

PEACE BUILDING AFTER HUMANITARIAN INTERVENTION: THE CASE OF
BOSNIA AND HERZEGOVINA

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ABSTRACT

PEACE BUILDING AFTER HUMANITARIAN INTERVENTION: THE CASE OF BOSNIA AND HERZEGOVINA

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This dissertation analyzes peace building process after humanitarian intervention. It conceptualizes peace building through questioning the feasibility of peace building following a humanitarian intervention. Addressing the deficiency of contemporary peace building approach, this thesis indicates the shortcomings of the various instruments of peace building in contributing peace and reconciliation on the case of Bosnia and Herzegovina (BiH). Besides, it shows the drawbacks of the current practice that peace building is a learning process, which employs the lessons learnt to advance the efficiency of peace building process.

There is a lack of comprehensive approach to peace building, based on case studies, evaluating the shortcomings and merits of all the instruments of peace building that provides a general strategy. Despite abundancy of policy oriented research to contribute policy making, academic work to analyze such a complicated phenomena has been frail. Within this context, contribution of the dissertation is to demonstrate the entire picture and question viability of the peace building process in war-torn societies. Therefore, it is enriching the study on the peace building operations.

Failure of institutionalization of peace in BiH after almost a decade of rigorous peace building efforts of the international community shows the fault of the mainstream understanding of peace building. The dissertation also unveils that engagement in Kosovo is the product of a similar strategy, which in practice either repeated the same fruitless methods or tried to build on the experience obtained in Bosnia but failed to heal up the troubles and challenges faced in Kosovo. Overall, the study points out the inevitability of a novel approach and an alternative peace building strategy beyond the policy-related focus.

Keywords: Peace building, humanitarian intervention, instruments of peace building: governance and security sector reform, post-conflict elections, promotion of human rights, return of refugees, civil society development, Bosnia and Herzegovina, Dayton Peace Agreement, Kosovo and UN Security Council Resolution 1244.

ÖZ

İNSANİ MÜDAHALE SONRASI BARIŞ İNŞASI: BOSNA HERSEK ÖRNEK OLAYI

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Bu tez, insani müdahale sonrası barış inşa etme sürecini incelemektedir. İnsani müdahaleyi takip eden barış inşasının uygulanabilirliğini sorgulayarak bunu kavramsallaştırmaktadır. Bugünkü barış inşası yaklaşımındaki eksiklikleri belirlemenin yanı sıra, birçok barış ve uzlaşma aracının zayıflıklarını Bosna Hersek örnek olayı üzerinde göstermektedir. Ayrıca, edinilen tecrübenin başarıyı artıran bir öğrenme süreci olduğunu var sayan mevcut uygulamanın sakıncalarına dikkat çekmektedir.

Örnek olaylar temelinde genel stratejiyi oluşturan bütün barış inşa araçlarının olumlu ve olumsuz yönlerini değerlendiren kapsamlı bir yaklaşım eksikliği vardır. Siyaset üretimine katkı odaklı araştırma fazlalığı olmasına rağmen böylesi karmaşık bir konuda analiz yapan akademik çalışmalar cılız kalmıştır. Bu bağlamda, tezin katkısı geniş bir çerçeveden tüm resmi gösterip, savaş yorgunu toplumlarda barış inşa sürecinin uygulanabilirliğini sorgulamaktır. Böylece, barış inşa operasyonları üzerindeki çalışmaları zenginleştirmektir.

Uluslararası toplumun bu konudaki yaklaşık on yıllık çabaları sonrası Bosna-Hersek'te barışın kurumsallaşmaktaki fiyaskosu, geleneksel barış inşası anlayışının

başarısızlığını ortaya çıkarmaktadır. Bu tez aynı zamanda Kosova'daki girişimin de benzer stratejinin ürünü olduğunu, pratikte aynı yetersiz yöntemlerin tekrarlandığını ve Bosna'da kazanılan tecrübeye rağmen Kosova'daki sorunlara çare bulunamadığını tespit etmektedir. Özetle, bu çalışma, siyaset üretme ötesinde, yeni bir yaklaşımın ve alternatif bir barış inşa stratejisinin kaçınılmazlığına işaret etmektedir.

Anahtar Kelimeler: Barış inşası, insani müdahale, barış inşa araçları: yönetim ve güvenlik reformları, çatışma sonrası seçimler, insan hakları, mültecilerin geri dönüşü, sivil toplum, Bosna Hersek, Dayton Barış Anlaşması, Kosova ve BM GK Kararı 1244.

DEDICATION

To all who suffered in ethnic conflicts.

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TABLE OF CONTENTS

PLAGIARISM.....	iii
ABSTRACT	iv
ÖZ.....	vi
DEDICATION	viii
ACKNOWLEDGEMENTS	ix
TABLE OF CONTENTS	x
LIST OF TABLES.....	xiv
CHAPTER	
1 INTRODUCTION.....	1
2 THE IDEA OF HUMANITARIAN INTERVENTION AND PEACE BUILDING.....	12
2.1 Definition of Humanitarian Intervention with a Long-term Commitment to Peace-building	16
2.2 Concept of Peace-building	18
2.3 Objectives of Peace-building	21
2.4 Instruments of Peace-building in Post-conflict Agenda.....	24
2. 4.1 Governance Reform.....	25
2.4.2 Security Sector Reform	26
2.4.3 Post-Conflict Elections	27
2.4.4 Human Rights	29
2.4.5 Return of Refugees	30
2.4.6 Empowering Civil Society	31
2.5 Constrains of Peace-building	33
2.5.1 Fixing Peace	33

2.5.2 Lack of Commitment.....	35
2.5.3 Insufficient Coordination.....	36
2.5.4 Delayed Assistance.....	38
2.5.5 Lack of Priorities	40
3 INTERVENTION FOR PEACE: THE CASE OF BOSNIA AND HERZEGOVINA	43
3.1 War in Bosnia (1991-1994) and the Road to Dayton Peace Agreement..	43
3.1.1 Role of the International Community (1991-1995) in Ending the War	48
3.1.2 The Dayton Peace Agreement	57
3.2 Assessment of the Dayton Peace Agreement.....	60
3.2.1 Short-ranged Arrangement	61
3.2.2 Integration versus Partition.....	62
3.2.3 Arms Control versus Train and Equip.....	63
3.2.4 Separation of Military and Civilian Aspects	64
4 IMPLEMENTATION OF DAYTON AND INSTRUMENTS OF PEACE- BUILDING IN BiH: I) GOVERNANCE AND SECURITY SECTOR REFORM.....	66
4.1 Instruments of Peace-building in Bosnia and Herzegovina.....	70
4.1.1 Governance Reform.....	70
4.1.1.1 Constitutional Reforms.....	77
4.1.1.2 Democratization.....	81
4.1.1.3 Role of the Office of High Representative	83
4.1.2 Security Sector Reform: Military, Police and Judiciary.....	87
4.1.2.1 Military Reform.....	91
4.1.2.2 Police Reform	96
4.1.2.3 Judicial Reform	103
5 IMPLEMENTATION OF DAYTON AND INSTRUMENTS OF PEACE- BUILDING IN BiH: II) ELECTIONS AND CIVIL SOCIETY	108
5.1. Elections	108
5.2 Political Party System of the BiH	111
5.2.1 Basic Party Profiles	113

5.2.1.1 Post-War Moderate Parties	118
5.3 14 September 1996 First Elections of BiH	120
5.3.1 Technical Evaluation of the 1996 Elections.....	126
5.4 Later Electoral Rounds Organized by the OSCE (1997, 1998, 2000) ...	131
5.4.1 1997 November Extra-Ordinary Elections for RS National Assembly	131
5.4.2 12-13 September 1998 General Elections	133
5.4.3 11 November 2000 General Elections.....	135
5.5 Adoption of Election Law	139
5.6 5 October 2002 First Elections Organized by the Local Authorities	144
5.7 Position of the International Community in Manipulating the Elections	148
5.7.1 Voting Incentive for Nationalist Parties	153
5.8 Empowering Civil Society	158
6 IMPLEMENTATION OF DAYTON AND INSTRUMENTS OF PEACE- BUILDING IN BiH: III) HUMAN RIGHTS AND RETURN OF REFUGEES	169
6.1 Human Rights.....	169
6.1.1 The Range of Human Rights Abuses in BiH.....	180
6.1.2 Bringing War Criminals to Justice	186
6.1.3 Educational Reforms	198
6.2 Return of Refugees and Displaced Persons	205
6.2.1 Role of United Nations High Commissioner for Refugees (UNHCR) in BiH.....	206
6.2.1.1 Network of Legal Aid Centers	209
6.2.2 Assessment of the Refugee Repatriation and Return of Internally Displaced Persons.....	212
6.2.3 Obstacles to Return.....	221
6.2.4 Property Issue	225
6.2.5 Transfer of Responsibility to the Locals.....	231
6.3 Evaluation of International Community's Peace-building Efforts in Bosnia and Herzegovina.....	236

7	LESSONS LEARNT AND NOT LEARNT FROM BOSNIA AND HERZEGOVINA?.....	242
7.1	Conflict in Kosovo	242
7.2	Rambouillet Accords and the Imposition of UNSCR 1244.....	246
7.3	Implementation of UNSCR 1244 and Peace-building in Kosovo	248
7.4	Instruments of Peace-building in Kosovo	251
7.4.1	Governance Reform and Democratization	252
7.4.2	Security Sector Reform: Military, Police and Judiciary.....	257
7.4.2.1	Military Reform.....	257
7.4.2.2	Police Reform	260
7.4.2.3	Judicial Reform	262
7.4.3	Elections	264
7.4.4	Human Rights	267
7.4.4.1	Bringing War Criminals to Justice	269
7.4.4.2	Educational Reforms	271
7.4.5	Return of Refugees and Displaced Persons.....	272
7.4.5.1	Property Issue	275
7.4.6	Empowering Civil Society	276
7.5	What Went Wrong in Kosovo?	277
7.6	Final Remarks	281
8	CONCLUSION	284
	BIBLIOGRAPHY	297
	APPENDICIES	312
	APPENDIX A DAYTON PEACE AGREEMENT.....	312
	APPENDIX B MAP OF BOSNIA AND HERZEGOVINA	362
	APPENDIX C UNITED NATIONS SECURITY COUNCIL RESOLUTION 1244.....	363
	APPENDIX D TÜRKÇE ÖZET	369
	APPENDIX E VITA	377

LIST OF TABLES

TABLES

Table 1: The Dayton Annexes.....	58
Table 2: BiH's State Structure before the Constitutional Changes.....	73
Table 3: Results of the September 14, 1996, Presidential Elections.....	120
Table 4: Results of the September 14, 1996, Parliamentary Elections.....	122
Table 5: Results of the September 14, 1996, Cantonal Elections.....	124
Table 6: Turn out in Bosnian 1996 Elections.....	127
Table 7: Compared number of votes 2000 and 2002.....	144
Table 8: Assessment of the electoral results:1990, 2000, 2002	148
Table 9: Returns Summary to BiH from 01/01/1996 to 31/07/2004.....	216
Table 10: Number of Mine Victims By Year.....	220
Table 11: Implementation of the Property Laws in BiH.....	225
Table 12: Structure of the International Administration in Kosovo.....	245

CHAPTER 1

INTRODUCTION

Peace building is a relatively new concept, constituting one of the four elements defined in “An Agenda for Peace”, put forward by the UN Secretary General Boutros B. Ghali that formulates a new strategy to cope with the security challenges in the post-Cold war era. Initially, it referred to the conditions that would enhance the transition from a state of conflict to peaceful coexistence, thus, contribute to a sustainable peace. However, the concept has gradually developed to include the creation of structures for the institutionalization of peace and also the long-term political, social and economic provisions to address the roots of the conflict.

Thus, peace building is broadly defined as consolidation of peace after an armed conflict ceases in war-torn societies. It includes a very comprehensive approach ranging from providing humanitarian assistance to reconstruction of political and civil institutions for creating workable and self-sustaining structures as well as reconciliation attempts addressing the causes of the conflict. For target state it means a fundamental restructuring of the society and the governmental structures. For intervening states it is a long term and controversial operation. Apparently, there is no quick route to peace building. It takes time and requires multidimensional commitment of military, political and financial resources over a long period to ensure transition from conflict to peace and reconciliation.

At this point, peace building faces constraints when international community formulates quick solutions and tends to impose institutions and mechanisms sometimes without local acceptance or indigenous involvement in

creating solutions. Further constraints of peace building involves late involvement, delayed assistance and insufficient coordination of donors and international agencies dealing with the conflict. In short, peace building is a very difficult if not an impossible task.

After international community intervened to stop humanitarian disasters, in some particular cases, engaged in a fundamental reshaping of the political processes and structures to address the root causes of the conflict. Such a policy change was the consequence of one of the fundamental concerns in the post-Cold war era: what should be the scope and depth of humanitarian intervention? Should it remain a kind of surgical short cut to end humanitarian crisis, which proved to be ineffective in many cases such as Somalia, or should international community undertake a long-term program to address the causes, which led to the conflict in the first place. The trend developed in favor of the latter that leads to the following debate.

Against this background, the basic questions of the study are whether peace building following a humanitarian intervention is attainable, what are the components of a strategy of peace building and what are the conditions conducive to the success of such a strategy. In order to analyze those a couple of complementary research questions need to be addressed, all elaborating on the central questions: how has humanitarian intervention been evolved to the commitment of peace building, what are the shortcomings of various instruments of peace building and what is the most controversial method in peace building?

This study questions the feasibility of achieving long-term goals of peace building by creating political and civil process through the basic instruments of peace building in war torn societies. Especially this applies to ethnically mixed cases where there is a lack of common interest but mistrust and resentment among different ethnic communities. On account of analyzing the objectives and instruments of peace building such as governance and security sector reform, post-conflict elections, human rights, return of refugees and civil society development this study explores the extent to which such a goal is attainable.

It also examines the contemporary peace building approach that lacks identified objectives, scheduled priorities and an appropriate strategy designed according to the specificity of each case. Moreover, it surveys the limitations and

shortcomings of the various instruments of peace building in contributing peace and reconciliation on the case of Bosnia and Herzegovina. This study further reviews the causes that make international peace building strategy vulnerable. Finally, it questions the claim of the major actors such as the UN, OSCE and NATO that peace building is a learning process that advances by way of applying the former experience into new cases.

Among the contemporary peace-building cases of Bosnia, Kosovo and East Timor this study has a particular focus on Bosnia and Herzegovina. The reason why Bosnia has been chosen is that it has been the first humanitarian intervention case in the post-Cold war period with an approach to peace-building. International community has engaged to create new structures to prevent internal violence and establish functioning democratic institutions for almost ten years. Therefore, Bosnia is the most advanced example in terms of duration and enforcement actions.

International community has a very comprehensive approach involving political, economic and social rehabilitation in Bosnia and Herzegovina. Since Bosnia and Herzegovina is located in Europe it attains the largest possible commitment to conflict resolution from the great powers and international organizations interested in the region. Thus, it receives maximum possible attention and effort in terms of peace building, reconstruction and reconciliation.¹ Nevertheless, after almost a decade of peace building attempts, peace still could not be institutionalized in BiH, and the question of what will happen to Bosnia when international community withdraws remaining unanswered. In this respect, Bosnia and Herzegovina is a good example to assess the peace building process, probability of success, and the viability of peace building approach in war torn societies. Since international strategy towards peace building claimed to be learning via progress and

¹ However, this has not been the only solution on the table for the future of the country. Some critics argue that partition of the country would be more logical instead of such a troublesome process. For instance Kaufmann mentions that 'in the last few years the idea of separating the warring populations may be the best solution to many of the most intense ethnic conflicts has been gaining ground. Events in Bosnia have supported this trend, as observers note that the more the warring groups have separated, the more peaceful their relations have become, while proposals to thoroughly reintegrate them command less and less support.' Chaim Kaufmann, 'When all else fails: Ethnic Population Transfers and Partitions in the Twentieth Century', *International Security*, vol. 23, no. 2, Fall 1998, pp. 120-56. Similarly, John J. Mearsheimer, 'Shrink Bosnia to Save It' *New York Times*, March 31, 1993, Robert A. Pape, 'Partition: An Exit Strategy for Bosnia', *Survival*, vol. 39, no. 4, Winter 1997-98.

applying the experience to other war torn societies, this study also evaluates international involvement in Kosovo from this point of view.

Peace building following humanitarian intervention is defined as a kind of humanitarian intervention with a long term commitment to peace. That includes a long term program after putting an end to the humanitarian emergencies. Therefore, it is important to see how humanitarian intervention has come to the agenda in the post-Cold war period.

A great amount of work has been done about various aspects of humanitarian intervention due to the major concern to humanitarian issues in the post-Cold War era. Most of the scholarly debates and literature focused on whether humanitarian intervention is legal, moral and justifiable.² There is also a considerable amount of literature against humanitarian intervention³ as well as intensive discourses in favor and against the desirability of the long-term commitment to peace building.

Radical arguments asserted that the objective of humanitarian intervention should not be simply to halt oppression but also to prevent its recurrence through a peace building agenda.⁴ Although there are scholars who believe that it is impossible for international actors to construct sustainable local institutions⁵, there is a

²Jack Donnelly, 'Human Rights, Humanitarian Intervention and American Foreign Policy: Law Morality and Politics', Journal of International Affairs 37, Winter 1984, 'Human Rights, Humanitarian Crisis, and Humanitarian Intervention', International Journal, vol. XLVIII, No.1, Autumn 1993, Adam Roberts, 'Humanitarian Action in War', Adelphi Paper, no. 305, 1996, Stephan Garrett, Doing Good and Doing Well: An Examination of Humanitarian Intervention Westport: Praeger Publishers, 1999, Stanley Hoffmann, The Ethics and Politics of Humanitarian Intervention, Notre Dame: University of Notre Dame Press, 1996, Richard Falk, 'Complexities of Humanitarian Intervention: A New World Order Challenge', Michigan Journal of International Law, vol. 17, Winter 1996, Thomas Weiss, 'Tangled up in Blue', Harvard International Review, vol. 16, issue. 1, Fall 1993, 'The Politics of Humanitarian Ideas', Security Dialogue, vol. 31, no. 1, March 2000, Nicholas Wheeler, 'Humanitarian Intervention After Kosovo: Emergent Norm, Moral Duty or the Coming Anarchy?', International Affairs vol. 77, issue 1, 2001.

³ Stephen R. Shalom, 'Reflections on Intervention', Peace Review, vol. 8, no. 4, 1996, Mohammed Ayoub, 'Humanitarian Intervention and International Society', Global Governance, vol. 7, issue 3, Jul-Sept, 2001, Vincent R.J., 'Grotius, Human Rights and Intervention, in Hedley Bull, Benedict Kingsbury and Adam Roberts (Editors), Hugo Grotius and International Relations, Oxford: Oxford Univ. Press, 1990, Noam Chomsky, The New Military Humanism: Lessons from Kosovo, Monreco: Common Courage Press, 1999.

⁴ Thomas R. Gillespie, 'Unwanted Responsibility', Peace and Change, vol. 18, issue 3, July 1993, David Fisher, 'The Ethics of Intervention', Survival, vol. 36, no. 1, Spring, 1994, Bhikhu, Parakh, 'The Dilemmas of Humanitarian Intervention', International Political Science Review, vol. 18, no. 1, 1997, Jarat Chopra, The Politics of Peace Maintenance, Colorado: Lynne Rienner Publishers, 1998.

⁵ Kimberly Stanton argued that the 'problem does not depend on the justifiability of humanitarian intervention, it lies in the capacity of foreigners to produce institutions that are sustainable at local

consensus on the probability that rapid withdrawal of the forces may lead to the revitalization of the conflict between parties.

A few number of research have been concluded and published on this issue. For instance, the central theme of the Report of the International Commission as reflected in its title “Responsibility to Protect” is that “sovereign states have a responsibility to protect their own citizens from avoidable catastrophe, but when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states.”⁶ The report provides a normative overview of the responsibilities of the international community to prevent internal conflicts, to react and intervene when it fails to prevent, and afterwards to rebuild war torn states.

Similarly, Jarat Chopra in “Politics of Peace Maintenance” defines the concept of peace maintenance as a “comprehensive political strategy for pulling together all forms of intervention and assistance that may be required when state institutions fail.”⁷ The concept signifies an overall political framework, as part of which the objectives of diplomatic activities, humanitarian assistance, military forces, and civilian components are not only coordinated but also harmonized. He also questions the international capability to adequately address peace maintenance. Although the UN has been engaged in peace keeping and enforcement for a long time, the new idea of peace maintenance aims to provide more success based on unified efforts and long term commitments. Basically, Chopra tried to develop a model for the UN to cope with security challenges, merely concentrating on the initial tasks such as establishing political authority, organizing civil administration and providing military security without tackling with the challenges of the long-term peace building approach.

level.’ ‘Pitfalls of Intervention’, Harvard International Review, vol. 16, issue 1, Fall 1993. Look Charles Krauthammer, ‘The Short, Unhappy Life of Humanitarian War’, The National Interest, issue 57, Fall 1999. The argument that outsiders can not substitute for the fundamental democratic learning originally comes from John Stuart Mill’s opposition to intervention for the support of self-determination. Similarly, Roland Paris points to the weaknesses of liberal internationalism in the work of international peace building agencies. He examines the problems arising from political and economic liberalization, paradoxes of democracy and capitalism, and the elements of an approach ‘limiting the conflict-inducing effects of economic and political liberalization policies on war-shattered states.’ Roland Paris, ‘Peace-building and the Limits of Liberal Internationalism’, International Security, vol. 22, issue 2, Fall 1997.

⁶ International Commission on Intervention and State Sovereignty (Editor), The Responsibility to Protect, Ottawa: Int. Development Research Centre, December 2001.

⁷ Jarat Chopra, The Politics of Peace Maintenance, Colorado: Lynne Rienner Publishers, 1998.

One of the rare works combining humanitarian intervention with peace building is Andrea Kathryn Talentino's "Intervention as Nation Building: Illusion or Possibility?"⁸ which analyzes whether nation building⁹ style interventions can work. Instead of focusing on the debate about the propriety of intervention in theory, the author asks more practically whether the strategy has any hope of succeeding. Talentino argues that history shows that intervention can serve power interests, but holds fewer examples demonstrating the success of nation building attempts, particularly in enforcement context. The article addresses this question by evaluating the long-lasting attempt of NATO and OSCE in Bosnia.

Moving on to the concept and strategy of peace building in the literature, Karin Von Hippel in the article "Democracy by Force- A Renewed Commitment to Nation Building"¹⁰, defines nation building as an attempt to create democratic and secure states. Marina Ottaway in "Nation Building"¹¹ discusses different approaches towards nation building by the international community that seeks to rebuild war-torn states through conflict resolution, multilateral aid, and free elections that have not yielded much success. The author suggests that nation building is difficult but not impossible as long as the effort has clear goals and sufficient resources. Besides, the study asserts that international community does not know how to proceed with nation building process and also lacks political will, while the article fails to propose any remedy.

In general, research on peace building so far had a narrow scope focusing on certain objectives or elements of peace building either on democratization and post-conflict elections, or on promotion of human rights and punishment of war crimes.¹²

⁸ Andrea K. Talentino, 'Intervention as Nation-Building: Illusion or Possibility?' Security Dialogue, vol. 33, no. 1, 2002.

⁹ The terms of peace-building, nation-building or institution-building are used interchangeably in the peace studies' literature. However, nation-building is a broad and vague term. Since nation-building or institution-building may lead to confusions and misunderstandings within the United Nations circles, the term peace-building is generally preferred. This dissertation follows the same path.

¹⁰ Karin Von Hippel, 'Democracy by Force-A Renewed Commitment to Nation Building', Washington Quarterly, vol. 23, issue 1, Winter 2000.

¹¹ Marina Ottaway, 'Nation Building', Foreign Policy, issue 132, Sep/Oct 2002.

