establishment of an Independent Judiciary in Bosnia and Herzegovina", 5 July 1999.

ccxcvi 16 July 1998. "With the creation of JSAP, UNMiBH's efforts undertaken by IPTF vis-à-vis the police are complemented with parallel efforts in the court system within an overall framework co-ordinated by the High Representative." UNMiBH JSAP Report for the Period November 1998 to January 1999, preface.

ccxcvii "Odbiti sve naloge o delozaciji izbjeglica", *Dnevni Avaz*, 8 September 1999.

ccxcviii Madrid Declaration of the PIC, 16 December 1998.

ccxcix "Pocela isplata penzija u ZE-DO kantonu", *Dnevni Avaz*, 8 September 1999.; "Neizvjesna isplata dvije zaostale penizije", *Dnevni Avaz*, 11 September 1999.; "Penzionerski protesti 9. oktobra", *Dnevni Avaz*, 21 September 1999.

^{ccc} See the ICG report "Republika Srpska in the Post-Kosovo Era: Collateral Damage and Transformation," 5 July 1999, page 10 and 11.

^{ccci} "Odrzan protestni skup radnika," *Dnevni Avaz*, 26 October, 1999, p.1.; "Odrzan veliki protestni skup radnika Federacije BiH," *Oslobodenje*, 26 October, 1999, p.1. "U zgradi RMK Prometa blokirano 400 zaposlenih", *Dnevni Avaz*, 22 September 1999.

^{cccii} Madrid Declaration of the PIC, 16 December 1999.

^{ccciiii} "It is through Republika Srpska that we will open the door to our own statehood. But for the time being it is in our best interests to act within the institutions of BiH." – Zivko Radisic, "moderate" Serb member of the tri-partite BiH Presidency, at an SPRS elections celebration dinner in Doboj on 25 October 1998.

^{ccciv} A case in point is the USAID expenditure of \$5 million to repair the Banja Luka heating system. In spite of this, no real refugee returns have yet begun to this area. See the ICG report "Preventing Minority Return in Bosnia and Herzegovina", 2 August 1999.

^{cccv} Madrid Declaration of the PIC, 16 December 1998, Article VI.

^{cccvii} Von Clausewitz, "On War."