¹² Tonya L. Putnam, 'Human Rights and Sustainable Peace' in Stephen John Stedman, Donald Rothchild, Elisabeth M. Cousens, Ending Civil Wars The Implementation of Peace Agreements, London: Lynne Rienner Publishers, 2002, Viktor Masenko Mavi, "The Dayton Peace Agreement and Human Rights in Bosnia and Herzegovina, Acta Juridica Hungarica, vol. 42, no. 1-2, 2001, Kaoru

Some work undertakes merely the return of refugees and displaced persons or civil society development as important elements of reconciliation and peace building.¹³ Particularly, there is an enormous literature on post-conflict elections and democratization. A few outstanding volumes include Krishna Kumar's "Post-conflict Elections, Democratization, and International Assistance"¹⁴, Terrence Lyons', "Post-conflict Elections: War Termination, Democratization, and Demilitarizing Politic"¹⁵, Benjamin Reilly's "Post-Conflict Elections: Constraints and Dangers"¹⁶, and lastly Charles Call and Susan Cook's article "On Democratization and Peacebuilding".¹⁷

However, there is a lack of comprehensive approach to peace building analyzing, based on case studies, shortcomings and merits of all the instruments of peace building that provides a general strategy. In this respect, one of the main contributions of this dissertation is to evaluate all instruments of peace building with their achievements and failures, and measure the progress on the background of the ten years experience in the most advanced case of peace building Bosnia and Herzegovina. The dissertation thus seeks to develop a sound conceptual approach to

Okuzumi, 'Peacebuilding Mission: Lessons from the UN Mission in Bosnia and Herzegovina', Human Rights Quarterly, vol. 24, 2002, Marcus G. Brand, 'Institution Building and Human Rights Protection in Kosovo in the Light of UNMIK Legislation', Nordic Journal of International Law, vol. 70, 2000, Paul R. Williams, Michael P. Scharf, Peace with Justice? War Crimes and Accountability in the Former Yugoslavia, New York: Rowman&Littlefield Publishers, 2002.

¹³ Howard Adelman, 'Refugee Repatriation' in Stephen John Stedman, Donald Rothchild, Elisabeth M. Cousens, Ending Civil Wars The Implementation of Peace Agreements, London: Lynne Rienner Publishers, 2002, Dayton Implementation The Return of Refugees, Special Report 26, The US Institute of Peace, 1997, http://www.usip.org/pubs/specialreports/early/dayton_imp/refugees.html, David Chandler, 'The Limits of Peacebuilding: International Regulation and Civil Society Development in Bosnia', International Peacekeeping, vol.6, no.1, Spring 1999, Roberto Belloni, 'Building Civil Society in Bosnia and Herzegovina', Human Rights Working Papers, no. 2, 12 January 2000, <http://www.du.edu/humanrights/workingpapers/index.html>.

¹⁴ Krishna Kumar, Post-conflict Elections, Democratization, and International Assistance, London: Boulder, 1998.

¹⁵ Terrence Lyons, Postconflict Elections: War Termination, Democratization, and Demilitarizing Politic, Working Paper No. 20, Institute for Conflict Analysis and Resolution, George Mason University, February 2002.

¹⁶ Benjamin Reilly, 'Post-Conflict Elections: Constraints and Dangers', International Peacekeeping, Special Issue: Recovering from Civil Conflict Reconciliation, Peace and Development, vol. 9, no. 2, Summer 2002.

¹⁷ Charles Call, Susan Cook, 'On Democratization and Peacebuilding', Global Governance, vol. 9, issue 2, April-June 2003.

peace building following humanitarian intervention by assessing international community's peace building efforts.

Furthermore, the study problematizes the idea of peace building and provides an academic perspective. Although there has been an “abundancy of policy relevant research” and “abundancy of work to contribute policy making”, academic research and analysis on peace building operations remained frail. Roland Paris argues that “pre-occupation with policy relevance, and a corresponding lack of attention to issues that may not have a direct bearing on policy, have reduced the field of peace operations to policy instruments.”¹⁸ Paris continues that “the academic's mandate is not primarily, or necessarily to contribute to policy discussions: it is to analyze and explain complex phenomena, even if doing so yields no specific policy recommendation.”¹⁹ In this way, the dissertation aims to enrich academic work on peace building

Within this framework, the following groups of sources are utilized in this study. The first group of resources used in this analysis is the reports, publications and statistics of international organizations and institutions, particularly engaged in peace building missions in Bosnia and Herzegovina and Kosovo such as OHR, OSCE, UNHCR, UNDP, Council of Europe, UNMBH, UNMIK and ICTY. It also includes reports and other publications on the implemented policies. The second group comprises international documents namely the Dayton Peace Agreement that ended the armed struggle in Bosnia and Herzegovina, and the UN Security Council Resolution 1244 concerning Kosovo.

Collection of the articles of the prominent academics, leaders and intellectuals that gives the general picture of peace building both conceptually and practically constituted third group of the sources. The fourth group employed is composed of books and texts on peace building as well as the case study of the research. The fifth group of sources covered the reports and publications of the peace institutes such as the United States Institute of Peace, International Peace Academy, and the European Center for Minority Issues. In addition, reports of the European Stability Initiative

¹⁸ Roland Paris, ‘Broadening the Study of Peace Operations’, International Studies Review, vol. 2, no. 3, Fall 2000, p. 33.

¹⁹ Ibid., p. 33.

and International Crises Group, which is a multinational organization making field based analysis to prevent and resolve conflicts are used.

As part of the field survey for finding answers to the questions raised from the above sources local and international staff from the NATO's Stabilization Force (SFOR), the Office of High Representative (OHR), the Organization of Security and Cooperation in Europe (OSCE), the UN High Commissioner for Refugees (UNHCR), the UN Development Program (UNDP), and the UN International Criminal Tribunal for the Former Yugoslavia Sarajevo Field Office (UNICITY) have been interviewed in order to examine what is their objective and how much progress they could make throughout the past ten years in terms of reconciliation and peace building in Bosnia and Herzegovina. Directors of the two NGOs Konrad Adenauer and Friedrich Ebert Foundations, and a documentalist from the Human Rights Centre of the University of Sarajevo have also been interviewed.

Further research was conducted in the libraries of Middle East Technical University (METU), Bilkent University, Eastern Mediterranean University (EMU) as well as of the European Academy (EURAC) in Bolzano and the Human Right Centre of Sarajevo University. In addition, presentations and discussions that took place during the Seventh International Seminar on Democracy and Human Rights in Multiethnic Societies convened in Konjic, Bosnia and Herzegovina, on July 12-17, 2004 have been very constructive for the completion of this research.

After this clarification, focuses of the chapters answering the research questions are as follow. The first chapter introduces the objectives, research questions and the main arguments of the study. It presents the case study, reviews the literature and provides what will be the contribution of the research to the contemporary literature on peace building. The chapter also explains the methodology and lists the sources utilized for the research.

The second chapter outlines the theoretical framework, starting with the definition of humanitarian intervention with a long term commitment to peace building, preceding to the concept, objectives, instruments and constraints of peace building in the post conflict environment. It provides a general overview of the historical evolution of humanitarian intervention, the debate over its legitimacy and the question of "when humanitarian intervention should start and when it should end", and what should be the goal of interveners in the aftermath of the operation.

Then it explains the development of the concept of peace building, indicates the lack of identified objectives, priorities and a proper strategy, and lists the various instruments and constraints of peace building.

The third chapter explores international intervention to stop the war in Bosnia and Herzegovina, imposition of the Dayton Peace Agreement on the parties and the assessment of the Dayton Peace Agreement. After giving a brief information about the war in BiH, it focuses on the initial failure of the international community namely the US, EU and UN to halt the violence. The chapter also outlines various fruitless attempts to draw plans for peace, ranging from the Cutileiro Plan, the following Vance-Owen to the Owen-Stoltenberg Plans. Subsequently, it emphasizes the changing atmosphere on the ground and the eventual agreement on the Dayton Peace Accords. It also underlines the uniqueness of the Dayton Peace Agreement that gives comprehensive powers and immunities to the international community, describes its main annexes and articles and finally categorizes its fallacies.

The fourth chapter analyzes the implementation of the Dayton Peace Agreement and presents the peace building agenda in Bosnia and Herzegovina. It enumerates and examines the instruments of peace building from governance, security sector and military reform to post conflict elections, human rights, return of refugees, lastly civil society development, and evaluates international community's peace building efforts in Bosnia and Herzegovina. The chapter records the mandates of the leading international organizations whose responsible for the implementation of the different aspects of the Dayton Agreement. A comprehensive assessment of all the above mentioned instruments of peace building reveals the shortcomings of the international community's strategy of building up peace in BiH. Beyond manifestation of the limitations of each instrument for building peace and reconciliation in Bosnia, it also demonstrates the main weakness of the international efforts driving from the fragmented nature of the civilian implementation, duplication, and poor coordination of the initial military and civilian elements that led to a lack of coherent strategy in BiH.

The fifth chapter provides a preliminary account of the lessons learnt from the peace building experience in Bosnia and Herzegovina that was applied in Kosovo through critical lenses. The chapter begins with the conflict in Kosovo, rejection of the Rambouillet Accords and imposition of UN Security Council Resolution 1244. It

continues to the implementation of UNSCR 1244 and peace building in Kosovo that divides UN Mission in Kosovo into four pillars headed by different international organizations and supervised by the Special Representative of the Secretary General. It describes that drawing from the experience in BiH, a clear chain of command and integrated activities tried to be established in Kosovo, which did not work in practice. The same instruments of peace building governance and security sector reforms, post conflict elections, promotion of human rights, return of refugees and civil society employed in Kosovo are analyzed. It also touches on the recent ethnic violence in 17-19 March 2004 and questions what went wrong in Kosovo. The chapter points out that international community's involvement in Kosovo was the product of a similar strategy to BiH with a key difference, the degree of power assumed by the international administration. It is stressed that though the mandates are different international community has been adopting a parallel method either arbitrarily repeating the faults or trying to build on the experience gathered in Bosnia, which so far has not guaranteed the success of peace building mission in Kosovo.

The last chapter forms the conclusion and contains an evaluation of almost a decade of peace building and reconciliation efforts of international community in Bosnia and Herzegovina. It also discusses the international approach that peace building is a learning process and addresses the fact that Bosnian experience could not cure the troubles faced in Kosovo. Finally, the chapter attempts to conceptualize peace building and demonstrate the inevitable need for the development of a novel approach to peace building.

CHAPTER 2

THE IDEA OF HUMANITARIAN INTERVENTION AND PEACE BUILDING

Humanitarian intervention has been one of the widely debated concepts of the contemporary international relations since it touches upon the traditional principles of state sovereignty, non-intervention and non-use of force. After the end of Cold War many internal conflicts broke out in different parts of the world, giving way to widespread violations of basic human rights. The international community had to interfere to stop human suffering under the name of humanitarian intervention in Haiti, Somalia, Rwanda, Bosnia-Herzegovina, Kosovo, and East Timor. “Unacceptability of gross and systemic human rights abuses, civil wars leading to genocide and man-made catastrophes” in the new post-Cold War environment forced international community to address the human suffering through several means, including humanitarian intervention.¹

Humanitarian intervention has been defined and categorized in a range of different ways by different scholars due to controversial components of the concept, namely “humanitarian” and “intervention”.² Humanitarian intervention can simply be defined as the use of armed force by a state or states to protect civilians of the target state from large-scale human rights violations. A humanitarian intervention occurs without the explicit consent of the target state, which is the major feature of the

¹ Shashi Shukla, ‘Humanitarian Intervention: Power Politics or Global Responsibility’, Journal of International Affairs, vol. 57, no. 3, July-September 2001, p. 79.

² Saban Kardas, Humanitarian Intervention: the Evolution of the Idea and Practice, Unpublished Masters Thesis, Ankara: METU, 2001, pp. 10-11.

concept and make its place in international relations problematic. Moreover, this distinguishes it from traditional peace-keeping operations. Principally, the primary purpose of the humanitarian intervention is the relief of human suffering. Therefore, humanitarian intervention is usually justified by the need to prevent disproportional loss of life and the collapse of the social and political fabric of a country.

Other components of the definition, such as the absence of consent, use of armed force, the agent which is entitled to undertake humanitarian intervention and the “beneficiaries of intervention” are all deeply discussed by the scholars in their efforts to conceptualize humanitarian intervention.

Increasing number of interventions on humanitarian grounds in the post-Cold war era brought the question how to warrant humanitarian intervention on the agenda. Although humanitarian intervention is not a new concept and European states arbitrarily intervened to protect Christian minorities in the 19th century³, the United Nations system strictly bans intervention into domestic affairs and asserts the principle of state sovereignty.⁴ The UN Charter universalized non-intervention and prohibited the use of force except self-defense and collective security measures which is subject to UN Security Council authorization. Despite the fact that one of the purposes of the UN is the promotion of human rights, the UN Charter does not empower the Security Council to authorize use of force in case of violations of human rights. It is at this point that traditional principles of state sovereignty and non-intervention clash with the need for the promotion of universal human rights.

Due to quasi-sacred place given to the principles of state sovereignty and non-intervention, during the Cold War states could not justify their actions on humanitarian grounds. There were three cases with substantial humanitarian

³ Humanitarian justifications for use of force by the states have been important for centuries. However, the content and application of justifications have changed over time. In the 19th Century while European powers occasionally intervened on behalf of Christian minorities, abuses of non-Christian victims were generally ignored by the European states since they are regarded as ‘uncivilized humans’. Over the years, the definition of who qualified as ‘human’ and therefore deserves human protection by the outsiders has changed. Decolonization period set the principle of self-determination and the idea of universal human rights was widely accepted. Accordingly, the scope of humanitarian intervention expanded. For more information see Martha Finnemore, ‘Constructing Norms of Humanitarian Intervention’, in Peter Z. Katzenstein (Editor), The Culture of National Security: Norms and Identities in World Politics, New York: Colombia University Press, 1996, pp. 153-185.

⁴ Sean D. Murphy, Humanitarian Intervention: The United Nations in an Evolving World Order, (Pennsylvania: University of Pennsylvania Press, 1996), p. 63.

dimension to be used for justification; India's intervention in Pakistan in 1971, Vietnam's intervention in Cambodia in 1979, and Tanzania's intervention in Uganda in 1979.⁵ Since humanitarian claims were not accepted as a legitimate basis for the unauthorized uses of force in the 1970s, during that period states used self-defense which was a more appropriate argument to warrant their actions.

Changing normative context regarding human rights, which no longer confined it to the domestic jurisdiction of states, and the outbreak of internal conflicts in the 1990s, reduced opposition to intervention on humanitarian grounds. Violations of human rights and humanitarian law, and the magnitude of human suffering in civil wars have been considered by the UN Security Council as threats to international peace and security.

Humanitarian emergencies have become an international concern deriving from its link to international peace and order. Severe human rights violations utterly damage the civilians where it takes place. However, they also have the potential to threaten the others, primarily in the neighbouring countries, since the impact of human right violations can not be restricted within borders.⁶ One of the most hazardous consequences of the humanitarian disasters is the huge amount of refugees crossing national borders to secure their lives. That was very acute especially in the case of Bosnia and Herzegovina, which eventually instigated the international community to intervene. Refugee flood carried the risk to destabilize the entire region.

Therefore, another concern is connected with the regional impact of the widespread human right violations, rising to the level of ethnic cleansing or genocide in particular cases. Human right violations or humanitarian crisis produce mass displacements and damage the internal security as well as the security of neighbouring states and the whole region due to its spill over effect. Increasing number of humanitarian disasters in the post Cold war era hence regarded threatening regional peace and security, and implicitly the global order. Accordingly, humanitarian intervention justified under the conception of crisis containment as well.

⁵ Martha Finnemore, 'Constructing Norms of Humanitarian Intervention', in Peter Z. Katzenstein (Editor), The Culture of National Security: Norms and Identities in World Politics, New York: Colombia University Press, 1996, pp. 177-179.

⁶ İhsan Dağı, 'Human Rights, Foreign Policy and the Question of Intervention', Perceptions, vol. 6, no. 2, June-July 2001, p. 7. (Available at <http://www.mfa.gov.tr/grupa/percept/VI-2/dagi.8.htm>).

Since there is no specific reference to humanitarian intervention in the UN Charter, through the re-interpretation of the Chapter VII by the SC humanitarian intervention was arguably accommodated within the UN system. Moreover, this was strengthened and augmented by a process whereby traditional understanding of state sovereignty and non-intervention that forbid humanitarian intervention was reconsidered. Consequently, the idea that in case of extreme human rights violations state sovereignty regarded as invalid, thus, non-intervention becomes obsolete gained ground. Although multilateral intervention with the UN SC authorization was justified by the international community, unilateral intervention and interventions without SC authorization continue to be treated with suspicion. This was illustrated by the amount of criticisms against NATO's use of force in Kosovo.⁷

Moving beyond the question of organizing agency, there are still a number of unresolved issues. First, while humanitarian intervention has earned a general legitimacy in cases of supreme humanitarian emergency, it still lacks a criteria and a framework for assessment. International community intervened to stop different kinds of humanitarian disasters; famine in Somalia, genocide in Rwanda, ethnic cleansing in Bosnia and Kosovo. However, there is no response to the humanitarian disasters in Sudan, Burundi, Congo, or Chechnya⁸. Therefore, "where to interfere and where not to interfere" is not easily differentiable. Types of solutions to the various humanitarian disasters differ from each other as well.

Besides, the scope and content of the humanitarian intervention are regarded as vital issues. Under which circumstances humanitarian intervention is justifiable, when international community should intervene and what should be the goal of interveners in the aftermath of the operation are the core issues to be decided by the international community. "When humanitarian intervention should start and when it should end" is another disputed issue. The crux of the question is whether the aim of humanitarian intervention should be the immediate end to human suffering or whether it should include a more fundamental reshaping of the political process that

⁷ Edward Said, 'Protecting the Kosovars', *New Left Review*, no. 234, March-April 1999, Tariq Ali, 'Springtime for NATO', *New Left Review*, no. 234, March-April 1999, Robin Blackburn, 'Kosovo: The War of NATO Expansion', *New Left Review*, no. 235, May-June 1999.

⁸ James Kurth, 'A Decade of Humanitarian Intervention, Lessons from the Past Decade', *Orbis*, vol. 45, issue, 4, Autumn 2001, p. 572.

gave rise to this suffering in the first place. This study takes this question as the point of departure and tries to address it throughout the study.

2.1 Definition of Humanitarian Intervention with a Long-term Commitment to Peace-building

Humanitarian intervention appears to be a practice out of emergency. But what happens when the emergency of a situation vanishes? What is the scope of humanitarian intervention? Just to end the humanitarian crisis as a kind of surgical short in short out, or undertake a long-term program to address the root causes. When one looks at the recent cases of humanitarian intervention in Bosnia, Kosovo and East Timor the distinguishing feature of these cases are that they all include long term goals after interveners put an end to immediate human suffering. International community has been engaged in comprehensive and ambitious projects to create new structures in all levels of the government and all facets of the society in these countries.

In the light of experiences of international community in civil wars, in the beginning of the 1990s it was argued that it is necessary to alter the government or governing structures that engages in gross human rights violations. This was because the national authorities were generally the main source of the gross violation of human rights or the violations were caused by their inability to maintain order.⁹ Besides, “the social rifts deep enough to produce massive human rights crimes can not be solved by a brief bit of international policing.”¹⁰ International community may stop the bloodshed when it is present but only to see it start again when it leaves.¹¹ In this direction, the aim should go beyond just stopping the aggression. It should also

⁹ Thomas R. Gillespie, ‘Unwanted responsibility’, Peace and Change, vol. 18, issue 3, July 1993, p. 220. Gillespie further argues that “over the past decades, the international community has evolved a generous theory and many statements of human rights. However, it has yet to establish the means to ensure human rights to those who reside in two categories of states that represent the most extreme examples of human rights denial: (a) states whose institutions of responsible government have collapsed, resulting in a chaos that serves to deny those rights to the population, or (b) states whose leaders intentionally nullify those rights for groups of their citizens as a matter of state policy.”, p. 220.

¹⁰ Elliott Abrams, ‘To Fight the Good Fight’, National Interest, Spring 2000, issue 59, p. 74.

¹¹ Ibid., p. 74.

include measures to avoid its repetition. Therefore, the offending rulers and the circumstances that led to violence in the first place must be changed.

In 1990s, more radical arguments started to assert that not only the replacement of the offending regimes, but also the establishment of a working political structure must be one of the goals of the interveners. The underlying logic of the emerging paradigm was that while military intervention can address the symptoms of a crisis and bring peace, a more comprehensive peace operation is required in order to address “the root causes of a crisis” and restore lasting stability.¹²

This should be achieved in order to guarantee the human rights of the target society and prevent the recurrence of the situation that has triggered the intervention. Complex nature of the humanitarian emergencies eventually convinced the supporters of humanitarian intervention to emphasize that “the underlying causes” should also be addressed and that the intervening forces must take long-term political missions such as achieving national reconciliation, disarmament, stabilization, establishing democratic process, building civil societies, revitalizing collapsed economies, as well as halting the immediate threat to human life.¹³

These arguments became the bases of peace-building efforts of international community in Bosnia Herzegovina, Kosovo and East Timor. Peace-building in this respect attempts to stabilize post conflict situations by creating or strengthening national institutions. However, realization of the long-term goals is very costly, needs serious commitment and the involvement of different actors ranging from governmental to non-governmental organizations with civilian, political and military mandate. Hence, this point is taken up by the critics of this policy to support their case by raising the impossibility for the international actors to construct sustainable institutions.

¹² Alexandros Yannis, ‘The Creation and Politics of International Protectorates in the Balkans: Bridges over Troubled Waters’, Journal of International Relations and Development, vol. 5, no. 3, 2002, p. 263.

¹³ Oliver Ramsbotham, Tom Woodhouse, Humanitarian Intervention in Contemporary Conflict: A Reconceptualization, Cambridge: Polity Press, 1996, p. 157. Thomas Weiss, ‘Tangle up in Blue’ Harvard International Review, Vol.16, Issue.1, Fall 1993, pp. 30-32.

2.2 Concept of Peace-building

Peace-building is one of the new fields in the international relations discipline come into view in mid-1990s. The concept was first used by the UN Secretary General Boutros B. Ghali in “An Agenda for Peace” in 1992, as part of the UN strategy for the resolution of conflicts since traditional peace-keeping proved to be ineffective to cope with the security challenges in the post-Cold war era. “An Agenda for Peace” formulates a new policy to strengthen the capacity of UN and consists of four elements. These are preventive diplomacy, peacemaking, peacekeeping and peace building. Preventative diplomacy seeks to resolve disputes before violence breaks out; peacemaking and peacekeeping are required to halt conflicts and preserve peace once it is obtained. If successful, they strengthen the opportunity for post conflict peace building, which can prevent the recurrence of violence among nations and peoples. Therefore, “peace building refers to those conditions that will enhance the transition from a state of conflict to coexistence and thus contribute to sustainable peace”.¹⁴

As described in “An Agenda for Peace”, peace-building requires strengthening the institutions to “consolidate a sense of confidence and well being between people.”¹⁵ The concept improved in the 1995 “Supplement to An Agenda for Peace”, to include “the creation of structures for the institutionalization of peace” as an essential goal.¹⁶ This means that peace building is better to be defined by its actions and purposes instead of by its position in a peace process. In essence, “Supplement to An Agenda for Peace” stated that peace building measures could also support preventive diplomacy and the goal of both preventive and peace building should be the creation of structures for the institutionalization of peace,

¹⁴ Merav Moshe, ‘Peace building: a conceptual framework’, International Journal of Social Welfare, January 2001, vol. 10, Issue 1, p. 14.

¹⁵ Boutros Boutros Ghali, ‘An Agenda for Peace’, A/47/277-S/24111, <http://www.un.org/plweb-cgi/idoc.pl>, 17 June 1992, p. 12.

¹⁶ Boutros Boutros Ghali, ‘Supplement to An Agenda for Peace’, UN Doc. A/50/60-S/1995/1, <http://www.un.org/plweb-cg./doc.pl>, 3 January 1995, para 49.

which is a “vague operational target” that leads to different interpretations about how to institutionalize peace.¹⁷

There are arguments that peace building must concentrate on basic human needs, such as stability, security, adequate economic conditions or the acknowledgment of identity that can cause conflict among different ethnic groups if threatened.¹⁸ Some others focus on supporting the establishment of a local capacity to resolve conflicts peacefully.¹⁹ Within this context, the clear target is strengthening the role of civil society in the war-torn societies. Yet, development of the concept of peace building in the 1995 Supplement indicates the changing policy within the UN circles. The concept understood to include “continuum of activities, which may be present in all phases of a conflict differing whether the objective is the prevention of violent conflict, support to peace making processes, or post-conflict reconstruction”.²⁰

Moreover, Jeroen de Zeeuw from Netherlands Institute of International Relations Conflict Research Unit describes the characteristics of peace-building as including “long-term political, economic and social provisions to address the causes of conflict, the interdependent quality and consequent importance of coordination” and encircling preventive peace building measures.²¹ Zeeuw argues that core of peace building lies in the incentive to change a war-torn society to a society based on the promotion of peace.²²

¹⁷ John Cockell, ‘Conceptualizing Peace-building: Human Security and Sustainable Peace’ in Michael Pugh (Editor), Regeneration of War-Torn Societies, London: Macmillan, 2000, p. 17.

¹⁸ For more information see Merav Moshe, ‘Peace building: a conceptual framework’, International Journal of Social Welfare, January 2001, vol. 10, Issue 1, and Michael Pugh (Editor), Regeneration of War-Torn Societies, London: Macmillan, 2000.

¹⁹ Carlos L. Yordan, ‘Society Building in Bosnia: A Critique of Post-Dayton Peacebuilding Efforts’, Seton Hall Journal of Diplomacy and International Relations, Summer/Fall 2003, pp. 59-74; Bronwyn Evans-Kent, ‘Bringing People Back in: Grassroots Approaches to Peace in Bosnia-Herzegovina’, Journal of International Relations and Development, vol. 5, no. 3, 2002, p. 307.

²⁰ John Cockell, ‘Conceptualizing Peace-building: Human Security and Sustainable Peace’, (Cited from the UN Department of Political Affairs evaluation) p. 18.

²¹ Jeroen de Zeeuw, Building Peace in War-Torn Societies: From Concept to Strategy, Research Project on Rehabilitation, Sustainable Peace and Development, Netherlands Institute of International Relations ‘Clingendael Conflict Research Unit, August 2001, p. 13.

²² Ibid., p. 13.

Borrowing from Johan Galtung's terminology, peace-building is interpreted not only ending the warfare described as negative peace but also targeting the "root causes" of conflict, which is positive peace.²³ Uniqueness of peace-building with regard to other international peace operations rest in this focus on targeting the roots of conflict within societies. Galtung pointed out that differing from the various methods for the solution of conflicts, peace-building has a connective approach: "peace as the abolition of structural violence" in the form of suppression rather than the abolition of "direct violence" which is the armed struggle.²⁴ "An Agenda for Peace" of Boutros Ghali confirms in this manner the concern in the conditions that can generate violent conflict.

Furthermore, parameters of peace which are classified as peacemaking, peacekeeping and peace-building are not detached:

Making peace by successfully ending the hostilities and keeping it by monitoring the parties' compliance with the peace agreement that has been reached in negotiations provides the mandate for peace-building. When it is appropriately coordinated peace-building can contribute to the peacemaking and peacekeeping process. Finally, peace-building can complete the circle by insuring against the recurrence of conflict by building capacities for, among others, labor negotiation, civil society reconciliation, fair courts, and an electoral process that enable a society to resolve its conflicts before violence breaks out.²⁵

Therefore, advocates of peace building argue that the conditions that lead internal conflicts and their consequences require a comprehensive approach to keep peace. This goes "beyond military and security priorities to address the issues of governance, democratic legitimacy, rule of law, or functioning civil society that might enable war-torn countries to increase their resistance to new rounds of violence."²⁶ Hence, considering the challenges of ethnic conflicts long-term treatment envisaged for international involvement. It is claimed that although "peace could be kept for one or two years after the conflict ends, peace is unlikely to

²³ John Cockell, 'Conceptualizing Peace-building: Human Security and Sustainable Peace', p. 16.

²⁴ Johan Galtung, 'Three Approaches to Peace: Peacekeeping, Peacemaking and Peacebuilding' Peace War and Defense: Essays in Peace Research, vol. 2, Copenhagen: Christian Ejlertsen, 1976, pp. 282-304.

²⁵ Jeroen de Zeeuw, Building Peace in War-Torn Societies: From Concept to Strategy, p. 13.

²⁶ Elizabeth M. Cousens, 'Introduction' in Elizabeth M. Cousens, Chetan Kumar (Editors), Peacebuilding As Politics – Cultivating Peace in Fragile Societies, London: Lynne Rienner Publishers, 2001, p. 1.

stabilize, deepen and become more irreversible rather than less in such a short time.”²⁷

Subsequently, the usual difficulty of the UN was how to link international assistance that used to be provided separately and how to move the short-term presence of peace keepers into long-term peace. At this point, peace building came into view as a good solution following the three elements to be the fourth component of an extensive approach of the UN and other international mechanisms to peace and security. In a few years many internal wars broke out in different parts of the world generating a dramatic demand for international involvement. As a result, the “concept and operation of peace building” developed presenting a “mixed record of international intervention in its name.”²⁸ Since then, a broad literature on peace building was created but with a weakness and confusion about what constitutes peace building, what comprise its appropriate objectives, what are the most effective methods and instruments and lastly what are the constraints of peace building that the thesis clarify in the following sections.

2.3 Objectives of Peace-building

The objective of the international community’s peace building efforts after humanitarian intervention is to provide full assistance with recovery, reconstruction and reconciliation addressing the root causes of the conflict which invited the intervention. It is argued in thereport, “Responsibility to Protect” that when intervention takes place, “there should be a genuine commitment helping to build a durable peace, promoting good governance and sustainable development.”²⁹ This should be done by international institutions in co-operation with local structures. Sustainable recovery and rehabilitation requires adequate amount of money, resources, time and close cooperation with local people.³⁰

²⁷ Ibid., p. 1.

²⁸ Ibid., p. 2.

²⁹ International Commission on Intervention and State Sovereignty (ed.), The Responsibility to Protect, Ottawa: Int. Development Research Centre, December 2001, p. 39.

³⁰ Ibid., p. 39.

Additionally, the attempts to (re)-build civil and political institutions and the efforts to create workable and self-sustaining structures go beyond a simple reform. Peace-building is a process which occurs through “defining, shaping and creating new processes rather than merely reforming existing structures.”³¹ It is a comprehensive and broad task which involves political, economic and social aspects. In short, for target state, it implies a fundamental restructuring of the societal structure. For intervening states it is a long-term, costly, risky and controversial operation. It requires a major commitment of money and personnel.

Peace-building is a very difficult task but not impossible as long as the effort has clear objectives and enough resources. Nevertheless, “the goal of peace-building should not be to impose common identities on deeply divided peoples but to organize states that can administer their territories and allow people to live together despite differences.”³² When the establishment of a new state within the previous borders can not be achieved, then the international community should accept that peace-building may necessitate the dissolution of former states and the creation of new states.³³

For example Kaufmann claims in this direction that one of the best solutions to many of the most intense ethnic conflicts could be the “separation of warring populations”; discussing the idea on the four famous twentieth century partitions Ireland, India, Palestine and Cyprus. He furthermore argues that “events in Bosnia have supported this trend, as observers note that the more the warring parties have separated, the more peaceful their relations have become, while proposals to thoroughly integrate them command less and less support.”³⁴ However, while the Dayton Accords somehow acknowledged the separation of warring populations international community tried to do the opposite in Cyprus with the Annan Peace Plan.

³¹ Andrea K. Talentino, ‘Intervention as Nation-Building: Illusion or Possibility?’, p. 28.

³² Marina Ottaway, ‘Nation Building’, *Foreign Policy*, issue 132, September/October 2002, p. 17.

³³ *Ibid.*, p. 17.

³⁴ Chaim Kaufmann, ‘When all else fails: ethnic population transfers and partitions in the twentieth century’, *International Security*, vol. 23, no. 2, Fall 1998, p. 120.

In general, main objective of peace-building in war-torn countries is to acquire multiple transitions; “a security transition from war to peace; a political transition from authoritarianism to a more participatory political system” with respect to human rights; and a “socio-economic transition”.³⁵ Yet, there is no consensus among the international community about the priorities and in which order they should be addressed.³⁶ While security is more important for some, respect to human rights is more to the others. Therefore, there is a need for identified objectives and priorities for peace building to have a successful strategy.

Although, the necessity of transition from conflict to peace is commonly acknowledged, there is no final agreement among the international community how this should be obtained. The main debate over the objectives of peace building has been focused on for a while whether ceasefire is a sufficient goal or how a ceasefire can be related to more ambitious aspirations such as reconciliation, democratization, rule of law, promotion of human rights or civil society.³⁷ In this case, which purpose of peace building is primarily contributing to a society’s capacity to resolve conflict without violence? This question still needs to be tackled.

On the other hand, successful peace building must also calculate that international community need “exit strategies”. Before listing priority of the tasks, effective peace building should also define its goals in such a way that they can be self-sufficient in due course without a need for a re-newed international intervention. Hence, main objective of international community’s peace building efforts should be helping a war-torn society “to build its political capacity to manage conflict without violence as the most effective path to prevent renewed hostilities.”³⁸ Self-sustaining peace relies on the creation of indigenous social, political and legal devices to resolve conflicts. Thus, peace building that is seeking to terminate conflict should also create instrument that local actors with competing interests can resolve their differences peacefully.

³⁵ Jeroen de Zeeuw, Building Peace in War-Torn Societies: From Concept to Strategy, p. 16.

³⁶ Ibid., pp 15-16.

³⁷ For more information see Elizabeth M. Cousens, ‘Introduction’ in Elizabeth M. Cousens, Chetan Kumar (Editors), Peacebuilding As Politics, pp. 11-13.

³⁸ Elizabeth M. Cousens, ‘Introduction’ in Elizabeth M. Cousens, Chetan Kumar (Editors), Peacebuilding As Politics, p. 12.

2.4 Instruments of Peace-building in Post-conflict Agenda

Peace-building is identified as “an attempt after a peace has been negotiated or imposed, to address the sources of current hostility and build local capacities for conflict resolution.”³⁹ Stronger state institutions through governance reform and broader political participation, post-conflict elections, military reform and disarmament, respect to human rights and ethnic identities, return of refugees and displaced persons, deepening of civil society are generally seen possible means for sustainable peace.

A comprehensive review of UN peace operations known as “Brahimi Report” that made recommendations for strengthening UN’s capacity in peace operations also indicated the instruments to be employed.⁴⁰ The Report mentioned the use of civilian police and related rule of law elements in peace operations to upholding the rule of law and respect for human rights, helping to achieve national reconciliation; consolidation of disarmament, demobilization and better integration of electoral assistance into a broader strategy for the support of governance institutions.⁴¹ It further recommends integrated use of the elements responsible for military operations, civilian police, electoral assistance, human rights, development, humanitarian assistance, refugees and displaced persons.

In this part, the dissertation takes the instruments mentioned in the “Brahimi Report” of the United Nations. These peace building instruments were also differently categorized and used by several authors such as by Terrence Lyons and Krishna Kumar “post-conflict elections”, David Chandler “democratization and human rights”, and Jeroen de Zeeuw “governance and security sector reforms”:⁴²

³⁹ Michael W. Doyle, Nicholas Sambanis, ‘International Peace-building: A Theoretical and Quantitative Analysis’, American Political Science Review, vol.94, no.4, December 2000, p. 779.

⁴⁰ ‘Report of the Panel on United Nations Operations’, (A/55/305 – S/2000/809), 21 August 2000, http://www.un.org/peace/reports_operations.

⁴¹ Ibid., p. ix.

⁴² Terrence Lyons, Postconflict Elections: War Termination, Democratization, and Demilitarizing Politic, Working Paper No. 20, Institute for Conflict Analysis and Resolution, George Mason University, February 2002; Krishna Kumar, Post-conflict Elections, Democratization, and International Assistance, London: Boulder, 1998; David Chandler, Bosnia: Faking Democracy After Dayton, London: Pluto Press, Second Ed., 2000; Jeroen de Zeeuw, Building Peace in War-Torn Societies: From Concept to Strategy, Research Project on Rehabilitation, Sustainable Peace and

2. 4.1 Governance Reform

Internal conflicts are designated as “complex political emergencies” because conflict leads to the breakdown of governing institutions. International intervention is required to extend re-establishment of effective government. Therefore, reforming governmental structures in war-torn countries that are heavily damaged or non-existing after destructive civil wars is fundamental.⁴³ It is also vital to create the “institutional capacity” that would provide security, “prevent a relapse into violence”, and “lead to the development of conciliatory and effective administrative procedures.”⁴⁴

In some cases where political system fails to accommodate diversity, contest for the needs and the desires of the conflicting groups might lead to the regeneration of hostilities. Hence, “finding political mechanisms representing, managing, and preferably resolving conflicting interests is one of the most pressing issues to be addressed in peace-building.”⁴⁵

International community considers democratization as an important cure for the solution of ethnic tensions in the post-conflict environment. Although democratization came to the United Nation’s agenda only a decade ago it is considered a key component of peace building addressing the “economic, social, cultural, humanitarian and political roots of conflict.”⁴⁶ Democratization is broadly defined by UN to “constitute a comprehensive approach covering the broad range of new peace building priorities: top-down international regulation of elections, institutional management and economic management; but also bottom-up assistance to a democratic political culture through civil society building.”⁴⁷ During the democratization process the role of institutions in post-conflict transitions such as

Development, Netherlands Institute of International Relations, Cliengendael Conflict Research Unit, August 2001.

⁴³ Jeroen de Zeeuw, Building Peace in War-Torn Societies: From Concept to Strategy, p. 20.

⁴⁴ Ibid., p. 20.

⁴⁵ Ibid., p. 20.

⁴⁶ ‘Agenda for Democratization’, 17 December 1996, <http://www.library.yale.edu/un/un3d3.htm>, paragraphs 13 and 46.

⁴⁷ Ibid., para 124.

the role of interim government and the construction of democratic institutions are also regarded critical.

The most frequently employed approach of governance reform has been to impose governmental structures after the end of conflict that would provide fair representation to all ethnic groups. That is usually done through federal solutions which includes power sharing mechanisms. Such mechanisms also provide defense of the vital interests with high degree of communal autonomy, veto powers and proportional representation.

2.4.2 Security Sector Reform

Functioning security sector provides the cornerstone for a stable and safe post-conflict situation. However, the “intra-state character of most conflicts in the last decade has often led to the virtual collapse of indigenous security structures.”⁴⁸ While the government need to retake as much control over security as possible prior to the implementation of peace-building agenda, in many cases unable to do so. In post-conflict environment crime, violence and illegal actions like looting increase, and “local security structures are often inadequate, inappropriate or simply non-existent” in the absence of rule of law to cope with the security challenges.⁴⁹ Therefore, international community has to deal with two challenging problems: the short-term need to fill the security gap left by non-functioning local institutions, and the long term goal of re-creating the local security sector.⁵⁰

Security sector involves military and police forces, judicial structures and mechanisms for civilian control of the above institutions. In this respect, disarming, demobilizing and reintegrating ex-combatants into civilian life are integral components of peace-building.⁵¹ Although demilitarization of heavily armed societies is not very easy, it is essential since reconstruction can not be successfully materialized with the fear of casualties. Thus, neutralization and disengagement of

⁴⁸ Sheila Coutts, Kelvin Ong, ‘Managing Security Challenges in Post-Conflict Peace-building’, International Peace Academy Workshop Report, 22-23 June 2001, <http://www.ipacademy.org>, p. 2.

⁴⁹ Ibid., p. 2 .

⁵⁰ Ibid., p. 2.

⁵¹ Karin Von Hippel, ‘Democracy by Force-A Renewed Commitment to Nation Building’, Washington Quarterly, vol. 23, issue 1, Winter 2000, p. 103.

the former combatants are very important both in terms of establishing a secure environment and rule of law.

In the post-conflict reinstatement of military and police forces, and judicial structures international community has to cope with the fundamental issue of establishing a tradition of civilian control, keeping in mind that the whole authority will eventually transferred to them, as well as meeting international standards. Hence, reforming the military and police forces and the judicial structures in post-conflict environment is a challenging task. In addition, acceptance of the international community's prescription is generally relies on the accommodation of local set-up mostly out of the official framework.

Yet, when "the security sector is not sufficiently addressed or incorporated in the process of fostering mechanisms for political dialogue, they can develop in a relatively autonomous manner."⁵² Bypassing the local factors out of the legal system might result in weak and ineffective official structures whereas the informal set-ups remain and usually work with cross over purposes.

Successful conduct of the international involvement counts on "the extent of local involvement in creating solutions to security sector problems."⁵³ To gain local acceptance, security sector reforms need to accord with local traditions (even the integration of local informal networks of influence).⁵⁴ As a result, "peace-building programs should not merely be planned and implemented as a short-term package such as training police officers; instead, a long-term strategic approach to security sector reform is needed to foster civilian-controlled security arrangements that are able to contribute effectively preventing and managing the escalation of violent conflict."⁵⁵

2.4.3 Post-Conflict Elections

Post-conflict elections are one of the most frequently referred instruments of peace building. Holding elections after an ethnic conflict considered to give a chance to

⁵² Jeroen de Zeeuw, Building Peace in War-Torn Societies: From Concept to Strategy, p. 22.

⁵³ Sheila Coutts, Kelvin Ong, 'Managing Security Challenges in Post-Conflict Peace-building' p. 1.

⁵⁴ Ibid., p. 1.

⁵⁵ Jeroen de Zeeuw, Building Peace in War-Torn Societies: From Concept to Strategy, p. 22.

reform the political composition of a war-torn society and make it more legitimate to its electorate.⁵⁶ Hence, elections have been designed in many peace treaties as a device to end the conflict after peace agreements are signed. They are employed by the international community to start a new post-conflict environment, contribute democratization and provide legitimacy to the new political leadership.⁵⁷

However, they are generally “organized under difficult circumstances of societal disorder, general insecurity, fear, distrust, and institutional breakdown, and in some cases the vote is expected to do the impossible: Elections cannot settle a military conflict that negotiations or victory have failed to end.”⁵⁸ Shortly after the cessation of hostilities, elections are categorized among the early stages of complex transformations. Terrence Lyons argues that throughout these interim periods war-torn societies begin a long-term work to build acceptable political institutions, discharge former armed forces and resettle refugees and displaced persons.⁵⁹ They also need to face with human-rights violations, strength rule of law, and shift the economies rather than based on receiving humanitarian aid to self-sufficiency. In a post-conflict society accomplishment of all those elements requires hard work and long-lasting commitment.

The preliminary course in the peace-implementation stage is very significant. That forms the rules, standards, and institutional set ups for the the post-conflict period. Therefore, the provisional phase and its institutions have the driving force in maintaining peace and bringing democracy to the ethnically divided societies where mutual baisses and distrust prevail.

As a result, the influence of institutional arrangement and design, incentives and sanctions, and norms and patterns of behavior during these transitions play a particularly important role in encouraging peace building and reducing the chances of backsliding into renewed conflict or authoritarian rule. The

⁵⁶ Ibid., p. 22.

⁵⁷ Benjamin Reilly, ‘Post-Conflict Elections: Constraints and Dangers’, International Peacekeeping, Special Issue: Recovering from Civil Conflict Reconciliation, Peace and Development, vol. 9, no. 2, Summer 2002, p. 118.

⁵⁸ Terrence Lyons, Postconflict Elections: War Termination, Democratization, and Demilitarizing Politic, Working Paper No. 20, Institute for Conflict Analysis and Resolution, George Mason University, February 2002, p. 6.

⁵⁹ Ibid., p. 6.

nature of the interim institutions established during the peace-implementation phase will form the context in which former combatants and future voters assess their prospects and make decisions to either organize in a manner that supports the peace process or prepare for a return to war.⁶⁰

International community considering as an important aspect of peace-building undertakes training of civil society organizations for voter's education, monitoring elections, and supports electoral infrastructure with independent election commissions. Assistance comprises setting target dates as well. However, the appropriate timing for holding elections is so crucial that requires a careful assessment.⁶¹ It proved to be counterproductive in many cases including Bosnia Herzegovina since early elections have helped nationalist parties to reinforce their positions.

2.4.4 Human Rights

The human rights aspect of a peace-building operation is regarded crucial for successful peace-building especially among the UN staff and experts. Therefore, "most peace-building missions have included a human rights component to monitor post-conflict human rights violations and the response of local authorities to those violations, and to strengthen local capacity to address such violations through educational and institution-building activities."⁶² The aim is to create a durable peace in those places that have experienced severe conflict between different parts of a society.

In many internal conflicts government officials have contributed to the severe human rights violations. Punishment of the criminals and reforming the involved organizations has been regarded in recent times as one of the conditions for the new governments to re-establish their legitimacy. Another question was that of punishment of war criminals, which have been addressed

⁶⁰ Ibid., p. 7.

⁶¹ For more information see Benjamin Reilly, 'Post-Conflict Elections: Constraints and Dangers', pp. 119-120.

⁶² Kaoru Okuizumi, 'Peacebuilding Mission: Lessons from the UN Mission in Bosnia and Herzegovina', Human Rights Quarterly, vol. 24, 2002, p. 721.

differently in various cases.⁶³ However, if human rights are not guaranteed and the violators are not addressed, reconciliation at community level can hardly take place.

Reconciliation can be achieved through working together to replace hostility with cooperation, provision of justice to war victims regardless of ethnic affiliation as well as via forgiveness, understanding, and tolerance for diversity. Yet, this is another delicate issue for the international community to deal with the tension between the victims who are waiting for the justice and the new government unable to deliver the war criminals because of differing reasons or sometimes in view of a future national reconciliation that punishment of notorious ethnic community leaders might lead to tensions.

International community has various tools to address human rights. Among these are establishment of “war crime tribunals inside or outside of the country”, “creation of reconciliation commissions to prevent national amnesia about what has happened during the violent conflict”, and “human rights field operations, such as dispatch of human rights monitoring missions.”⁶⁴ The latter include training civilian police, monitoring peacekeeping operations and reporting on human rights violations.⁶⁵

2.4.5 Return of Refugees

The return of refugees and displaced persons in war torn societies have become one of the key aims for the international community although it is not indicated in all sources as one of the instruments of peace building. That was the outcome of the increasing number of intra-state conflicts in the post-Cols war era, which comprised dislocation of many civilians both within and across states. As a result, the end of conflicts linked to the return of refugees and internally displaced persons, and a return to normality, peace and stability. The number of returnees has

⁶³ As an earlier example, in South Africa punishment of war criminals was regarded as complicating the national reconciliation. In Bosnia and Herzegovina it is an important component of peace building. However, the latest United Nations’ Annan Plan for the resolution of Cyprus conflict does not encompass provisions for the punishment of war criminals as well.

⁶⁴ Jeroen de Zeeuw, Building Peace in War-Torn Societies: From Concept to Strategy, p. 23.

⁶⁵ Ibid., p. 23.

been used as an indicator of re-establishment of secure environment, triumph or failure of peace-building and restoration of democracy and human rights.

International community encourages refugees and displaced persons to return their post-conflict residence as part of the broader policy not to accept the changes in the status quo in the course of hostilities after a violent conflict, or aggression. Return of refugees and displaced persons are also seen as an important element for reconciliation. Moreover, international community assumes that the majority of refugees and displaced persons would like to return to their post-conflict residence if there is guarantee of life, respect to human rights and no discrimination on ethnic basis. Therefore, the provision of sustainable return of the refugees and displaced persons after a violent conflict is regarded as an important element of peace building.

However, it is a complex issue since return to previous residence for many refugees is not merely a matter of choice due to “the shortages in housing and employment opportunities caused by the destruction of the war.”⁶⁶ Thus, the returning process is not only a political question of discrimination and ethnic hostility but also an economic one. Furthermore, refugee repatriation alone is not sufficient for achieving and maintaining peace. The refugees repatriated but not successfully reintegrated might cause new tensions in the post-conflict climate.⁶⁷

2.4.6 Empowering Civil Society

Peace-building through merely the development of conflict managing institutions is not sufficient for the resolution of ethnic conflicts. There is a need to include broad range of organizations labeled “civil society”. Civil society refer to non-governmental organizations (NGOs) as well as civic initiatives that may not formally registered as NGOs. They can function both as an important catalyst for grass roots change towards democratization due to their interest in power-sharing

⁶⁶ David Chandler, Bosnia: Faking Democracy After Dayton, London: Pluto Press, Second Ed., 2000, p. 106.

⁶⁷ Howard Adelman, ‘Refugee Repatriation’ in Stephen John Stedman, Donald Rothchild, Elisabeth M. Cousens, Ending Civil Wars The Implementation of Peace Agreements, London: Lynne Rienner Publishers, 2002, p. 294.

mechanisms, serve as watchdogs for government actions, and contribute reconciliation through inter-communal dialog.⁶⁸

Additionally, without incorporating the grassroots communities in peace process international community can not achieve sustainable peace. For instance, as it could be observed in Bosnia “the holding of elections and the restructuring political institutions have not transform the environment in conflict.”⁶⁹ The top down effort of the international community to contribute peace building and reconciliation in many cases proved to have little success in the long-term if the local population does not have the ownership of the process.

The increasing awareness among international community concerning the important role of civil society in peace-building has led to growing support to various local organizations. In this respect, with their involvement at the community level and capacity to act beyond formal structures NGOs are regarded as effective vehicles for promoting inter-ethnic contacts as well.⁷⁰ They have a potential to mitigate the effects of the polarized political struggle and build up a “democratic culture of tolerance, moderation and compromise.”⁷¹

In particular cases, “when violence becomes the only mean for people to achieve their goals or protect their ethnic interest, there is an urgent need for promoting alternatives to violent solutions in post-conflict societies.”⁷² Hence, civil society initiatives and NGOs can be utilized for non-violent contact, conflict resolution, inter-communal dialog and reconciliation.⁷³ They can enable the people with different ethnic backgrounds to exchange ideas and experiences, and understand each other’s considerations. However, ensuring broad participation is the biggest challenge since many NGOs are urban based, dependent on international donors, and

⁶⁸ ‘Civil Society Policy’, OSCE Mission to Bosnia and Herzegovina, <http://www.oscebih.org>, pp. 1-2.

⁶⁹ Bronwyn Evans-Kent, ‘Bringing People Back in: Grassroots Approaches to Peace in Bosnia-Herzegovina’, *Journal of International Relations and Development*, vol. 5, no. 3, 2002, p. 307.

⁷⁰ *Ibid.*, p. 303.

⁷¹ David Chandler, ‘The Limits of Peacebuilding: International Regulation and Civil Society Development in Bosnia’, *International Peacekeeping*, vol.6, no.1, Spring 1999, p. 110.

⁷² Steven M. Riskin, *Three Dimensions of Peacebuilding in Bosnia*, United States Institute of Peace, Washington, 1999, <http://www.usip.org>, p. 47.

⁷³ *Ibid.*, p. 47.

established by a number of peace activist failing to make a genuine grassroots impact through a large participation of the people from various groups.⁷⁴

In sum, to increase the effectiveness of international peace-building there is not only the need for better understanding of the complex set of tasks but also of the different actors and their role in transforming war-torn societies. All the above mentioned institutions have potentials to contribute to peace-building for conflict management.

2.5 Constrains of Peace-building

The most comprehensive classification on problems connected with peace building was compiled by Jeroen de Zeeuw. According to that, the limitations of external peace building efforts fall into the categories of “fixing peace”, “lack of ownership”, “insufficient coordination”, “delayed assistance” and “lack of priorities”.⁷⁵ In the following sub-chapters this dissertation will adapt de Zeews classification for its own purposes.

2.5.1 Fixing Peace

International community’s peace-building efforts have been dominated by the dire strategy of the quest for quick solution. Although it has been realized that institution-building and reinforcement of peace need a long-standing, multi-dimensional thorough commitment, assistance programs primarily based on quick and technical fixes in the form if disarmament, reconstruction plans, the return of refugees and elections.⁷⁶ International community usually attempt to leave and release from the responsibility of pace building and its hurdle as soon as possible.

Along these lines, international community established short-term military and civilian mandates and programs from six months to two years. For example,

⁷⁴ For more information see Roberto Belloni, ‘Building Civil Society in Bosnia and Herzegovina’, Human Rights Working Papers, no. 2, 12 January 2000, Longest Road To A Distant Goal, 2001 Civil Society Report, <http://www.soros.org>.

⁷⁵ Jeroen de Zeeuw, Building Peace in War-Torn Societies: From Concept to Strategy, Research Project on Rehabilitation, Sustainable Peace and Development, Netherlands Institute of International Relations, Cliengendael Conflict Research Unit, August 2001, pp. 26-29.

⁷⁶ Ibid., p. 26.

NATO's international forces to maintain peace, UN's peace building or implementation missions or OSCE's mandates to assist in the conduct of elections have been initially designed for such short-term engagements in war-torn societies especially in Balkans.

However, the quick approach to peace building creates conflict among international organizations who must meet the deadlines set externally such as the military deployment, organizational budget, competition of work and the turnover of the responsibility to the locals alongside the impatience of the international donors. Nevertheless, the first lesson international community learnt through its experience in war-torn societies in the post-Cold war era is that peace building is an extremely hard task. Building up peace and reconciliation in post-conflict societies is much more profound than achieving a military victory. It requires a long term commitment of the military, diplomatic, financial resources and the expertise of the international community.

Thus, concentration on departure policy particularly on the post-conflict elections to resolve the ethnic struggle between the ethnic groups and the desire to rapidly transfer responsibility to the elected officials in many cases confirmed to be not viable or paradoxical since bringing the nationalist in power.⁷⁷ On the other hand, extension of the very ambitious and short-term mandates and the projects of the major international organizations, as a result delay in the transfer of the sole responsibility to the local authorities led to severe criticisms. It is argued that if external actors are serious with their commitment to promote indigenous capacity to resolve conflicts peacefully, external international assistance to peace building will be (and should be) relatively short-term.⁷⁸ Failure of "quick fix" peace engineering approach and the postponement of the transfer of authority claimed to "colonize" Bosnia and Kosovo as protectorates of international community.⁷⁹

⁷⁷ Larry Garber, 'Introduction' in Krishna Kumar (Editor), Post-conflict Elections, Democratization, and International Assistance, London: Boulder, 1998, p. 2.

⁷⁸ John Cockell, 'Conceptualizing Peace-building: Human Security and Sustainable Peace', p. 23.

⁷⁹ Michael Pugh (Editor), 'Introduction: The Ownership of Regeneration and Peace-building', Regeneration of War-Torn Societies, London: Macmillan, 2000, p. 5. For more information about the 'neo-colonialism', 'neo-trusteeship', and 'protectorate' debate see James D. Fearon, David D. Laitin, 'Neotrusteeship and the Problem of Weak States', International Security, vol. 28, no. 4, Spring 2004, David Chandler, 'The Bosnian Protectorate and the Implications for Kosovo', New Left Review, no.

2.5.2 Lack of Commitment

The conceptual device of the peace building has included the assumption that international community has the right and moral obligation to bring about a peaceful change in a post-conflict society since the local authorities failed to do it themselves.⁸⁰ As it was reflected in the Report of the International Commission on Intervention and State Sovereignty entitled “Responsibility to Protect” “sovereign states have a responsibility to protect their own citizens from avoidable catastrophe, but when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states.”⁸¹ The Responsibility to Protect embraces three specific responsibilities:

First, the responsibility to prevent, which is to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk. Second, the responsibility to react, which is to respond to situations of compelling human need with appropriate measures that may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention. Third, the responsibility to rebuild; to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.⁸²

The conviction that local actors are not committed to solve the conflict among the various ethnic groups lead to the conclusion that outsiders must handle it. When international community can not stop the start of the conflict, “external actors should at least make concerted efforts to pick up the pieces and regenerate societies in ways that it will inhibit relapses into violence.”⁸³ However, regardless of the commitment of international community to consider the precedences of the subject

235, 1999, ‘The Protectorate’, Economist, vol. 346, issue 8055, 02/14/98, Roberto Belloni, ‘Bosnia: The Limits of Neocolonial Rule’, Foreign Policy in Focus, August 5, 2004.

⁸⁰ Michael Pugh (Editor), ‘Introduction: The Ownership of Regeneration and Peace-building’, p. 3; Jeroen de Zeeuw, Building Peace in War-Torn Societies: From Concept to Strategy, p. 27.

⁸¹ International Commission on Intervention and State Sovereignty (ed.), The Responsibility to Protect, Ottawa: Int. Development Research Centre, December 2001, p. viii.

⁸² Ibid., p. xi.

⁸³ Michael Pugh (Editor), ‘Introduction: The Ownership of Regeneration and Peace-building’, p. 3.

state and work on improving local capacities, in many occasions “parallel structures” are constructed.⁸⁴

Those parallel structures usually work with cross-purposes, against the peace building agenda of the international community. Since certain figures drive their power from the status quo, they operate for the continuity of the conflict through different ways, try to maintain the hostility, distrust, ethnic divisions, thus, obstruct international community’s peace building and reconciliation efforts. This restrains international efforts to promote long-lasting peace and stability in war-torn societies. In response to the lack of local interest to collaborate with the international community, peace building mainly falls back on the outsiders’ commitment.

On the other hand, external peace building methods have the potential to upset the locals; especially when the peace mission prolongs and transfer of authority to the locals tempts to be postponed. This instigates an anxiety that outside actors direct domestic affairs and rule them under the disguise of peace building. Therefore, successful peace-building rests on co-operation with the local actors and their accommodation to the international peace building strategy.

The other dimension of the lack of commitment is the delicate engagement of the international community with its separate objectives and priorities to build up peace in alien war-torn societies. Changing agenda and shifting interest of the international forces, lack of shared vision, absence of communication leads to lack of cooperation among the major international actors which will be detailed below.

2.5.3 Insufficient Coordination

Generally, humanitarian interventions followed by a peace-building schedule have been inadequately planned, not well thought, and uncoordinated. One of the most important causes of the failures is the “inability of the diffuse international community to organize itself to deal coherently with the humanitarian crises that follow in the wake of state breakdown and internal conflict.”⁸⁵ Most of the problems

⁸⁴ Jeroen de Zeeuw, Building Peace in War-Torn Societies: From Concept to Strategy, p. 27.

⁸⁵ Antonia Handler Chayes, Abraham Chayes, Planning for Intervention International Cooperation in Conflict Management, The Hague: Kluwer Law Int., 1999. The volume especially focuses on Bosnia

paralyzing the rebuilding efforts of the war-torn societies result from this insufficient organizational planning.

In case of the succeeding peace building policy, lack coordinated leadership among the leading countries and institutions, duplication and overlapping activities of multiple organizations working on the same issue, and cross-cutting interests are the reasons of malfunctioning.⁸⁶ Moreover, objectives of various operating agencies do not always coincide, which is the potential line of conflict as well. Consequently, competing international agencies and indecisive leadership lead to a lack of coherent peace building strategy.

There are many players, international and regional organizations such as the UN, OSCE and NATO; states with diverse political perspectives and interests; and a bunch of non-governmental organizations (NGOs) each with a separate agenda. They all have a contribution to make but they either work at cross-purposes or inefficiently. In addition, all various international organizations engaged in peace building designed for diverse purposes and mandates with different hierarchy, chain of command, programming and funding acting autonomously from the local forces.

Jeroen de Zeeuw argues that sources of the lack of coordination also comprise “the disparate interests of donor countries to assist certain war-torn societies, the different mandates of the various implementing (multilateral, bilateral and non-governmental) agencies, and the problem of burden-sharing and leadership in multi-agency efforts.”⁸⁷ Regardless of the international efforts to develop institutional guidelines for the coordination of peace building programs, in practice they have remained uncoordinated and essentially ad hoc enterprises.

among other cases to illustrate the planning failure. It is argued that the problems that plagued the reconstruction effort in Bosnia show many of the consequences of the absence of inter-organizational planning. Therefore, central argument of the authors is cooperation and collaboration at all levels, before and after intervention, is essential to successful intervention.

⁸⁶ For more information see ‘Reshaping International Priorities in Bosnia and Herzegovina Part Two’, European Stability Initiative Report, 30 March 2000, <http://www.esiweb.org>, pp. 23-24, ‘Bosnia: Reshaping the International Machinery’, International Crisis Group, Balkans Report No. 121, Sarajevo/ Brussels, 29 November 2001, <http://www.crisisweb.org>, pp. 4-6.

⁸⁷ Jeroen de Zeeuw, *Building Peace in War-Torn Societies: From Concept to Strategy*, p. 28.

Nevertheless, by the time inevitability of the coordination for joint action, integrated planning and shared operation due to the interrelated nature of security challenges acknowledged.⁸⁸ For instance, lack of coordination between NATO's military forces and the civilian organizations such as the UN and OSCE, and clear distinction of the military and civilian mandates stemming from the concern of loss of autonomy proved to be ineffective in Bosnia. Thus, international peace building mission drawn for Kosovo called for more cooperation of the military and civilian forces. Briefly, "managing security challenges can be more successful when integrated within the wider context of a multi-sectoral peace building process."⁸⁹ Prudent regulation of various international institutions' operations to perform collectively can stimulate the development of a solid ground for peace building.

2.5.4 Delayed Assistance

Timely deliverance of international assistance is fundamental for the proper conduct of the peace building operations. It is argued that "delays between promises, commitments and actual disbursements of post-conflict assistance risk destroying the hope and commitment of local people to the peace process and might lead to inadequate programming and delivery."⁹⁰ Nonetheless, difficulties arise during the provision of aid basically due to the absence of political interest, financial, material and human resources.

However, when the assistance of the international community is not easily available and fail to ease the suffering of the people cause frustration and disappointments. The setbacks have two aspects: "internal/demand-side factors" and "external/supply-side" deficiencies:⁹¹

Beneficiaries sometimes lack the capacity to distribute the assistance in the corrupt and cluttered post-conflict environment where the rule of law is still not re-established. The other factor is that assistance from donor countries might be delayed because of the bureaucratic inefficiencies. Another consideration is the position of the recipient state. In case of state itself is

⁸⁸ John G., Cockell, 'Civil-Military Responses to Security Challenges in Peace Operations: Ten Lessons from Kosovo', Global Governance, vol. 8, issue 4, October-December 2002, pp. 2-3.

⁸⁹ Ibid., p. 10.

⁹⁰ Jeroen de Zeeuw, Building Peace in War-Torn Societies: From Concept to Strategy, p. 28.

⁹¹ Ibid., p. 28.

subject to structural reforms as involving the traditional or nationalistic power structures, which were part of the conflict at the first place would risk the reform of the political system in the post-conflict society.⁹²

On the other hand, violent conflicts do not stop or achieve peaceful transition in the absence of sufficient financial resources to fulfill the necessary work such as the reconstruction of the damaged infrastructure, provision of security, rehabilitation of refugees, displaced persons and war traumatized victims. An international engagement “in support of peace, prevention or cessation of a violent conflict or humanitarian disaster” is not capable to succeed without any budget or funds.⁹³ The international community needs to generate funds for a functional operation. In the absence of reliable governance structures for the reconstruction of war torn societies international community has sought multilateral instruments to complement assistance programs. That is arranged via “international organizations and NGOs to carry out the crucial activities of post-war reconstruction, reconciliation...and institution building necessary to achieve these goals.”⁹⁴

Yet, in many cases delays or disruptions in the provision of the pledged aid took place. Thus, an important lesson to be learnt from the recent peace building experiences of the international community is the significance of timely arrangement and participation of the various institutions. Early assessment and planning during the conflict, even before a peace settlement is signed, could be one way to speed up the mobilization of donors and assistance. In fact, the “key to mobilizing resources” and keeping up the attention in post-conflict situation is based on the establishment of a secure atmosphere.⁹⁵ In many war-torn societies like Bosnia and Kosovo recurrent setbacks in distributing relieve assistance and realizing the plans took place because of the absence of secure environment.

Additionally, considerable assistance is provided to encourage refuge repatriation in many post-conflict societies as a “donor priority” but in the absence of

⁹² Ibid., p. 28.

⁹³ Zlatko Hurtic, Amela Sapcanin, Suzan Woodward, ‘Pledges of Aid to Bosnia and Herzegovina’ in Steven M. Riskin, Three Dimensions of Peacebuilding in Bosnia, p. 10.

⁹⁴ Ibid., 10.

⁹⁵ Ibid., p. 12.

security conditions refugees have not returned.⁹⁶ Provision of financial assistance for the reconstruction of destroyed houses and sponsoring the return process has not been fruitful in many post-conflict societies in the absence of life security. The other trouble of granting assistance is the distribution of aid as a condition, incentive or as a reward in case of cooperating with the international community. Such a policy results in delaying the self-sufficiency, transfer of authority to the locals and hinders the creation of indigenous capacities for a sustainable peace.

2.5.5 Lack of Priorities

Alongside delayed assistance the biggest difficulty of the international community is to reach consensus on a common strategy about the priorities or specific programs to be applied in peace-building cases. Through a “fragmented approach” it is financing several projects of various sectors and spreading resources over a wide range of peace-building initiatives.⁹⁷ In addition to the poor return of spreading peace building efforts, when there is lack of continuity positive impact of specific activities can not be sustained.⁹⁸ This is partly originating from the insufficient formulation of donor policies.

As a matter of fact, “a peace operation has to start with a clear set of objectives”, however, this “elementary principle has been ignored” in the recent peace building missions.⁹⁹ At the outset, what should be the priority of international community in a war-torn society should be decided. What should be short- and long-term goals to be pursued? Conduct of fair elections, return of the refugees, establishment of physical security, rule of law or enforcing democratic principles? There is an argument that “peace building should not be equated to

⁹⁶ *Ibid.*, p. 12.

⁹⁷ Jeroen de Zeeuw, *Building Peace in War-Torn Societies: From Concept to Strategy*, p. 29.

⁹⁸ *Ibid.*, p. 29.

⁹⁹ ‘Seven Principles for Building Peace’, Speech delivered by the UN Special Representative of the Secretary General in Kosovo, Michael Steiner, London School of Economics and Political Science, 27 January 2003, <http://www.lse.ac.uk/Depts/global/Kosovodebate.htm>

the entire basket of postwar needs, as multiple and complex as they are.”¹⁰⁰ Instead peace building needs a focused approach on conflict resolution.¹⁰¹

Apparently, generally conceived instruments of peace building such as security sector and governance reform, post-conflict elections, human rights monitoring, refugee repatriation and civil society development have a potential to contribute peace building but they are not equivalent to peace building unless they designed themselves for that motive. Success of certain instruments might be a necessary condition for peace building such as the security sector reform, particularly establishment of a secure environment. Each can be conducive to peace building as the return of refugees and displaced persons and strengthen the foundation for peace building. Some could further become an instrument for peace building like civil society development.

However, it should be noticed that arrangement of the tasks, particularly the order of the priorities are fundamental for the success of peace building. Flawed array of the priorities and the timing of the critical tasks can frustrate peace building such as early conduct of elections that in many cases entrenched the position of former combatants. Moreover, this lack of clarity of the objectives and priorities creates a great deal of confusion about which of the main organizations is responsible for what.¹⁰² Major international organizations engaged in the same matter such as the return of refugees, democratization or the establishment of rule of law, which undermined the efficiency of international involvement. Besides, international organizations often change their priorities without a criteria that justifies or guides their existence which produce question marks in the minds of locals about the extent of international presence.

In conclusion, peace building approach in practice has a number of limitations. First of all, the quick fix strategy proved to be not feasible as the initial short-term peace building mandates had to be extended in many war-torn societies. Following constrains cover the lack of commitment, insufficient

¹⁰⁰ Elizabeth M. Cousens, ‘Introduction’ in Elizabeth M. Cousens, Chetan Kumar (Editors), Peacebuilding As Politics, p. 13.

¹⁰¹ Ibid., p. 13.

¹⁰² Michael Steiner, ‘Seven Principles for Building Peace’, Speech delivered by the UN Special Representative of the Secretary General in Kosovo.

coordination and delayed assistance that undermine international community's peace building efforts. Furthermore, there is a lack of priority setting and arrangement of activities under the guidance of a clear peace building strategy. Therefore, the current peace building approach and practice needs reconsideration. Listing constrains of peace building in practice aims to indicate the challenges of peace building and contribute to the improvement of peace building approach towards war-torn societies.

CHAPTER 3

INTERVENTION FOR PEACE: THE CASE OF BOSNIA AND HERZEGOVINA

3.1 War in Bosnia (1991-1994) and the Road to Dayton Peace Agreement

The violent conflict in Bosnia and Herzegovina has pursued the wars that broke out first in Slovenia and later in Croatia during the disintegration of former Yugoslavia. The first warfare continued just for ten days in June/July 1991 in Slovenia. That was followed by a more brutal conflict in Croatia for six months from July 1991 to January 1992.¹ Slovenia declared its independence on 25 June 1991 and won the struggle successfully after the short war with the Yugoslav National Army (JNA). Croatia simultaneously declared independence but faced severe resistance from the JNA, Serb paramilitary units, and its own secessionist Serbs living in the territory of Croatia.

As war in Croatia continued through late 1991, Bosnian Serb and to an extent Croat communities in Bosnia also began to mobilize for conflict.² Serb nationalists announced their determination to remain in Yugoslavia or ask separation from Bosnia.³ On the contrary, Muslims supported Bosnia's sovereignty. Actually, the discussion to find a compromise solution for the future of Bosnia already started among the three ethnically based parties that came to power after the Bosnian multiparty elections in November 1990.⁴

¹ Misha Glenny, The Fall of Yugoslavia –The Third Balkan War, London: Penguin Books, 1992, p.98.

² For more information see Laura Silber, Allan Little, The Death of Yugoslavia, London: Penguin Books Ltd, (Revised Edition), 1996, pp. 209-210.

³ Ibid., p. 211.

⁴ Robert J. Donia, John V.A. Fine, JR., Bosnia and Herzegovina: A Tradition Betrayed , London: Hurst&Co, 1994, p. 229.

Hence, just before the start of the war in Bosnia and Herzegovina the country was divided at the side of the three national parties, which were the Muslim Party of Democratic Action (SDA), the Serb Democratic Party (SDS) and the Croat Democratic Union (HDZ). Regardless of the delicate coalition preserved between the Croat and Muslim parties, the three parties then had different visions about the future of Bosnia and Herzegovina:

The Muslim party advocated a united and centralized Bosnia and Herzegovina, independent from the remaining Yugoslav republics. The Serb party advocated the division of Bosnia along national lines, while the Croat party supported the independence of the country provided that its exclusive control over the Croat populated parts, primarily in west Herzegovina, remained uncontested. Each of the three positions was as the result of a mixture of ideological and pragmatic considerations.⁵

The Bosnian Muslims which composed the relative majority of the population were seen by the other two communities intending to have political dominance over the country. The Bosnian Serbs aspired to control the regions inhabited with Serbs. This aim later evolved to the creation of an independent state which could afterwards be merged to the Republic of Serbia. In response, the Bosnian Croats desired the separation of Croat regions to be united with the Republic of Croatia.

Delegates of the three communities invited the Bosnian President “to propose a declaration of sovereignty that would reconcile differing views” but the war in Croatia hindered those efforts and a compromise was never reached.⁶ Thus, Muslim and Croat parties passed a resolution without consent of the Serbs demanding sovereignty for Bosnia.⁷ In response members of the SDP left the parliament. Consequently, Serbian districts were established and a plebiscite was organized to demonstrate Serbian opposition to Bosnia’s secession from Yugoslavia. In short, decision of the Republic of Bosnia and Herzegovina to secede from the former Yugoslavia, during its dissolution process, led to an armed conflict over the control of territory and political dominance.

⁵ Aleksandar Pavkovic, The Fragmentation of Yugoslavia Nationalism and War in the Balkans, London: MacMillan Press, (2nd edition), 2000, pp. 157-158.

⁶ Robert J. Donia, John V.A. Fine, JR., Bosnia and Herzegovina: A Tradition Betrayed , p. 229.

⁷ Ibid., p. 229.

When the European Community (EC) recognized both Slovenian and Croatian declarations of independence in January 1992 Bosnia was left with a choice; either remain in a smaller Yugoslavia that would be overwhelmingly dominated by Serbia and by implication its own large Serb minority, or leave the Yugoslav Federation, leaving Bosnian Serbs, and Bosnian Croats to an extent worried about domination by the country's Muslim majority.⁸ Deciding on the future of the country and the issue of independence the Muslim-Croat coalition organized a referendum. Armed struggle in Bosnia commenced after the referendum on 29 February-1 March 1992, since the Serb party rejected it as unconstitutional.⁹ "The referendum was proposed by the EC Arbitration Commission in December 1991 as a condition of the EC's recognition of the Republic of Bosnia and Herzegovina."¹⁰ In accordance with the referendum results 63.4 per cent of the electorate voted with 99.8 per cent for independence.¹¹

Arbitrary shooting took place already the same day of the referendum. In the following days Serbian irregulars started to attack some Bosnian towns. When the Bosnian Serb leaders announced their constitution, the JNA started attacks targeting "the newly declared republic of Bosnia from the south, west and north-west."¹² A day before the European Community recognized independence of Bosnia between 50,000 and 100,000 Bosnians from all ethnic groups went out to the streets to protest the Serbian aggression.¹³ Noel Malcolm quotes from a news report that one demonstrator said "Let all the Serbs chauvinists go to Serbia and let the Croat chauvinists go to Croatia... We want to remain here together... We want to keep Bosnia as one."¹⁴ However, Serbian snipers interrupted the peace demonstration in Sarajevo with gun fire.

⁸ Stanley Hoffmann, The Ethics and Politics of Humanitarian Intervention, Notre Dame: University of Notre Dame Press, 1996, pp. 41.-42.

⁹ Aleksandar Pavkovic, The Fragmentation of Yugoslavia, p. 161.

¹⁰ Ibid., p. 161.

¹¹ Ibid., p. 161.

¹² Robert J. Donia, John V.A. Fine, JR., Bosnia and Herzegovina: A Tradition Betrayed, p. 238.

¹³ Noel Malcolm, Bosnia A Short History, London: Pan Macmillan, (2nd edition), 1996, p. 235.

¹⁴ Ibid., p. 235.

In a short time, more than one thousand people had been killed in the escalating war that spread all around the country. The opponents and their aspirations in Bosnia-Herzegovina have changed throughout the war. Hence, the war can be divided into three periods. First is the war between the Muslim-Croat coalition and the Serb forces in 1992-93. Second era can be depict as the Muslim-Croat war and Muslim-Muslim war in 1993-94. Third period is the Muslim/ Croat attacks, followed with the combined NATO/Muslim/Croatian attacks against the Serb forces in March-October 1995.

Shortly after the fighting, the number of refugees escaping from Serbian offensive grew enormously. It was calculated by “the UN High Commissioner for Refugees that around 370,000 Bosnians had become refugees and by June 1992 the number reached 750,000.”¹⁵ Soon, the Bosnian war created “two million refugees, almost half of the population according to the 1991 census.”¹⁶ Every ethnic group used violence to drive out the hostile armed forces and populations from the regions which were asserted for themselves. Thus, during the three and a half years of warfare, nearly whole republic was under attack.¹⁷

To provoke people engage in warfare against the other ethnic communities, the nationalist leadership exposed them as enemies. For the Serbs, the Bosnian Muslims were presented as Islamic fundamentalists aiming to establish an Islamic state in the middle of Europe. The Bosnian Croats were described as Croat Ustasha. Both communités were shown as threatening the Serbian existence in Bosnia. The Bosnian Muslim and Croats presented Serbs to their communities as Chetnik terrorist planning to terminate other ethnic groups.

On the other hand, the fighting in Bosnia was brutal involving indiscriminate attacks and torture of civilians, sieges of cities, rape as an instrument of warfare, and inhumane treatment of prisoners. The term ethnic

¹⁵ Robert J. Donia, John V.A. Fine, JR., Bosnia and Herzegovina: A Tradition Betrayed , p. 244.

¹⁶ Ibid., p. 245.

¹⁷ At the time of the war, the Muslim party fought for an independent and united Bosnia within its pre-1991 borders. The Serb party rejected the Muslim vision of a united Bosnia and fought or a Bosnian Serb state carved out of the Republic of Bosnia and Herzegovina. The Croat party first allied with the Muslim party in its fight for Bosnian independence, but in 1993 it attempted to carve out by force a Bosnian Croat state as well. As a result, during the war both the Serbs and the Croats invaded a substantial part of Bosnia and Herzegovina. Cited in Aleksandar Pavkovic, The Fragmentation of Yugoslavia, p. 162.

cleansing defined manifestly as the elimination by an ethnic group exercising control over a given territory of members of other ethnic groups either by forced expulsion or death.¹⁸ Thus, the UN War Crimes Commission confirmed that during the conflict “ethnic cleansing had been carried out by means of murder, torture, arbitrary arrest and detention, extra judicial executions, rape and sexual assault, confinement of civilians in ghetto areas, forcible removal displacement and deportation of civilians, deliberate military attacks or threats on civilians and civilian areas, and wanton destruction of property.”¹⁹

Ethnic cleansing in Bosnia started in March 1992 when the first clashes blew up in northern and western Herzegovina. The Bosnian Serbs and Croats were forced to leave the areas that were later occupied by the opponent groups. After the invasion of eastern Bosnia and parts of western Bosnia in the following months the Bosnian Muslim inhabitants living in the region were driven out. Throughout the Muslim-Croat battle in 1993-1994 both forced the opponent community out of the places they took control over. In the course of the hostilities expulsion of the rival groups were seen necessary for the defense of each community. Besides, the houses and belongings of the ejected people were used to settle the refugees expelled by the other ethnic communities.

Apparently, ethnic cleansing was not the outcome of the war in Bosnia. That was a considered plan to create homogenous or mono-ethnic regions for having political dominance in those ethnically cleansed parts later. Thus, through a systematic campaign primarily Serb and to an extent Croat armed forces throw out the civilians from their homes on the basis of their ethnicity. Nevertheless, the Bosnian Muslims suffered the most from this ethnic cleansing policy.

Yet, in certain places of Bosnia the ethnic cleansing was very bloody encompassing mass murders, systemic rape of numerous women and creation of huge prisoners camps. In April 1992, the Bosnian Serb leader Karadzic established a new Serbian state in Bosnia and ethnic cleansing was the mean for the territorial

¹⁸ Steven Burg, Paul Shoup, The War in Bosnia and Herzegovina Ethnic Conflict and International Intervention, New York: M.E Sharpe, 1999, p. 171.

¹⁹ Paul R. Williams, Michael P. Scharf, Peace with Justice? War Crimes and Accountability in the Former Yugoslavia, New York: Rowman&Littlefield Publishers, 2002, p. 94.

definition of this state.²⁰ After detention camps were on the Western media Karadzic confessed that there were prisoners camps in Bosnia observe the prisoner of war camps. In August 1992, following investigations and release of the reports international community announced that ethnic campaign was achieving its aim with the creation of merely Serbian populated areas in Bosnia.

Nevertheless, the attention soon shifted to the long blockade and bombardment of Sarajevo. Meanwhile, ethnic cleansing was carried on in the rural parts of the country. Finally, the war and the ethnic cleansing policy considerably changed the demographic configuration of the Republic of Bosnia and Herzegovina. Throughout the war the areas which were ethnically mixed rapidly became nationally homogenized.²¹

3.1.1 Role of the International Community (1991-1995) in Ending the War

From 1991, the international community involved in efforts to resolve the conflicts resulting from the dissolution of former Yugoslavia. However, initially there was no coherent policy among the United States and European Union. Individual member states of the European Union also could not agree on a common strategy. Besides, international organizations and agencies split about the nature of the war, thus, about the proper role of peace keeping as well. One of the major questions concerning the war had been whether it was a civil war or international conflict.²² If the war was seen as an international conflict that one state committed aggression against the other(s) the provisions of the UN Charter that deal with aggression had to be applied.

Many Western leaders regarded the struggle in Bosnia as a civil war. Yet, international community failed to grasp the root causes of the conflict. Initially the conflict was seen as a historical and ethnical enmity. Different ethnic communities living in Balkans perceived to have a bloody history of fighting with each other. Such an approach was trouble-free. Since nobody was innocent there would be no

²⁰ Emel G. Osmañçavuşođlu, The Wars of Yugoslav Dissolution and Britain's Role in Shaping Western Policy 1991- 1995, Ankara: Center for Strategic Research, 2000, p. 83.

²¹ Aleksandar Pavkovic, The Fragmentation of Yugoslavia, p. 167.

²² Stanley Hoffmann, The Ethics and Politics of Humanitarian Intervention, p. 42.

need to distinguish who is the aggressor and who is the victim. That was also justified the inaction of the international community.

As a consequence of this short of understanding international community was confused about how to stop the conflict. Thus, it undertook the policy of preventing the conflict to spill over the other parts of the Balkans. Restricting the violence and waiting the “ancient hatreds” to be exhausted were the proper way to handle with the conflict.²³ Therefore, the main concern of the international community focused on the military and secondly on the humanitarian sides of the conflict.

Stanley Hoffmann argued that the war in Bosnia had the elements of both civil war and international conflict. He stated that “there had been large elements of civil war; certainly the Serbs in Bosnia moved on their own to proclaim a separate republic they were armed by the Serbs from Serbia and the Serbian army intervened and provided much of the military power without which the Serbs could not have occupied as much ground as they did.”²⁴ It has been an important question for international community, particularly for the UN to distinguish whether it was a civil war or a case of aggression in order to respond appropriately.

However, the conflict in Bosnia was primarily treated not as an aggression²⁵ but as a “case of humanitarian intervention since the UNPROFOR was sent on a humanitarian mission to provide relief and food to the inhabitants of Sarajevo and other isolated places.”²⁶ It could not be sent neither as a peace-keeping unit because there was no cease-fire agreement nor as a force allowed to use its arms to protect the victims. Thus, it was conducted merely as a humanitarian operation. In August 1992, the Security Council called upon states to take “all measures necessary” to facilitate the delivery of humanitarian assistance to Bosnia.²⁷

²³ Emel G. Osmançavuşoğlu, ‘The New Humanitarianism in British Foreign Policy: Lessons Learned from Bosnia?’, The Review of International Affairs, vol. 1, no. 4, Summer 2002, p. 62.

²⁴ Stanley Hoffmann, The Ethics and Politics of Humanitarian Intervention, p. 43.

²⁵ The reason not to call it aggression was believed to be the implications of Collective Security under Chapter VII of UN Charter which ask costly and expensive measures.

²⁶ Stanley Hoffmann, The Ethics and Politics of Humanitarian Intervention, p. 44.

²⁷ Security Council Resolution 770, UN. SCOR, 47th SESS., 3106th mtg. At 24, U.N Doc. S/INF/48, 1993. Cited in Sean D. Murphy, Humanitarian Intervention: The United Nations in an Evolving World Order, (Pennsylvania: University of Pennsylvania Press, 1996), pp. 203-204.

This articulation could be used “as the basis for military intervention by one or more states should they choose to do so to facilitate the delivery of humanitarian assistance by military means.”²⁸ Such an intervention might be accepted since many states were horrified by the atrocities committed against Muslims in Bosnia-Herzegovina. Particularly, on account of the acceptance that the crimes were carried out by the units of Serbia-Montenegro’s JNA and elements of the Croatian Army.²⁹ As a result, the General Assembly appealed to the Security Council to undertake “further appropriate measures” referring Chapter VII to end the war and restore the territorial integrity of Bosnia-Herzegovina.³⁰ However:

Whereas plans were made for thousands of NATO troops to be deployed to Bosnia to protect humanitarian convoys, the step taken in September 1992 was only to expand the mandate of UNPROFOR forces to protect those delivering relief supplies. No state was ready to deploy a multinational force for Bosnia.³¹

In short, the UN military intervention in Bosnia started as an operation to protect the delivery of humanitarian relief and not as an intervention to assist Muslim victims. Nevertheless, it gradually moved on protecting the civilians. As the war continued, the UN with the help of NATO aircraft, proceeded to restrict the Serb forces’ use of aircraft and artillery and to provide protection to the civilians in Muslim-controlled cities. Thus, responding to the use of air force in support of the Bosnian Serb forces, the UN Security Council in October 1992 imposed a ban on unauthorized military flights in Bosnia-Herzegovina.³²

Further, responding to the Bosnian Serb bombardment of Srebrenica in April 1993, UN Security Council declared Srebrenica a safe area “an area free from any armed attack or any other hostile act - to be protected by the UN

²⁸ Sean D. Murphy, Humanitarian Intervention: The United Nations in an Evolving World Order, (Pennsylvania: University of Pennsylvania Press, 1996), p. 204.

²⁹ Ibid., p. 204.

³⁰ General Assembly Res. 46/242, U.N. GAOR, 46th Session, Supp. No. 49A, at 6, para.5, UN Doc. A/46/49/ Add.1, 1993. Cited in Sean D. Murphy, Humanitarian Intervention: The United Nations in an Evolving World Order, (Pennsylvania: University of Pennsylvania Press, 1996), p. 204.

³¹ Sean D. Murphy, Humanitarian Intervention, p. 204.

³² S.C. Res. 781, U.N. SCOR, 47th Session, 3122d meeting at 27, U.N. Doc. S/INF/48, 1993 and S.C. Res. 786, U.N. SCOR, 47th Session, 3133d meeting at 28, U.N. Doc. S/INF/48, 1993. Cited in Sean D. Murphy, Humanitarian Intervention, p. 204.

forces.”³³ One month later, five key towns and cities within the range of Bosnian Serb weaponry -Gorazde, Zepa, Tuzla, Bihac and Sarajevo- were also proclaimed safe areas.³⁴ Whilst the protection of civilians was generally ineffective due to the Serb attacks on safe areas, this ultimately provided a good reason for expanded NATO military intervention against the Serb forces.³⁵

In addition, while the UN in the latter stages of the war was distributing humanitarian aid and attempting to protect civilians, it also engaged together with European Community in peace negotiations. A long series of negotiations and various fruitless plans followed the installation of UNPROFOR in 1992 such as Plan I, Stoltenberg Plan, Owen-Vance Plan with different maps and by using the threat of force. Throughout international involvement in the war, there were various attempts to draw plans for peace and conclude agreements based on them.

The first of these were drafted within the framework of the European Community Conference on Yugoslavia in 1991. However, the Chairman of the European Community Conference Lord Carrington’s efforts to reach an agreement on a ceasefire specifically on arrangements for the UN to take control of heavy weaponry led tension between the EC and the UN. The UN Secretary-General expressed his resentment “at the EC negotiating team’s affront in making agreements on behalf of the UN without even discussing the matter with UN representatives.”³⁶ The plan called Cutileiro, the name of the EC mediator Jose Cutileiro, and envisaged the establishment of a number of cantons (non-contiguous national regions) by the principle of ethnicity.³⁷ Albeit the parties showed some support for the agreement, disagreements took place over the size of the cantons, whereas certain issues were not even mentioned, as the police and army control.³⁸

³³ Aleksandar Pavkovic, The Fragmentation of Yugoslavia, p. 171.

³⁴ For more information see James Gow, Triumph of the Lack of Will International Diplomacy and the Yugoslav War, London: Hurst&Company, 1997, pp. 141-155.

³⁵ Aleksandar Pavkovic, The Fragmentation of Yugoslavia, p. 171.

³⁶ James Gow, Triumph of the Lack of Will, p. 223.

³⁷ Ibid., p. 80-81.

³⁸ Florian Bieber, ‘The Case Study of Bosnia and Herzegovina’, Unpublished paper, September 2001, p. 5.

Since an agreement could not be reached regarding the distribution of territory, the agreement collapsed and the war started in a couple of weeks.³⁹

Nonetheless, the UN and EC attempts were reunited at the London Conference in August 1992, which was “co-chaired by the UK Prime Minister John Major as the President of the European Council and the UN Secretary General Boutros Boutros Ghali.”⁴⁰ At the London Conference, Cyrus Vance acted on behalf of the UN Secretary General, and former British Foreign Secretary David Owen replaced Lord Carrington as the deputy of the European Community.

After the resignation of Cyrus Vance in 1993 spring, Thorvald Stoltenberg, former Norwegian Minister of Foreign Affairs, followed him in the beginning of May.⁴¹ The principles outlined in London, having “the notion that no peace settlement should reward the practitioners of ethnic cleansing, soon vanished as the mediators pressed all sides to reach an agreement that would simply end the fighting, thus ratifying the territorial conquests of the battlefield victors.”⁴² At the end, the mediators produced two proposals. The first one was the Owen-Vance plan of January 1993. According to this plan Bosnia would be divided into ten cantons. There would be three cantons for each nationality. The control of the tenth, Sarajevo and environs, would be shared by the three ethnic groups.⁴³

This was a resolution reached by considering the demands of the Serbs, Croats and Muslims and trying to find a mid-way point between them.⁴⁴ Noel Malcolm argues that “the result gave the Serbs enough to make the Muslims feel that the Serbs were being rewarded for their actions, and enough also for the Serbs to feel that if they continued their actions they could press for more.”⁴⁵ The plan proposed that all cantons would exercise most functions of government as well as

³⁹ For more information see Steven Burg, Paul Shoup, The War in Bosnia and Herzegovina Ethnic Conflict and International Intervention, New York: M.E Sharpe, 1999, pp. 108-117.

⁴⁰ James Gow, Triumph of the Lack of Will, pp. 224- 225.

⁴¹ Robert J. Donia, John V.A. Fine, JR., Bosnia and Herzegovina: A Tradition Betrayed , p. 260.

⁴² Ibid., p. 260.

⁴³ Ibid., p. 260.

⁴⁴ Noel Malcolm, Bosnia A Short History, p. 247.

⁴⁵ Ibid., p. 247.

policing. The central government of Bosnia would be responsible only from national defense and foreign affairs.

Vance-Owen Plan was accepted by the main representatives of all three sides who were present at the negotiations. Yet, it failed to gain the approval of the Bosnian Serb representatives at Pale in 1993 despite Milosevic forced Radovan Karadzic to signed the agreement. The amendments made to satisfy the Bosnian Serb demands were not enough. Instead of signing the agreement the Pale Assembly insisted on a referendum and the outcome was reported to be 96 per cent rejection of the map by the Serbs.⁴⁶ The main reasons behind the objections of the Serbs were absence of ethnic homogeneity and contiguous Serbian territories.

Nevertheless, Vance-Owen Plan with its cantonization policy was severely criticized mostly by the Americans for acknowledging the ethnic cleansing and new status quo created by use of force. On the other hand, Vance-Owen Plan led to the intensification of the armed struggle in Bosnia. The Bosnian Serbs facilitated ethnic cleansing to increase the number of Serb-inhabited cantons. The Plan also triggered the Croat-Muslim war in central Bosnia. Following the revealed version of the Plan Croatia forces within the Bosnian army withdrew from the areas given to the Croats. After that violent clashes and ethnic cleansing of the Bosnian villages pursued. As a result, reports concerning violence in Bosnia stated that Vance-Owen Plan stimulated ethnic cleansing.

After the rejection of the Vance-Owen Plan, efforts continued to find a compromise solution that would end the fighting between the sides. Thus, the second proposal was prepared by Owen and Stoltenberg in August 1993 to answer Bosnian Serbs' demands. It envisaged a tri-partite separation of the country along ethnic lines. The Owen-Stoltenberg plan gave up the idea to create small, non-contiguous cantons in favour of creating three ethnic territories. It had modest attempts to ensure some degree of minority representation within as well.⁴⁷

The new Plan proposed a union of three republics based on ethnicity. While the previous Vance -Owen plan offered Bosnian Muslim led government 43 per cent of the territory the new proposal reduced it to 30 per cent. On the contrary, the

⁴⁶ James Gow, Triumph of the Lack of Will, p. 247.

⁴⁷ Florian Bieber, 'The Case Study of Bosnia and Herzegovina', Unpublished paper, September 2001, p. 5.

Bosnian Serbs were given 53 while the Croats were entitled to the 17 per cent of the territory. Naturally, Bosnian Muslim President Izetbegovic at first opposed to the plan. Later, in response to the pressure exerted by Owen, he conditionally accepted the Owen-Stoltenberg plan. Yet, the Bosnian Parliament put various conditions and demanded a Bosnian outlet to the Adriatic Sea. In fact, they refused the essence of the Owen-Stoltenberg proposal.

Despite further talks, the negotiations supported by the UN and EC reached a stalemate in early 1994. Meanwhile, severe fighting was continuing among the three ethnic groups.

In February 1994 the efforts of Owen and Stoltenberg to achieve a consensus among the three parties were outdated by an American plan to bring the Bosnian Croats into a federation with the Muslims. Consequently, in April 1994, the leadership in the peace process have passed from Owen and Stoltenberg basically to the US diplomats.⁴⁸

Similarly, the Owen and Stoltenberg Plan was criticized to award aggression. In addition, the international negotiators' appeared to be eager to make concessions for pleasing the Bosnian Serbs.⁴⁹ Therefore, the new proposal was not considered by the Bosnian Serbs as the last attempt to reach a settlement.

On the other hand, since the war in Bosnia understood as a result of historical ethnic hatreds, Western leaders over the time accepted the ethnic separation policy. Vance-Owen Plan reflected the conviction that three ethnic communities in Bosnia would not be able to live together. Even the Plan included safe return of refugees, the competencies given to the cantons and allocation of an ethnic criteria showed that ethnic cleansing and division of the country would not be changed. Such a development was regarded as an "open endorsement" of the ethnic division in Bosnia.⁵⁰ The following Owen-Stoltenberg Plan endorsed a more straightforward partition of Bosnia into three zones. The proposed map contained the border which was in fact outcome the the Serbian aggression.

⁴⁸ Robert J. Donia, John V.A. Fine, JR., Bosnia and Herzegovina: A Tradition Betrayed , p. 262.

⁴⁹ Emel G. Osmañçavuşoğlu, The Wars of Yugoslav Dissolution and Britain's Role in Shaping Western Policy 1991- 1995, p. 147.

⁵⁰ Noel Malcolm, 'Bosnia and the West: A Study in Failure', The National Interest, no. 39, Spring 1995, p. 5.

In sum, the main changes from the first Cutileiro plan to the Vance-Owen, then the Owen-Stoltenberg, and finally Dayton Peace Accord can be drawn up on three factors: “size and continuousness of the ethnic units, power of the center and shifting borders of the units depending on the balance of power on the ground.”⁵¹

Defeat of the Serbian forces by the restored Muslim and Croat coalition and the determination of international community with the new American initiative to find a military solution to the war changed the faith of Bosnia. The fall of the two UN safe havens Zepa and Srebrenica and the murder of thousands of civilians by the Bosnian Serb paramilitary strengthened the decision of the international community to end the war even against Serb resistance. After three and half years of destructive war, the change of the United States’ policy in August 1995 to resolve the conflict combined with the shifting position of the local opponents in summer 1995, led a few months later to the Dayton Peace Accords.⁵²

Following incredibly intensive discussions, especially the final 48 hours of the three week negotiations, a general agreement was announced at Dayton and later formalized as a treaty on 14 December in Paris.⁵³ The Dayton Peace Agreement was signed on November 21, 1995 in Dayton, Ohio, by the President of Bosnia and Herzegovina Aliya Izzetbegovic, Croatian President Franjo Tudjman and the Serbian President Slobodan Milosevic. The signing of the Agreement was witnessed by the delegations of France, Germany, England, Russia and the USA, known as the Contact Group. The agreement “included a territorial settlement, a new constitution, various mechanisms for the protection of human rights, the return of refugees and the reconstruction of the economy, and a plan for the deployment of an international force, under NATO leadership, of 60, 000 troops to supervise the cessation of hostilities.”⁵⁴

⁵¹ Florian Bieber, ‘The Case Study of Bosnia and Herzegovina’, Unpublished paper, September 2001, p. 4.

⁵² Alexandros Yannis, ‘The Creation and Politics of International Protectorates in the Balkans: Bridges over Troubled Waters’, Journal of International Relations and Development, p.265.

⁵³ Noel Malcolm, Bosnia A Short History, p. 268.

⁵⁴ Ibid., p. 268.

The main purpose of the Dayton Peace Accords was to stop the conflict in Bosnia and Herzegovina. Besides, there was sensitivity about the influence of the ethnic conflict in Bosnia on regional peace and stability; especially on the issue of perturbing flood of refugees continuously escaping to Western Europe. Moreover, ability of the international community to cope with security challenges in the post-Cold period was under question. More than three years neither the United States nor the EU could stop the conflict going on in the middle of Europe.

As a result of a determined American involvement, the war in Bosnia approached to its end. The diplomatic and coercive policy exercised in the second half of 1995 under the leadership of Richard Holbrooke was backed by a political scheme. It intended “to reconcile the political and moral values and interests of the international community to preserve the unity of a multiethnic Bosnia and Herzegovina with the interests and aspirations of the local leaders to retain authority over the territories under their effective control.”⁵⁵

The failure of the Bosnian representatives to end the war and their inability to solve their political differences is seen by many international observers as necessitating international intervention.⁵⁶ There was a consensus that without international community’s involvement the people of Bosnia would be capable to normalize their affairs and reconcile. As a result of a deadlock a new approach developed which is less severely restricted by the principle of respect to national sovereignty.⁵⁷ This approach was formulated especially with regard to the political leaders who make their community to face long wars and destruction. Dayton Peace Agreement in this respect “reflected the new post-Cold War interventionist approach of international institutions” emphasizing importance of post-conflict peace building

⁵⁵ Alexandros Yannis, ‘The Creation and Politics of International Protectorates in the Balkans’, p. 265. For more information about the negotiation process see Richard Holbrooke, To End A War, New York: Random House, 1998, pp. 262-287.

⁵⁶ David Chandler, Bosnia: Faking Democracy After Dayton, London: Pluto Press, Second Ed., 2000, p. 32.

⁵⁷ B., Denitch, Ethnic Nationalism: The Tragic Death of Yugoslavia, London: University of Minnesota Press, 1996, p. 60. Cited in David Chandler, Bosnia: Faking Democracy After Dayton, London: Pluto Press, Second Ed., 2000, p. 33.

and the necessity for the long-term involvement of international organizations for this end.⁵⁸

3.1.2 The Dayton Peace Agreement

Dayton Peace Agreement is a “unique peace treaty”⁵⁹ not only owing to the fact that it was imposed by external powers, but also because of the comprehensive powers and immunities given to international community covering almost all aspects of the new Bosnian state.⁶⁰ Most parts of the Dayton Agreement is not about terminating the warfare rather focusing on reconstructing and building peace in Bosnia by the involvement a great number of international organizations, which received special mandate under the Agreement and its annexes.

The Dayton Peace Accords is composed of a main text and 11 annexes with the constitution of Bosnia and Herzegovina and extra agreements. The Agreement is a brief text but its eleven articles outline the conditions of peace. International community drives its authority over the Bosnian state and its institutions from the annexes of the Dayton agreement. This authority embraces far-reaching government functions including the military, political, judicial and economic control.⁶¹

The first two annexes contain the military aspects of the peace settlement and regional stabilization. The first part, covers the Agreement on the Military Aspects of the Peace Settlement that is Annex1-A and provides extensive powers and immunities to the NATO forces in Bosnia and Herzegovina.⁶² The second part, Agreement on Inter-Entity Boundary Line and Related Issues entitled

⁵⁸ David Chandler, Bosnia: Faking Democracy After Dayton, p. 34.

⁵⁹ Its distinctiveness drives from the desire to establish a new political entity without the consent or involvement of the people but imposed on even before a peaceful solution could be reached between the warring sides.

⁶⁰ David Chandler, Bosnia: Faking Democracy After Dayton, p. 43.

⁶¹ Ibid., p. 44.

⁶² Especially see Article III and Article IV for the rights and immunities of the NATO forces. The General Framework Agreement in Bosnia and Herzegovina, Annex 1-A: Agreement on Military Aspects of the Peace Settlement, <http://www.oscebih.org/gfap/>.

Annex 2, also grants NATO forces a special position on the matters concerning the border, which is separating the entities.⁶³

The rest of the Dayton's annexes are focusing on the non-military aspects of the peace enforcement. David Chander argues that:

The civilian annexes, comprising five-sixths of the Dayton Accords, involved a wide range of activities in which international organizations were mandated to play key coordinating roles. These included economic reconstruction, the establishment of political institutions, human rights enforcement and the holding of elections. In order for these regulatory powers to have legality under international law, these mechanisms were incorporated into the Dayton Agreement.⁶⁴

The next annex following the military ones is Annex 3, which allows the OSCE to regulate and control the elections in BiH. Annex 4 forms the Constitution of Bosnia and Herzegovina. Annex 5, Arbitration assigns the two entities to solve disputes among themselves. That is the only annex giving the locals the authority to sort their own affairs. Annex 6 is the agreement on human rights that enumerated respect for fundamental rights and freedoms and instigated the establishment of a Commission on Human Rights. Following Annex 7 incorporated issues on refugees and displaced persons, and established a Commission which was also authorized to decide on property claims. Annex 8 deals with the agreement on the commission to preserve national monuments. Annex 9 of the Dayton comprises the agreement on Bosnian public corporations.

The last two annexes of the Dayton Peace Accords, Annex 10 and 11 focuses on the implementation of civilian aspects of the peace treaty. Annex 10, agreement on civilian implementation, created the Office of High Representative to coordinate the international institutions and facilitate the efforts of the locals.⁶⁵ Article II of Annex 10 lists the mandate of the High Representative "to monitor the implementation of the peace, to maintain close contact with the Parties to promote

⁶³ The General Framework Agreement in Bosnia and Herzegovina, Annex 1-B: Regional Stabilization, <http://www.oscebih.org/gfap/>.

⁶⁴ David Chandler, *Bosnia: Faking Democracy After Dayton*, p. 46.

⁶⁵ The General Framework Agreement in Bosnia and Herzegovina, Annex 10: Agreement on Civilian Implementation, Article I, <http://www.oscebih.org/essentials/gfap/eng/annex10.asp>.

their full compliance, to coordinate the activities of the civilian organizations and agencies for efficient implementation, to facilitate the resolution of difficulties in connection with civilian implementation, to participate in the meetings of donor organizations, to report periodically on progress in implementation of peace agreement and finally to guide the Commissioner of the International Police Task force in Annex 11 of the General framework Agreement.”⁶⁶ The last annex, Annex 11 envisaged the formation of a UN International Police Task Force (IPTF) to be responsible for the civilian law enforcement.

Table 1: The Dayton Annexes

Annex	Area of Authority	International Implementers
1-A	Military Aspects	NATO (IFOR/SFOR)
1-B	Regional Stabilization	OSCE
2	Inter-Entity Boundary	NATO (IFOR/SFOR)
3	Elections	OSCE
4	Constitution	European Court of Human Rights
5	Arbitration	(Local authorities)
6 Part B	Human Rights Ombudsman	OSCE, Council of Europe, European Court of Human Rights
7	Refugees & Displaced Persons	UNHCR
8	Commission to Preserve National Monuments	UNESCO
9	Commission on Public Corporations	European Bank for Reconstruction and Development
10	Civilian Implementation	Office of High Representative
11	International Police	UN

Source: General Framework Agreement, 1995.

Peace-building in Bosnia and Herzegovina followed the approval and implementation of the Dayton Peace Accord. The Accord established the framework for (re)-building a multi-ethnic state in BiH in various political, social, legal and economical aspects. The new state is described as a composite state formed by two entities: one Republic, Republika Srpska, and one federation, the Federation of Bosnia and Herzegovina. It has an exceptional system since the federation of an entity with another federation is unprecedented.

⁶⁶ *Ibid.*, Article II.

The complicated feature of the state has been the result of an inevitable compromise to convince the parties to end the war and maintain the BiH as an independent state. Thus, during the negotiations mainly bringing an end to the war and the frontier of the two Entities were stressed. For that reason, there was less attention on the functionality of the state structure designed by the Dayton. Therefore, BiH is now in a situation that state institutions do not function appropriately and encounter difficulties to implement the provisions of Dayton Agreements in some areas.

In sum, whereas the Dayton Accords is regarded as the most successful attempt to end the war in former Yugoslavia, it is at the same time criticized not to succeed in ending the conflict. There is still a question mark whether it was successful in achieving stability in Bosnia and Herzegovina. Many scholars raise the argument that it has structural flaws and inadequate provisions to respond the needs of the people in the post-war environment.⁶⁷

3. 2 Assessment of the Dayton Peace Agreement

The Dayton Peace Agreement has generally been criticized to be imposed rather than reached by the parties with a simple motivation: swift quest for stability. After more than nine years of international presence in BiH the goal of establishing stable, self-sufficient, functioning, unified state that is able to manage its own affairs still could not be achieved. Furthermore, it does not seem very close to the realization. There has been ongoing ethnically motivated violence, influential extremist politicians and a number of refugees and displaced persons awaiting settlement.⁶⁸

Among the early critics of the Dayton Accords Jane Sharp formulated a profound analysis of the agreement. Sharp argued that many of the current problems

⁶⁷ For more information see Elizabeth M. Cousens, Charles K.Cater, Towards Peace in Bosnia Implementing the Dayton Accords, Colorado: Lynne Rienner Publishers, 2001; Necmettin Alkan, 'Bosnia and Herzegovina in the Shade of Dayton Accords', Euroasian Studies, Spring 2002, no. 22; Jane Sharp, 'Dayton report card', International Security, Winter 97/98, Vol. 22 Issue 3; Anthony Borden, 'Moving Dayton to Bosnia', The Nation, vol. 262, issue 12, 3/25/1996; Charles G. Boyd, 'Making Bosnia Work', Foreign Affairs, Jan/Feb 98, vol. 77, issue 1.

⁶⁸Bronwyn Evans-Kent, 'Bringing People Back in: Grassroots Approaches to Peace in Bosnia-Herzegovina', Journal of International Relations and Development, vol. 5, no. 3, 2002, p. 300.

in Bosnia and Herzegovina are the outcomes of the four structural problems of Dayton, which could not be resolved during the three weeks of negotiations:

First, it is geared to an unrealistically short-term schedule, especially with respect to the stabilizing presence of NATO implementation forces. Second and third, it embraces two sets of contradictory goals: partitioning Bosnia into two political entities with separate armies while seeking a single integrated state with central institutions; and imposing arms limits on both entities despite arming and training only the Muslim-Croat federation. Fourth, the military and civilian aspects of the agreement are not well coordinated, making for a dangerous law enforcement gap and a fragmented aid program, and leaving little opportunity to exert economic leverage on recalcitrant local parties.⁶⁹

The dissertation will elaborate on the criticism shared by most of the scholars doing research on this field.

3.2.1 Short-ranged Arrangement

Peace building in ethnically divided societies is a hazardous undertaking and calls for a long-term commitment. Often due to the destructive impact of the civil wars, opponents need assistance to start and facilitate a reconciliation process. To begin with, a secure environment is vital. In the absence of a physical security peace building can not vigorously commence. Thus, the initial phase of the process needs an external military presence to monitor the “dismantling of forces, to restore freedom of movement, and to build confidence and trust.”⁷⁰ Provision of an entirely secure environment can take several years. However, the Dayton agreement in the beginning envisaged that the NATO Implementation Force (IFOR) would withdraw in one year. Likewise, one year was neither enough to build confidence nor to encourage reconciliation in Bosnia and Herzegovina (BiH).

On the other hand, international community saw the organization of first elections as its exit strategy for withdrawing troops.⁷¹ Therefore, insisted on a condition in the Dayton Accords the elections to take place between June 14 and September 14.⁷² In addition, during 1996 the anxiety about what would happen when

⁶⁹ Jane Sharp, ‘Dayton report card’, *International Security*, Winter 97/98, Vol. 22 Issue 3, p. 102.

⁷⁰ *Ibid.*, p. 109.

⁷¹ Anthony Borden, ‘Moving Dayton to Bosnia’, *The Nation*, vol. 262, issue 12, 3/25/1996; p. 21.

⁷² *Ibid.*, p. 21.

NATO left in December as scheduled was aggravated by the premature election date set by the agreement.⁷³ Although, establishment of a safe atmosphere was a pre-condition for the conduct of elections, the fact that NATO's mandate would have been over soon lead to the breach of that condition.

The first elections in BiH took place in the absence of freedom of movement and expression as well as life security. As a result, nationalist parties in Bosnia won the elections. Consequently, the mandate of IFOR had to be replaced by Stabilization Force (SFOR) of NATO. This initial short-ranged mandates was partly the result of short-sightedness and lack of expertise about the extent and duration of peace building missions.

3.2.2 Integration versus Partition

Dayton Peace Accords encompasses two converse elements. The agreement separated Bosnia along two entities: the Muslim-Croat Federation and the Republika Srpska. Conversely, international community sought "integration through implementation of civilian elements of the Accord such as refugee return".⁷⁴ Dayton partitioned the new state and drew a weak central government that the minorities could maintain their autonomy, which is significant for them to feel secure.⁷⁵ It also hoped that the two separate entities will merge when moderate parties and civil initiatives come forward in the future.

However, all ethnic groups in Bosnia: Serbs, Bosniaks (Bosnian Muslims referred as Bosniaks after Dayton) and Croats have been emphasizing different provisions of the Dayton agreement to pursue their own objectives.⁷⁶ For instance, Serbs and Croats try to utilize the terms of the Dayton that grant autonomous powers to their communities'. Especially Serbs are very keen to preserve the robust autonomy of their entity and stress the provisions in the Dayton agreement which strengthen the split among the two political entities. These are Annex 1-A and 1-B concerning the military aspects and regional stabilization of the agreement. Others

⁷³ Jane Sharp, 'Dayton report card', p. 110.

⁷⁴ Charles G. Boyd, 'Making Bosnia Work', Foreign Affairs, Jan/Feb 98, vol. 77, issue 1, p. 43.

⁷⁵ Ibid., p. 43.

⁷⁶ Jane Sharp, 'Dayton report card', p. 110.

incorporate Annex 2 and 3 which are respectively the inter-entity boundary line and elections. These conditions in fact enabled stabilization of the “October 1995 ceasefire by separating the warring factions, by exchanging prisoners, and by concluding two sets of arms control agreements.”⁷⁷

On the contrary, specific provisions⁷⁸ of Dayton devised to facilitate reconciliation of the people and ultimate integration of the two entities supported only by the Bosniaks and largely ignored by the leaders of the other two communities. As a result, the elements of partition have been exploited by the nationalist parties while the items for the integration denied in the absence of will from all parties to cooperate.

3.2.3 Arms Control versus Train and Equip

The train and equip program was build to assist the Muslim-Croat Federation, especially the Muslims, in case of another Serb attack if the peace agreement does not work.⁷⁹ Therefore, the US provided modern armament and training techniques to increase the capability of the Federation army. At the same time, Serbs were supposed to reduce their military equipment, according to the Dayton agreement, below the Federation.⁸⁰

Since Dayton Accords established an extensive NATO presence in BiH, such a train and equip program was not indispensable; it was the result of political motivations. Besides, Jane Sharp argued that:

Arm and train, or its smoother version train and equip assumed to cast a shadow over implementation of the Dayton agreement. It was not undermined just the confidence-building measures and the sub-regional arms control agreement mandated by Annex I-B, but also the reintegration of the federation and Republika Srpska armies, as an important precondition for an integrated Bosnia.⁸¹

⁷⁷ Ibid., p.112.

⁷⁸ Such as Annex 4 on the Constitution of a Reintegrated Bosnia-Herzegovina, Annex 5 on Arbitration, Annex 6 on Human Rights, and Annex 7 on Repatriation of Refugees and Displaced Persons. See Jane Sharp, ‘Dayton report card’, p. 112.

⁷⁹ Charles G. Boyd, ‘Making Bosnia Work’, p. 45.

⁸⁰ Ibid., p. 45.

⁸¹ Jane Sharp, ‘Dayton report card’, p. 112.

The US initiated train and equip program started in 1996 intended to enable the Muslim forces to go beyond the Serb forces. As a result, this would “enable the Muslim forces, together with Croats, to translate their military superiority into political dominance, either by threats to use their armed forces to conquer the Serb republic or by an actual conquest.”⁸² Train and equip program contradicted with the spirit of peace building. Sustainable peace can not be reached through such calculations and security considerations.

3.2.4 Separation of Military and Civilian Aspects

Another weakness of the implementation of Dayton Agreements regarded to be its content, which separates authority for its military and civilian provisions. Dayton appointed “a U.S. commander in chief for the NATO implementation forces and a High Representative to coordinate, the civilian aspects of the agreement.”⁸³ The High Representative is entrusted with maintaining contact with chief international institutions in BiH such as the OSCE, EU, UNHCR, UNDP and coordinating activities with NATO.

Besides, there is multiplicity of international institutions dealing with different aspects of civilian implementation. Elizabeth Cousens and Charles Cater mentioned that “the initial decision to decentralize implementation efforts among multiple international organizations and the unwillingness to use military resources in support of civilian implementation worked against Dayton’s integrationist goals.”⁸⁴ Moreover, the separation of military and civilian aspects led the NATO troops to be seen in Bosnia to implement just the military aspects of the Dayton but not the annexes dealing with the civilian issues.⁸⁵

This division brought two negative consequences. One of the damaging outcomes was the law enforcement gap. After the war, there was no mechanism to

⁸² Aleksandar Pavkovic, The Fragmentation of Yugoslavia, p. 181.

⁸³ Jane Sharp, ‘Dayton report card’, p. 113. For the details see Annex 10- Agreement on Civilian Implementation; Article I and Article II of the Dayton Agreement.

⁸⁴ Elizabeth M. Cousens, Charles K.Cater, Towards Peace in Bosnia Implementing the Dayton Accords, Colorado: Lynne Rienner Publishers, 2001, p.15.

⁸⁵ Edward Mortimer, Bosnia’s Fault Lines’, Financial Times, May 22, 1996. Cited in Jane Sharp, ‘Dayton report card’, p. 113.

enforce order, arrest war criminals, or establish secure environment for the return of refugees and displaced persons. The second was the absence of successful management of aid projects that result in defective use of carrots and sticks.⁸⁶

At the moment, it is too early to say that Dayton Agreement has brought sustainable peace for Bosnia and Herzegovina. There is a conviction that the Agreement contains some provisions that may lead to the breakout of war in future, and lacks provisions to fully eliminate the conflict and the division between the parties.⁸⁷ Besides, negative repercussions of the fact that Dayton was imposed on rather than agreed upon by the parties of the conflict persist. Therefore, it could have functioned as a starting point of a transitional period that would prepare the ground for future developments to take place in the following years. Alas, many issues though dwelled on carefully could not be carried into reality and remained on the paper so far. The issues that require agreement of the all parties also have not been entirely fulfilled yet.

⁸⁶ Jane Sharp, 'Dayton report card', pp. 113-114.

⁸⁷ Necmettin Alkan, 'Bosnia and Herzegovina in the Shade of Dayton Accords', *Euroasian Studies*, Spring 2002, no. 22, p. 39.

CHAPTER 4

IMPLEMENTATION OF DAYTON AND INSTRUMENTS OF PEACE-BUILDING IN BiH: I) GOVERNANCE AND SECURITY SECTOR REFORM

After the cessation of hostilities the Dayton Peace Accord's purpose was to restructure a multi-ethnic Bosnian state in which different ethnic groups would co-exist peacefully. Therefore, the agreement incorporated a wide range of provisions from governance reform, elections, punishment of war crimes to security sector as well as the judiciary, police and human rights. Dayton also promised all refugees to return back to their original homes, on account of re-establishing the demographic base on which a heterogeneous postwar state could be found.¹

As a result, most of the annexes except the first two covers the civilian aspects of the peace settlement. The civilian clauses involve the continuation of the humanitarian assistance as long as necessary; rehabilitation of infrastructure and economic reconstruction; the establishment of political and constitutional institutions; promotion of respect for human rights and the return of refugees and displaced persons; and the holding of free and fair elections according to the timetable in the General Framework Agreement.² Besides a number of priorities defined as rule of law, institution building, economic development and refugee return. The long-term goal of the international community in BiH has been to establish a well functioning, sustainable democratic system, which can take place among the European states.

For this end the central role for the implementation of civilian aspects of the Dayton was given to the High Representative. Annex 10 of the Dayton Peace

¹ Elizabeth M. Cousens, Charles K.Cater, Towards Peace in Bosnia Implementing the Dayton Accords, p. 33.

² The General Framework Agreement in Bosnia and Herzegovina, Annex 10: Agreement on Civilian Implementation, <http://www.oscebih.org/essentials//gfap/eng/annex10.asp>

Accords gave the Office of the High Representative, a far reaching mandate to decide, to interpret and implement policies as it sees appropriate and to substitute itself for local authorities when they fail to promote the goals and principles identified in the Accords.³ As a result, High Representative is responsible for facilitating the Parties' own efforts and coordinating the activities of the organizations and agencies involved in the civilian implementation.⁴

However, there is also a group of international institutions involved in the policy making process for peace building in BiH. One of the main bodies is the Peace Implementation Council (PIC), which was established at the London Peace Implementation Conference in December 1995. It comprises all fifty-five states and various international organizations and agencies participated to the Conference. The PIC supervises and operates through the authorization of its members, who are interested in peace implementation.⁵ The High Representative regularly reports the PIC with respect to the implementation of Dayton.

The Steering Board is the executive arm of PIC that provides the OHR political guidance. The Steering Board members are the US, Russia, France, Germany, Japan, Canada, Italy, the European Union, the European Commission and the Organization of Islamic Countries represented by Turkey. The Board of Principalities initially included the OHR, EUPM, EU, UNHCR, SFOR, World Bank, OSCE, UNDP and IMF. However, through a streamlining process, the Board of Principalities reduced to OHR, SFOR, OSCE, UNHCR and EUPM.⁶ Although the financial institutions of EU, World Bank, UNDP and IMF participate they are not in the structure any more.

Besides, the Contact Group (France, Germany, Italy, Russian Federation, United Kingdom and the United States) contributes to the PIC Steering Board decisions. There are also ad hoc meetings of the signatories, involving the Bosnian, Croatian and Serbian Presidents, the High Representative, NATO's Commander,

³ Annex 10, Article II, para. 1.

⁴ Annex 10, Article I, para 2.

⁵ David Chandler, *Bosnia: Faking Democracy After Dayton*, p. 56.

⁶ For more information see <http://www.ohr.int>.

the Head of the OSCE Mission, organized to discuss policy and apply pressure to the Parties, both directly and through pressure on Croatia and Serbia.⁷

The Dayton Accords outlined an extensive role for the main international agencies to implement the General Framework Agreement for Peace and the decisions of the international policy making bodies in Bosnia. However, in contrast to military implementation supervised by NATO, the responsibility of civilian implementation was distributed annex by annex to the principal agencies.⁸ The OSCE and the Provisional Election Commission (PEC) administered the preparation and conduct of elections. The UNHCR undertook return of refugees and displaced persons. The UN peacekeeping operation, which was in Bosnia since 1992 turned to the International Police Task Force (IPTF) to monitor and reform the Bosnian police force. The other key implementation organizations included the Council of Europe, the UN High Commission on Human Rights, and the European Court of Human Rights to improve human rights conditions. The state of missing persons have been under the liability of the International Committee of Red Cross (ICRC).⁹

As a result of this framework the new Bosnian state was made up highly dependent on international community's existence and supervision. In addition, over the years powers given to international community through its implementing institutions have gradually increased and transfer of authority to the locals has been kept postponed. For example the High Representative's role was initially more consultative and informative than to be fully able to direct or allocate the policies. However, the vague and undefined authority of the OHR has been supplemented by the decision of PIC meetings.

In May 1997, during the Sintra meeting of the PIC new measures to warrant co-operation with the High Representative were declared. The new measures incorporated the power to monitor the deadlines and enforce penalty in case of non-compliance. They also comprised visa limitations for uncooperative Bosnian

⁷ David Chandler, Bosnia: Faking Democracy After Dayton, p. 56.

⁸ Elizabeth M. Cousens, Charles K.Cater, Towards Peace in Bosnia Implementing the Dayton Accords, p. 39.

⁹ Ibid., p. 39.

representatives, economic sanctions and the capacity to restrict or defer any media set-up which contradicts with the Dayton agreement.¹⁰

Later, at the Bonn meeting of the PIC the High Representative's powers further extended. The High Representative was empowered to choose the time, place and chair of vital meetings; to pass provisional procedures when the Bosnian representatives fail; and to take measures against any non-compliant elected or appointed official.¹¹ At present, executive and legislative powers lies in the hand of OHR who has the power to directly impose legislation, to veto political candidates, and remove obstructionist officials or dismiss uncooperative elected members of Bosnian governing bodies.

Moreover, the mandates of leading international organizations have been either regularly extended as it was the case with SFOR, or redefined after a period of extension as it is with OSCE's mandate. Election managing role of the OSCE was regularly extended from 1996 to 2002; later its task was shifted to the educational reforms. In addition to the regular extension of mandates, institutions or their mandates have been replaced by another as the European Police Mission (EUPM) took over the International Police Task Force (IPTF). In case of the UN Mission in BiH (UNMBH), it transferred the responsibility to the UN Development Program (UNDP) after its mandate was over. Recently, SFOR is replaced with European Force (EUFOR).

The extension of mandates, replacements and creation of new mandates for the major international organizations have been justified with the assertion to stimulate and solidify the peace building process. As a consequence since the signing of Dayton Accords in 1995, Bosnia and Herzegovina has become the most advanced international experiment of peace building.

¹⁰ 'PIC Communique: Political Declaration from Ministerial Meeting of the Steering Board of the Peace Implementation Council', Sintra, 30 May, <http://www.ohr.int/docu/d970530a.htm>. Cited in David Chandler, *Bosnia: Faking Democracy After Dayton*, p. 54.

¹¹ 'Bonn PIC Declaration', 10 December 1997, Article XI, para 2. Cited in David Chandler, *Bosnia: Faking Democracy After Dayton*, p. 54.

4.1 Instruments of Peace-building in Bosnia and Herzegovina

4.1.1 Governance Reform

Creation of a multi-ethnic Bosnian state has been the principal feature of international community's peace building strategy since Dayton. The focal point of this strategy is "decentralization of political power and the provisions of security to all ethnic groups" in order to protect their vital interests within a unified Bosnia.¹² Thus, the Dayton Peace Agreement established Bosnia and Herzegovina (BiH) on a very decentralized administrative structure. The state of BiH consists of two constituent Entities, the Croat-Bosniak Federation of BiH (FBiH) occupying 51 per cent of the territory and the Serb entity, named Republika Srpska, occupying the remaining 49 per cent.¹³

According to the Article III of the Bosnian Constitution the Entities are responsible for "all governmental functions and powers not expressly assigned in this Constitution" such as civilian law enforcement, education, agriculture, health care and social policy.¹⁴ Despite foreign policy is under the control of the central government, the entities are entitled to establish separate relationships with neighboring states. With the consent of the federal Parliamentary Assembly, they are allowed to enter agreements with foreign states and international organizations.¹⁵

Another important point is the power of taxation. The power and financial responsibilities of the Entities with regard to the federal institutions explained in Article VIII of the Constitution. It articulates that the Federation should provide two-thirds and the Republika Srpska one third of the revenues

¹² David Chandler, Bosnia: Faking Democracy After Dayton, p. 66.

¹³ The first High Representative Carl Bildt described the new set up as follows: The two entities will probably be the most decentralized state in the world. It will be a very loose and highly decentralized state with weak central powers for its common institutions, and thus unlike any other state in existence. What is necessary in order to make peace work is to have effective and true power sharing between the two entities and the three communities ... Power sharing is the essence of the Constitution that is at the core of the Peace Agreement. Cited in David Chandler, Bosnia: Faking Democracy After Dayton, p. 67.

¹⁴ The General Framework Agreement in Bosnia and Herzegovina, Annex 4: The Constitution of BiH (Article III.3a), <http://www.oscebih.org/essentials/gfap>

¹⁵ Ibid., Article III.2a.

needed by the State budget. The Parliamentary Assembly of the State is authorized to determine sources and total revenues of the Bosnian institutions.¹⁶

As a result political power is concentrated at the intermediate levels and the entities are characterized by a high degree of political, administrative and fiscal autonomy. Although the name Entity had been cautiously picked to underline the non-state character of these institutions, both Entities have state-like structures, comprising a President, a Government, a Legislature and a Judiciary.¹⁷ Despite of the fact that Entities' relations to the federal level are identical the internal administrative structures of the entities are rather different and uneven.

The FBiH is extremely decentralized, with an intermediate administrative level formed by ten cantons (five Bosniak, three Croat and two mixed) which have a significant degree of fiscal autonomy, and a lower level of 84 municipalities. On the other hand, the RS is a unitary state with centralized structures, fiscal power concentrated at the entity level, and there is no intermediate level but merely 63 municipalities.

Accordingly, the legislative body in the Republika Srpska consists of a National Assembly with 83 members directly elected by simple proportional representation and indirectly elected RS Council of Peoples. The Council have 28 members, which are 8 Bosniak, 8 Croat, 8 Serbs and 4 'Others', appointed from the National Assembly. Since the BiH system is based on ethnic representation the 'Others' comprise minorities which the largest group is the Roma; and the people who identify themselves as Yugoslavs. This people consider themselves Yugoslavs either ideologically or they are from mix marriages. The Republika Srpska government does not have cantons or other intermediary structures, therefore directly oversees the municipalities.

In the Federation, the Presidency, the Vice-Presidency, and the office of the Prime Minister rotate between the two ethnic groups, Bosniaks and Croats. A bicameral system had been instituted with a directly elected House of

¹⁶ Jens Woelk, 'Federalism and Consociationalism as tools for state (re)-construction? Experience from Bosnia and Herzegovina', Unpublished Paper, EURAC European Academy of Bolzano, 2003, p. 3.

¹⁷ *Ibid.*, p. 3

Representatives with 98 members, and a House of Peoples, which represents the ten cantonal assemblies. Its 58 members are elected from members of the cantonal legislatures in the proportions of 17 Bosniaks, 17 Croats and 17 Serbs and 7 Others.

Nevertheless, both Entities have been unsuccessful to perform real control over their territories. It is argued by Florian Bieber that “the cantonal configuration of the FBiH played a role that Croat cantons and army units could maintain separate and parallel institutional structures and direct political, institutional and financial relations with the Republic of Croatia.”¹⁸ In case of the Republika Srpska, central administration and physical separation have led to a similar weakness. The Dayton Peace Agreement declined to create a unified Serbian region that might wish to join Serbia later, thus divided into two linked only by the city of Brcko.¹⁹

At the state level, to defend the interests of the three communities, the central state mechanisms were organized on the basis of an ethnic key which provided protection of “vital interests” and representation to all three sides.²⁰ In this direction, the powers of the Presidency, Council of Ministers, Parliamentary Assembly and constitutional procedures have been designed.

The three-member Presidency, whose members are one Croat, one Serb and one Bosniak are directly voted from the Federation and Republika Srpska. The Presidency is obliged to adopt all Presidential decisions by consensus (Annex 4, Article V. 2). When consensus lacks, a dissenting member of the

¹⁸ Florian Bieber, ‘Croat Self-Government in Bosnia -A Challenge for Dayton?’, European Center for Minority Issues (ECMI Report), No. 5, Flensburg, May 2001, <http://www.ecmi.de>. Cited in Jens Woelk, ‘Federalism and Consociationalism as tools for state (re)-construction?’, p. 3.

¹⁹ Brcko is a town in northern Bosnia, which was mainly Bosniak that had been ethnically cleansed by the Serbs. The issue of Brcko could not be settled at Dayton due to the sensitivity of the parties and international fears that it could renew fighting. It was a matter of life and death for both parties because of its location as the only connection between the divided halves of the ethnic Serbian entity, the Republika Srpska in the new Bosnia and Herzegovina. Thus, Dayton agreement handed the problem to a tribunal. The arbitrator Roberts Owen made its judgment that Brcko will be a shared condominium between the Federation and Republika Srpska, creating a district that encompassed the entire pre-war Brcko municipality. With this decision Owen aimed to unite the areas under the control of Serbs, Croats and Bosniaks. In spite 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. Thus, the OHR office responsible for Brcko is handicapped by the lack of enforcement mechanism. For more information see <http://www.ohr.int>.

²⁰ David Chandler, Bosnia: Faking Democracy After Dayton, p. 67.

Presidency can claim a decision to be harmful to the vital interest of the ethnic community he/she represents. In this case, the decision is sent either to the National Assembly of Republika Srpska or the Federation House of the Peoples. When the statement is approved by a two-thirds vote of these bodies, the Presidency decision can not pass.

The executive consists of Council of Ministers, whose Chair is designated by the Presidency for a four year-term with a recent change from the previous eight month rotating basis.²¹ The Council of Ministers comprises beside the Chairman eight ministries which are the ministry of foreign affairs, security, foreign trade and economic relations, finance and treasury, transport and communications, civil affairs, human rights and refugees, and justice. For each ministry there is a minister and a deputy minister.

The legislative organ has a bicameral parliament comprising the House of Representatives and the House of Peoples. The House of Peoples has 15 appointed representatives: five Croats, five Bosniaks, and five Serbs. The House of Representatives consists of 42 elected members: 28 from the Federation and 14 from RS. Two-thirds of its members are elected from the territory of the Federation, and one-third from the territory of Republika Srpska. Both House of Representatives and House of Peoples have to support a legislative decision. A quorum is necessary for action: in the House of Peoples at least nine members (three of each constituent people), in the House of Representatives a majority has to attend.²²

Decisions are usually taken by a simple majority vote. However, there is a kind of suspensory veto for the representatives of each entity:

When no cross-community minimum approval of at least one third of deputies from each entity can be achieved, the chairs of each House are obliged to present a re-elaborated draft within three days. In case that this attempt fails, a simple majority is sufficient for the adoption of the decision. In this case, an absolute veto is possible, if in the second voting procedure

²¹ Before the Constitutional amendments, which radically changed the BiH's system in 2000, the Council of Ministers composed of six ministries and there were one minister and two deputies, whose members must not be from the same ethnic group, for each ministry rotating every eight month. Constitutional amendments and its consequences will be explained in detail in the following section.

²² Annex 4, Article IV, para 3. (c).

two thirds of the members representing one entity are voting against the decision.²³

In addition to this veto-powers “vital interest-mechanism” can be used by each constituent peoples to hinder any decision. In case of an issue regarded vital interest, a majority also within the three groups of present members is required for the decision.²⁴

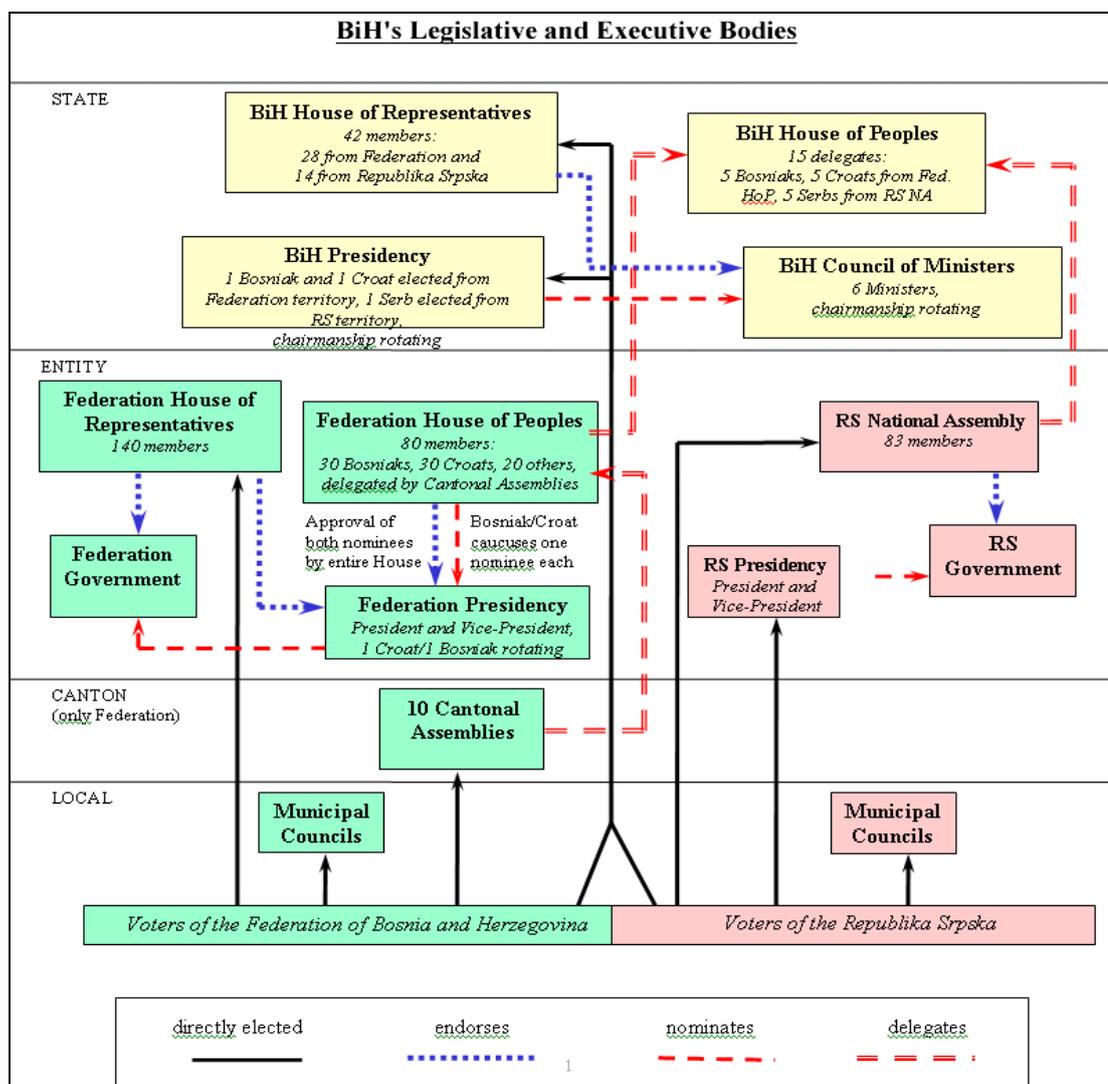


Table 2: BiH's State Structure before the Constitutional Changes.

Source: Office of High Representative, Sarajevo.

To sum up, the main characteristics of Bosnian political system are the direct election of the triple Presidency, division of electorate on ethnic grounds

²³ *Ibid.*, Article IV.3d.

²⁴ *Ibid.*, Article IV.3e.

and the wide-ranging autonomy of the Entities. The complex governance structure of the BiH was the outcome of ardent negotiations over the ethno-territorial arrangements in Dayton. Thus, the new system was built on power sharing between the different ethnic groups in BiH. The system also encompasses diffusion of power from center to the local level, which result in the weakness of the common institutions and their limited powers. Subsequently, the four building blocks of the system are the participation of all representatives of the ethnic groups in the government; proportionality as the basic criterion of political representation; a high degree of autonomy for the constituent groups (even the military and police, education and tax collection were assigned to the Entities) and finally minority veto as the crucial instrument for the protection of vital interests.²⁵

Nevertheless, this complex and multiple layers of governance which was designed to provide maximum protection to all ethnic groups in Bosnia and Herzegovina after the end of war is neither functioning nor appropriate for building up peace and restructuring the country. The large degree of autonomy given to the ethnic groups has been abused especially by the nationalist politicians who managed to remain in power since 1995. They actually have shown no interest to strengthen the State institutions and implement the necessary reforms agreed at Dayton to further integrate the Entities. Contrary to the expectations of the international community loyalty of political representatives in the institutions lies within the Entities: the national groups they belong to and which they represent.

Numerous efforts of the international community to strength the state institutions such as the introduction of VAT (Value Added Tax) and common customs administration faced with the reluctance of Republika Srpska. Being not able to deliberately oppose since fearing resentment of the international community, it tries to paralyze the efforts though endless bargains and very slow responses for the sake of retaining its financial autonomy.²⁶ All important

²⁵ Jens Woelk, 'Federalism and Consociationalism as tools for state (re)-construction?', pp. 6-7.

²⁶ Interview with Damir Gnjidic, Legal Officer, Office of High Representative, Sarajevo, 11 July 2003.

decisions since Dayton such as the issuance of single identity cards, passports, single currency, number plates for cars and the flag of RS failed to be passed in the local decision mechanisms and imposed by the High Representative.

One of the fundamental problems of the BiH is while the Federation, especially the Bosniaks, tries to strengthen the central government and State institutions the RS has a tendency towards a loose federation.²⁷ Although many scholars and experts see this fact as the main flaw of the BiH's system, some others perceive the veto power and proportional representation, which force people to identify themselves according to their ethnicity instead of citizenship as the main weaknesses of Dayton's Bosnia.²⁸ Besides, the report of the United Nations Development Program (UNDP) in BiH summarized the key problems of BiH as constant internal contests about the role of central authorities, lack of unified political will and unchanged bureaucratic patterns of behavior of administration at all levels.²⁹

On paper, Dayton appeared to provide the security that was so essential after the war and to bridge the dilemma of unifying the state, as well as guaranteeing the protection of minorities through institutional safeguards. However, this special feature of BiH entails many difficulties. The decentralized governmental structure of BiH was not introduced as an instrument for an efficient system as it is normally the case, but as an instrument to protect ethnic interests and create a basis for post-war political stability.³⁰ The basic principles of "good governance such as effectiveness and efficiency, transparency and participation have thus remained neglected."³¹ Later, the high cost of ignoring these critical aspects started to emerge.

²⁷ Confidential interview with a Political Officer, Office of High Representative, Sarajevo, 14 July 2003.

²⁸ Interview with Prof. Joseph Marko, Co-Director of the Research Department 'Minorities and Autonomies', European Academy of Bolzano, 2 September 2003.

²⁹ Bosnia and Herzegovina, 'Human Development Report/Millennium Development Goals 2003', UNDP in BiH, June 2003, p. 26.

³⁰ *Ibid.*, p. 26.

³¹ *Ibid.*, p. 26.

4.1.1.1 Constitutional Reforms

The Constitutional Court of BiH initiated a process in July 2000 to ease the functioning of the complex government structure. The Court required the two entities to change their constitutions to guarantee equality of the three communities throughout Bosnia and Herzegovina. The decision of the Court challenged the Dayton Peace Accords and gave BiH a chance to become a functional multi-ethnic state.

Beyond question the most important verdict for improving functionality was the Constitutional Court's decision at Entity-level. The critical question that the Court should have to answer was whether the State constitution grant Bosnia's constituent peoples: Bosniaks, Croats and Serbs, equal status all over Bosnia and Herzegovina or whether they are equal just at the State level.

In fact, the Court dealt with some basic questions of a multi-ethnic system, such as "the meaning of the constitution, the constituent peoples, the right to self-determination, the affiliation with a minority group, the federal structure of the State, and finally the political representation of the groups."³²

Regarding the political representation of ethnic groups in BiH, the Court needed to distinguish constituent peoples and minorities. According to the Court Dayton designated Bosniaks, Croats and Serbs as constituent peoples instead of national minorities.³³ Therefore, they can not be put in a minority position in any of the Entities. The Constitution states that the Entities are not supposed to discriminate against the constituent peoples of BiH, regardless of the fact that some might be in a position of numerical minority such as the Serbs in the FBiH or Bosniaks and Croats in the RS. The territorial separation of BiH into two Entities can not be used to legitimize ethnic domination, homogenization or a mechanism to sustain ethnic cleansing.³⁴

Therefore, the Constitutional Court revised particular questions in the provisions of the two entity constitutions claimed to be incompatible with the state

³² Jens Woelk, 'Federalism and Consociationalism as tools for state (re)-construction?', p. 10

³³ Constitutional Reforms, Article 63. (Available on <http://www.ohr.int>).

³⁴ Constitutional Reforms, Articles 59, 60, 61. (Available on <http://www.ohr.int>).

constitution.³⁵ Concerning Republika Srpska, the Court decided the elimination of all references to sovereignty, self-determination, independence in the preamble of the RS Constitution and the determination of the Bosnian Serb people “to link their State with other States of the Serb people”.³⁶ The Court declared that the Serbian entity “must not describe itself as the “State of the Serb people”, and ruled against a number of other specific provisions, including certain references to “social property”, which it deemed incompatible with the constitutional protection of the free market.”³⁷ In relation to the Federation, the Court stated that Bosniaks and Croats shall not be delegated as the only constituent peoples.

These requirements of the Court have all been accepted by the Constitutional Commissions and the main political parties. The Court declared that the reference to three “constituent peoples” in the preamble of the Bosnian constitution, a concept that remained undefined in the text, establishes a principle of collective political equality of the three peoples throughout the territory. The internal structure of the Bosnian state cannot serve as a constitutional pretext for upholding the effects of ethnic cleansing. The Court further stated that, in the Federation, it is unconstitutional to reserve legislative, executive or judicial posts exclusively for Bosniaks and Croats.³⁸

Dario Sikuljak the National Political Officer of the OSCE Mission to BiH described that the main principles governing BiH are principles of parity, consensus and rotation. Almost everything is based on these three principles in the country. Therefore, after the signing of the Dayton Peace Agreement the second most important thing happen to be the constitutional amendments. In the year 2000, the Constitutional Court of the Bosnia Herzegovina adopted a decision according to which the entity constitutions are not in compliance with the State Constitution. This was because in the Federation the category of constituent people was not very familiar with the rest of Europe.³⁹

According to Dario Sikuljak the status of constituent peoples guarantee positions in the government, in the parliament and in all levels of authority. In the Federation, the constituent peoples before the year 2000 were only Bosniaks and Croats. Therefore, Serbs were not included as constituent peoples. They were

³⁵ ESI European Stability Initiative, ‘Imposing Constitutional Reform? The Case for Ownership? A Discussion Paper’, 20 March 2002, <http://esiweb.org>. p. 5.

³⁶ *Ibid.*, p. 5.

³⁷ *Ibid.*, p. 5.

³⁸ *Ibid.*

³⁹ Interview with Dario Sikuljak, National Political Officer, OSCE Mission to Bosnia and Herzegovina, Sarajevo 15 July 2003.

considered as minority while in the RS part only Serbs were considered as constituent people in that case Bosniaks and Croats were considered minorities. As the State Constitution affirms that in the state of Bosnia Herzegovina all three peoples are constitutive, the Constitutional Court ordered the entities to harmonize their constitutions with state constitution.

In the beginning of 2001, the High Representative decided to create Constitutional Commissions in both Entities. The Commissions would prepare constitutional amendments and inspect the work of the entity parliaments to safeguard non-discriminatory legislation.⁴⁰ However, they failed to reach agreements. The Commissions worked on proposals during 2001 until the early 2002 without achieving an outcome. Eventually, Sarajevo Agreement was signed on 27 March 2002, which specified the principles concerning the changes in the Entity constitutions.⁴¹ The agreement was not signed by the all parties; the RS representatives noted their reservations on certain issues, while the HDZ refused to sign anything, although it was not signed by all parties.⁴² Therefore, the High Representative Wolfgang Petritsch who was upset with the very slow progress of the parties, imposed in April the decisions to bring the two Constitutions in line with the Court's order.⁴³

As a consequence, Bosniaks, Croats and Serbs were recognized as constituent peoples in both entities. An Upper House was created in the Republika Srpska and two vice presidential positions installed in each Entity for the representation of the three constituent peoples, "which requires the holders of the three offices to come from different constituent peoples."⁴⁴ The Sarajevo agreement also recorded "vital interest" including education, religion, language, culture, promotion of tradition, and equal representation in government institutions and the mechanisms to safeguards those interests.⁴⁵ At last, proportional representation for all ethnic groups within both Entities as a constitutional principle has been accepted.

⁴⁰ ESI European Stability Initiative, 'Imposing Constitutional Reform? The Case for Ownership? A Discussion Paper', p. 2.

⁴¹ 'Implementing Equality: The "Constituent Peoples" Decision in Bosnia', p. 7.

⁴² *Ibid.*, p. 7.

⁴³ Jens Woelk, 'Federalism and Consociationalism as tools for state (re)-construction?', p. 12.

⁴⁴ *Ibid.*, p. 12.

⁴⁵ 'Implementing Equality: The "Constituent Peoples" Decision in Bosnia', pp. 16-17.

However, the imposition of the constitutional changes by the High Representative questioned by European Stability Initiative intellectuals on the basis that there was no need for urgency that the parties could be allowed to negotiate and learn to compromise, and the argument of approaching elections, thus, time pressure to pass the amendments before the elections to evaporate extreme nationalism could not be accepted as a valid judgment.⁴⁶ Nevertheless, there is a consensus on the Court's contribution for stimulating minority return, participation in public life in terms of recruiting minority police officers, judges and prosecutors, and increasing implementation of laws on the return of property.⁴⁷ The course of reversing ethnic separatism changed the country in a way that it facilitated cross-community existence.

To sum up, the Court's decision was considered a turning point and a revolutionary step in the development of BiH because it changed the entire *modus operandi* and the landscape of the country. Before that in the RS part of BiH only one people, Serbs, were dominating. They were the representatives in the government, in the parliament and the other ethnic groups were not represented in the government, had only minor representation in the parliament and no representation at all in institutions such as government agencies and public offices. Hence, after Dayton Peace Agreement, constitutional changes considered to be the most important development in recent BiH's history.

Additionally, constitutional changes allowed for streamlining and downsizing the administration in Bosnia. With the harmonization of the constitutions, the number of deputy ministers in the Council of Ministers could be downsized from one minister and two deputies, which can not be two from the same ethnic group, to one minister and one deputy for each ministry at the State level. This also allowed for equal treatment of all three peoples in the entire territory of the BiH that's why it is singled out among the most important occasions in the recent history of the country.

Yet, there are problems with the implementation of the constitutional changes. Until now, none of the entity parliaments has enacted all the amendments. Some parts were implemented. Yet the provisions stressing proportional ethnic representation in public institutions are mainly ignored. Moreover, it is not possible

⁴⁶ ESI European Stability Initiative, 'Imposing Constitutional Reform? The Case for Ownership? A Discussion Paper', pp. 1-4.

⁴⁷ *Ibid.*, p. 6-7.

to find the complete and amended texts of the RS and Federation constitutions on their government or parliamentary websites.⁴⁸ Alas, the RS government site still displays the old constitution's definition of the RS as a "state" of the Serb people whose official language is Serbian and script Cyrillic.⁴⁹ Nevertheless, constitutional changes are still a good start and produced a forum which might be more fruitful in future.

4.1.1.2 Democratization

The Organization for Security and Cooperation in Europe (OSCE) Mission in Bosnia that was launched shortly after the Dayton Agreement has a long term goal of peace building in the country. The Agreement bestowed the responsibility to OSCE for establishing the ground for representative government and facilitating the accomplishment of democratic goals in Bosnia and Herzegovina. These goals led to the development of a separate Democratization Branch in 1997, an exceptional attempt for an international institution.⁵⁰

Through its democratization program the Organization tries to promote the development of democratic institutions and a participatory culture. From the grassroots to the state level it seeks to support the development of a liberal political process, professional government practices and help the easy transition of the country to a stable and democratic state.⁵¹ The program also encourages Bosnians to participate in the domestic affairs of the country.

The initial focus of democratization program has shifted from civil society development to a wider commitment of governance and political development issues. However, the organization states that the ultimate goal of it remains to improve the representation of citizens' needs in all political process and at all levels of governance. In this regard, democratization activities of OSCE in various levels of governance include municipal, cantonal, parliamentary and civil society. It focuses on "capacity building through projects and training seminars aiming generally the

⁴⁸ 'Bosnia's Nationalist Governments: Paddy Ashdown and the Paradoxes of State Building', p. 4.

⁴⁹ *Ibid.*, p. 4.

⁵⁰ David Chandler, 'The Limits of Peacebuilding: International Regulation and Civil Society Development in Bosnia', *International Peacekeeping*, vol. 6, no. 1, Spring 1999, p. 112.

⁵¹ <http://www.oscebih.org/democratization/homedem.asp>, p.1.

twin goals of expanding the participation of local communities in all areas of public life and enhancing government ability to respond the needs of its citizens.”⁵²

Thus, the OSCE’s Democratization Branch initiated comprehensive projects covering broad aspects of governance in BiH. Among the wide-ranging projects there were Municipal Infrastructure Finance Implementation Project (MIFI) that 34 municipalities got budget and finance training.⁵³ A Capital Planning Committee (CPC) in each municipality was a distinct part of the MIFI program. Most municipalities have established Capital Planning Committees that included citizen representation and Strategic Planning Seminars (SPS) were given for the legislative authority in all MIFI municipalities.⁵⁴

Moreover, Municipal Association Building targeted rising inter-municipal co-operation in BiH regionally. As part of this program, the OSCE assisted in the formation of municipal co-operation projects in Zenica-Doboj, Una Sana and Tuzla Cantons.⁵⁵ Meetings were held between mayors and MPs in the RS. Municipal councilors trained on the importance of their representative, legislative, and oversight roles. Besides, municipalities also engaged in information sharing and mutual assistance. Canton Administration Project of the OSCE’s Democratization Branch implemented as well in three selected Cantons in Bosnia with the accession of the third and final Canton, which was Canton 6.⁵⁶

Likewise, Parliamentary Support Project (PSP) was started which incorporated assessment of parliamentary needs and priorities too. A group of parliamentary experts from various OSCE member states was created to assess both the needs of parliament and the success of PSP activities.⁵⁷ An extra project on Civil Society (CSP) was designed to encourage the establishment of different citizen bodies. This covered ad-hoc pressure groups and citizen networks. During the Civil

⁵² ‘The OSCE Fact Sheet’, <http://www.oscebih.org>, p. 3.

⁵³ ‘OSCE Democratization Semi-annual Report 2001’, <http://oscebih.org/democratization/homedem>, pp. 1-34.

⁵⁴ *Ibid.*, p. 3.

⁵⁵ *Ibid.*, p. 5.

⁵⁶ *Ibid.*, pp. 6-8.

⁵⁷ *Ibid.*, pp. 8-10.

Society Program many local NGOs were encouraged and educated in lobbying and advocacy to improve the impact of BiH civic actors in the policy making process.

In short, it was argued that democracy aimed to be installed via implementing certain institutions and mechanisms in BiH.⁵⁸ However, this external democracy promotion and influence over its political development has been severely criticized by many observers.⁵⁹ International community established a democratic institutional framework in BiH but Bosnian people failed to ensure their democratic and peaceful functioning. Another problem was considered to be the result of ignorance of Bosnians about democracy which was explained by a joke: “The opposition party leader asks the peasant why he is not going to vote for him. The peasant says that he will vote for him. The opposition leader asks ‘When?’. The peasant says ‘When you get in power’.”⁶⁰

4.1.1.3 Role of the Office of High Representative

The distinctive feature of the BiH is the massive involvement of the international community, which takes shape particularly on the institution of the High Representative. Reluctance of the local officials, both on State and Entity level to implement the Dayton Agreement resolved by the international community through the direct intervention of High Representative. This transferred the institution from a mediator to an integral part of the current government system of the country.

May 1997 was the crossroads of this change, “when the Peace Implementation Council authorized the OHR to stop incitations to violence broadcast on public media.”⁶¹ As an exceptional movement, international peacekeeping troops took over the Republika Srpska public television broadcast; at the same time the OHR ordered the withdrawal of the management board.⁶² The unexpected success of such interference led the PIC to grant the OHR new powers over the institutional

⁵⁸ Victor D. Bojkov, ‘Democracy in Bosnia and Herzegovina: Post-1995 Political System and its Functioning’, Southeast European Politics, vol.4, no.1, May 2003, p. 48.

⁵⁹ For more information see Victor D. Bojkov, ‘Democracy in Bosnia and Herzegovina: Post-1995 Political System and its Functioning’, Southeast European Politics, pp. 41-67.

⁶⁰ David Chandler, ‘The Limits of Peacebuilding: International Regulation and Civil Society Development in Bosnia’, International Peacekeeping, vol.6, no.1, Spring 1999, p. 120.

⁶¹ Gerald Knaus, Felix Martin, ‘Lessons from Bosnia and Herzegovina Travails of the European Raj’, Journal of Democracy, vol.14, no. 3, July 2003, p. 64.

⁶² Ibid., p. 64.

reform, legislation, and employment in public sector to implement the peace agreement.⁶³

The High Representative's powers expanded in Bonn in December 1997 to cover a variety of subjects. To facilitate the solution of difficulties faced the High Representative had the authority to take binding decisions, if he finds them necessary, on those matters:

- a) timing, location and chairmanship of meetings of the common institutions;
- b) interim measures to take effect when parties are unable to reach agreement, which will remain in force until the Presidency or Council of Ministers has adopted a decision consistent with the Peace Agreement on the issue concerned;
- c) actions against persons holding public office or officials who are absent from meetings without good cause or who are found by the High Representative to be in violation of legal commitments made under the Peace Agreement or the terms of its implementation.⁶⁴

This authority was called "Bonn powers" to avoid the impression that it was conferring additional functions on the High Representative. However, "they have come to mean two powers in particular: the power to impose laws; and the power to dismiss any public official from power."⁶⁵ The Bonn powers were granted "when formal and procedural disputes in the state institutions were causing frequent deadlocks, delaying the passage of laws required for the institutional reform agenda."⁶⁶

Nevertheless, the Bonn powers have been increasingly used by the subsequent High Representatives. This led to the growing criticisms as well. A widely debated article published in the Journal of Democracy pointed out that after the end of fighting in BiH since 1995, despite the large amount of democratization assistance, the international mission has arrived at this paradoxical conclusion: What

⁶³ Ibid., p. 64.

⁶⁴ Bosnia and Herzegovina 1998: Self Sustaining Structures, Bonn peace Implementation Conference, 10 December 1997, Annex, Article XI, para 2. Cited in 'Reshaping International Priorities in Bosnia and Herzegovina Part Two', European Stability Initiative Report, 30 March 2000, <http://www.esiweb.org>, pp. 25-26.

⁶⁵ 'Reshaping International Priorities in Bosnia and Herzegovina Part Two', European Stability Initiative Report, 30 March 2000, <http://www.esiweb.org>, p. 26.

⁶⁶ Ibid., p. 26.

Bosnia and Herzegovina needs is not democratic domestic politics, but government by international experts.⁶⁷ In BiH, outsiders do more than participate in shaping the political agenda: “They actually set that agenda, impose it, and punish with sanctions those who refuse to implement it.”⁶⁸

The core of this structure is that the OHR has unrestricted legislative and executive powers. High Representative is entitled to dismiss any elected or appointed officials such as presidents, prime ministers, judges, or majors without putting the decisions in front of a judicial review. He or she is capable of rejecting any candidate to run in the elections without presenting any evidence. Furthermore, the High Representative can impose legislation and create new institutions regardless of its cost to the locals.⁶⁹ The OHR is not accountable to any elected institutions by no means. For instance, in June, 2004 the High Representative dismissed 60 democratically elected Bosnian politicians on account of hindering the peace process.⁷⁰

This is the central criticism of the international regime in Bosnia that there are “no checks and balances on the High Representative, and no local or international accountability.” The article in the *Journal of Democracy* argues that “substantive or procedural checks” on the exercise of the powers of the High Representative are absent from the beginning.

In a mission whose staffers were worried about the potential abuses of authority by local figures, the absence of any serious though concerning limits on the mission’s own extraordinary powers was remarkable. Before long, the Bonn powers were being used for reasons of convenience and to address such general and abstract concerns as ‘corruption’. The OHR shifted from arguments based on concrete threats to the absence of core institutions to asserting a general need to push reforms that Bosnian politicians were unwilling or unable to implement.⁷¹

⁶⁷ Gerald Knaus, Felix Martin, ‘Lessons from Bosnia and Herzegovina Travails of the European Raj’, pp. 60-74.

⁶⁸ *Ibid.*, p. 61.

⁶⁹ *Ibid.*, p. 61.

⁷⁰ Roberto Belloni, ‘Bosnia: The Limits of Neocolonial Rule’, *Foreign Policy in Focus*, August 5, 2004, p. 1. (Available on <http://www.fpif.org>.)

⁷¹ Gerald Knaus, Felix Martin, ‘Lessons from Bosnia and Herzegovina’, p. 64.

The “exercise of absolute powers” in Bosnia regarded to prevent the creation of a competent democracy in a state recovering from a civil war.⁷² The critics of the western efforts to turn Bosnia into a liberal democracy since 1995 started the debate which accuses the current High Representative former Liberal Democrat leader Lord Paddy Ashdown of “turning Bosnia into a “European Raj”, deploying the methods and lessons of the British in India in the 19th century.”⁷³

The discussion focuses on the unlimited powers vested in Lord Ashdown as the international community’s representative discouraging local political initiative and entrenching a culture of international dependency. As a respond to the accusations that “You can not create a stable democracy by these authoritarian methods”, Lord Ashdown’s spokesman Julian Braithwaite defended his record that “Bosnia is not a European Raj: This is a polemic, but there is an important debate going on, and it is a contribution.”⁷⁴ The main question concerning the peace building in Bosnia and Herzegovina remains the same. “Is there a contradiction between democratization and the imperatives of peace building? Or is there a way to introduce outside powers such that they do not expand indefinitely?”⁷⁵

In conclusion, while the Bonn powers were conceived as emergency powers to confront concrete threats to the implementation of the peace accords, they gradually have become the regular instruments of an open ended attempt to develop institutions by decree and impose legislation without checks and balances.⁷⁶ Although it could be argued that in the early stage of the Bosnian mission some coercive powers were required in order to enforce the agreement, after more than nine years it is hard to be convinced why Bosnian leaders can not be given a chance to rule themselves, to negotiate, compromise and learn to overcome their differences.

Lastly, since governance reform and democratization have increasingly been regarded as the most effective instruments of securing a basis for lasting peace in post-conflict societies, international community aims to contribute to more stable,

⁷² Ian Traynor, ‘Ashdown Running Bosnia Like a Raj’, The Guardian, July 5, 2003, p. 1.

⁷³ Ibid., p. 1.

⁷⁴ Ibid., p. 1.

⁷⁵ Excerpt from ‘Travails of the European Raj’, <http://www.esiweb.org/europeanraj/article.php>, p. 2.

⁷⁶ Ibid., p. 2.

effective and legitimate forms of governance. The focus is to consolidate peace in short-term while enhance the probability that future conflicts can be managed without resorting to violence. It is believed that this can be best achieved through democratic institutions. As a result, proponents of democratization overtly focus on institution building. However, institution building is only one part of the process. It takes more than creation of a few institutions to enable genuine democratic participation.⁷⁷ Therefore, as long as international community can not ensure local participation in this process, and merely focus on institution building doom to fail achieving the desired outcomes.

4.1.2 Security Sector Reform: Military, Police and Judiciary

The security sector reform is essential for a stable and safe post-conflict environment. Thus, the primary motive of international community's peace operation after Dayton was focused on security.⁷⁸ The early post-war situation in Bosnia contained two significant security matters: "First, to ensure that the parties would not engage in fighting again and second, to extend the cease-fire to civilians in order to ensure that they were no longer targets of violence."⁷⁹ For guaranteeing this all potential belligerents or as described in Dayton Accords "all personnel and organizations with military capability", which referred "national guards, military

⁷⁷ Mark Malloch Brown, 'Democratic Governance: Toward a Framework for Sustainable Peace', Global Governance, vol. 9, issue 2, April-June 2003, p. 145.

⁷⁸ 'The short-term mission of the international community in Bosnia was to consolidate belated cease-fire through 60,000 NATO led IFOR troops. However, Dayton also addressed long-term stability by committing the parties to reduce levels of arms and troops and to embark on a series of confidence building measures under the supervision of the OSCE. Therefore, first strategy to keep peace was to separate the armies of the parties. Under the IFOR's supervision, the cease-fire was consolidated almost by the end of 1996. Federation of Muslim and Croat forces, and Serb military forces was separated, cantoned and demobilized. The second element of Dayton's strategy to build peace in Bosnia and Herzegovina was to lower the overall level of armaments within the region. As arranged in by Dayton, the parties and their neighbors reached an arms control agreement within six months that set limits on heavy weapons. Although there were early confusions and mutual attempts of cheating, arms and troops reductions were largely carried out according to the commitments of the parties in international agreements.' Cited in Elizabeth M. Cousens, Charles K.Cater, Towards Peace in Bosnia Implementing the Dayton Accords, pp. 53-55.

⁷⁹Elizabeth M. Cousens, Charles K.Cater, Towards Peace in Bosnia Implementing the Dayton Accords, p. 53.

police, internal security forces, armed civilian groups, and the foreign forces should withdrawn within 30 days after the signing of the peace agreement.”⁸⁰

Therefore, shortly after the parties signed the Dayton Agreement NATO launched one of the largest military operations of its history in BiH based on UN Security Council Resolution 1031 to implement the military aspects of the Peace Agreement.⁸¹ A NATO-led Multinational Implementation Force (IFOR) started its mission on 20 December 1995, and initially was given a one-year mandate. Its primary mission was to implement Annex 1A (Military Aspects) of the Peace Agreement. The principal military tasks comprised “ensuring the cessation of hostilities; separating the armed forces of the Bosniak-Bosnian Croat Entity (the Federation) and the Bosnian-Serb Entity (the Republika Srpska) by mid-January 1996; transferring areas between the two Entities by mid March; and, finally, moving the Parties’ forces and heavy weapons into approved sites by the end of June.”⁸²

IFOR’s presence provided a secure environment that enabled the High Representative and other international organizations to start their work with regard to the implementation of the civilian aspects of the Peace Agreement. It also created conditions in which the return to normal life could begin in BiH. After the conduct of the September 1996 elections, IFOR completed its mission of implementing the military annexes of the General Framework Agreement for Peace. However, it was clear that much remained to be accomplished on the civilian side and that the political environment would continue to be potentially unstable and insecure.⁸³

Thus, on 25-26 September, a week later than the Bosnian elections, NATO Defense Ministers decided that the Alliance needed to re-assess how it might continue to provide support for the establishment of a secure environment after the end of IFOR’s mandate in December.⁸⁴ A month later, “the North Atlantic Council approved detailed political guidance for a study to be undertaken by the NATO

⁸⁰ The General Framework Agreement in Bosnia and Herzegovina, Annex 1, Article II (1) and Article III. Cited in Elizabeth M. Cousens, Charles K.Cater, Towards Peace in Bosnia Implementing the Dayton Accords, p. 53.

⁸¹ Security Council Resolution 1031, 50th Session, 3610 meeting, U.N. Doc. S/1995/1031, 1995.

⁸² The General Framework Agreement in Bosnia and Herzegovina, Annex 1, Articles: I, II, III, IV.

⁸³ <http://www.nato.int/sfor/factsheet>, p. 1.

⁸⁴ ‘History of the NATO-led Stabilization Force in BiH’, <http://www.nato.int/sfor/factsheet>, p. 1.

Military Authorities of post- IFOR security options.”⁸⁵ In the following months a two year consolidation plan was established under the supervision of the Peace Implementation Council. On the basis of this plan it was concluded that a reduced military presence was needed to provide the stability necessary for consolidating the peace.⁸⁶

This led to the establishment of Stabilization Force (SFOR) on the date IFOR mandate expired, under the UN Security Council Resolution 1088, to implement the military aspects of the Peace Agreement as the legal successor to IFOR.⁸⁷ The primary mission of SFOR is to contribute to the safe and secure environment necessary for the consolidation of peace. Its specific tasks are designed “to deter or prevent resumption of hostilities or new threats to peace, promote a climate in which the peace process can continue to move forward and to provide selective support to civilian organizations within its capabilities.”⁸⁸

In the beginning, SFOR’s strength was about 32,000 troops in Bosnia and Herzegovina, which was almost half of IFOR.⁸⁹ “Building on the general compliance with the terms of the Peace Agreement, the smaller-sized SFOR was able to concentrate on the implementation of all the provisions of Annex 1A of the Peace Agreement likewise stabilization of the current secure environment in which local and national authorities and other international organizations can work.”⁹⁰

To achieve sustainable peace in Bosnia and Herzegovina, comprehensive realization of the civilian sides of Dayton is regarded indispensable as well. Therefore, through carrying on the implementation of the military aspects, NATO

⁸⁵ Ibid., p. 1.

⁸⁶ Ibid., p. 2.

⁸⁷ ‘As one can detect from the names: the role of IFOR was to implement the peace while the role of SFOR is to stabilize the peace. However, as in the case of IFOR, SFOR operated also under the Chapter VII of the UN Charter for peace enforcement. SFOR has the same robust rules of engagement for the use of force, if necessary to accomplish its mission and to protect itself. The Non-NATO contributing nations: Albania, Austria, Argentina, Bulgaria, Estonia, Finland, Ireland, Latvia, Lithuania, Morocco, Romania, Russia, Slovakia, Slovenia and Sweden.’ Cited in <http://www.nato.int/sfor/factsheet>, pp. 2-3.

⁸⁸ <http://www.nato.int/sfor/factsheet>, p. 2.

⁸⁹ Ibid., p. 2.

⁹⁰ Ibid., p. 2.

forces believed that they were contributing to “a secure environment conducive to civil and political reconstruction.”⁹¹ Although the civilian aspects of the Agreement were being carried out by appropriate organizations, SFOR tried to support the civilian tasks.⁹²

For example, SFOR contributed to the provision of safe conditions for “the national elections in October 1998, municipal elections in 1997 and April 2000, special elections in Republika Srpska in 1997 and general elections in November 2000.”⁹³ It has also provided support to the OSCE in the preparation and conduct of these elections.⁹⁴

Finally, SFOR used to assist the UNHCR in the field of supervising the return of refugees and displaced persons. It contributed to the prevention of any conflict with regard to the return of refugees and displaced persons. However, SFOR’s representatives recurrently stated that it was the responsibility of the locals to restore order and normal conditions every time an incident took place.

Besides, SFOR’s mandate included the detention and transfer of publicly indicted persons to the International Criminal Tribunal for the former Yugoslavia (ICTY).⁹⁵ Therefore, it supported the ICTY in carrying out its mandate. This comprised “the provision of security and logistic support to ICTY investigative teams, and surveillance and ground patrolling of alleged mass gravesites.”⁹⁶ While SFOR was in charge detained 27 persons indicted for war crimes starting from June 1997. Three publicly indicted persons have been killed when SFOR soldiers tried to bring them to justice. NATO’s basic role in BiH was to provide a “safe and secure

⁹¹ Civilian Aspects of the NATO-led Stabilization Force in BiH, <http://www.nato.int/sfor/factsheet>, p. 3.

⁹² *Ibid.*, p. 3.

⁹³ *Ibid.*, p. 3.

⁹⁴ Besides, SFOR supported the OSCE in its role of assisting the Parties in the implementation of the Confidence-and Security-Building Agreement and the Sub-Regional Arms Control Agreement. See Civilian Aspects of the NATO-led Stabilization Force in BiH, <http://www.nato.int/sfor/factsheet>, p. 3.

⁹⁵ <http://www.nato.int/sfor/factsheet/warcrime/t001116i.htm>, p. 1.

⁹⁶ ‘Civilian Aspects of the NATO-led Stabilization Force in BiH’, p. 4.

environment” and the presence of indicted war criminals considered one of the major obstacles to the peace process.⁹⁷

4.1.2.1 Military Reform

At the moment BiH suffers from lack of civilian command authority over the armed forces and does not have a unified armed forces at the state level. The Constitution of BiH gives ten responsibilities of the state of BiH. It mentions that “all governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities.”⁹⁸ Defense was not among the functions of the state from the beginning. The FBiH’s Constitution gives responsibility for the defense of the FBiH territory to the Federation military forces. Similarly, the Constitution of the RS gives defense and security responsibilities to the RS, openly expresses that the RS should possess its own army that will be controlled by the President of the RS.⁹⁹

Currently, Bosnia Herzegovina has two armies but de facto even three. For some BiH has two and half armies. They have the RS army, army of the Republika Srpska, and the army of the Federation. The army of the Federation has this so called subdivision in two components. They have a Bosniak and Croat component, which is a left over from the 1993-94 Croat and Bosniak conflict. In the Federation army there is single chain of command with two separate Bosniak and Croat units. Besides there is a separate army of the Republika Srpska. Since the army is divided in the Federation and RS has a separate army it is argued that there are two and half armies in BiH.

As a consequence, NATO forces had a special concern targeting the military reform in BiH. As part of the military reform of the BiH’s army SFOR tried to encourage the parties to overcome their differences, unite under single chain of command, work together and learn how military functions in a democracy.¹⁰⁰ SFOR Spokesperson Major James T. Billings asserted that “BiH should have one army

⁹⁷ <http://www.nato.int/sfor/factsheet/warcrime/t001116i.htm>, p. 1.

⁹⁸ GFAP, Annex 4, Article III, (2).

⁹⁹ Valery Perry, ‘Military Reform in BiH: Committed Incrementalism’, Perihelion Working Papers, March 2003, <http://www.erpic.org/MilitaryreformBosna.html>, pp. 1-2.

¹⁰⁰ Interview with US Major James T. Billings, SFOR Spokesperson, Sarajevo, 22 July 2003.

since it is part of being a democratic country: All democratic institutions have to be able to control their army and there should be a single chain of command. In addition, military should be independent and respond attempts against peace and order, which is part of professionalism.”¹⁰¹ Thus, SFOR was engaged in providing professional training in Bosnia and Herzegovina.

At the moment there is no single chain of command, which denied BiH membership in the Partnership for Peace Program of NATO in the Istanbul Summit meeting of 2004. The crux of the discussion is how this will take place even though it is acknowledged that you can not really unite the country if you have three different armies.¹⁰² Nevertheless, during the last four years the armed forces in BiH have experienced a process of reduction and restructuring.

The intended force level for the total armed forces in BiH was 10,500 with 7000 professional soldiers in the Federation Army (3500 Bosniak and 3500 Bosnian Croat) and 3500 in the Army of the RS (VRS), with a number of reservists to be determined. Reductions have been made rapidly, both due to the inability to pay for the inflated numbers of troops previously in service, as well as to pressure from SFOR and the International Community. The value of the inefficient system of conscription was reconsidered, a conscientious objector’s civil service option discussed and junior officers received training both inside and outside of BiH to improve their skills and future leadership potential.¹⁰³

Major James T. Billings explained that one of the most serious problems on both sides has been finance for some time. The Entities can not afford to manage their armies. Although the government decided to spend more money both Entities have been exceeding their budgets. Still the barracks in Sarajevo and around the country do not have electricity, and even do not have water or hygiene facilities in the RS sector.¹⁰⁴

The most important incentive of those reforms was the hope to join the Partnership for Peace Program and eventually to NATO.¹⁰⁵ That was because of the

¹⁰¹ Ibid.

¹⁰² Interview with Dario Sikuljak, National Political Officer, OSCE Mission to Bosnia and Herzegovina, Sarajevo, 15 July 2003.

¹⁰³ Valery Perry, ‘Military Reform in BiH: Committed Incrementalism’, p. 2.

¹⁰⁴ Interview with US Major James T. Billings, SFOR Spokesperson, 22 July 2003.

¹⁰⁵ Valery Perry, ‘Military Reform in BiH: Committed Incrementalism’, p. 2.

reason that NATO works merely with states and requires a unified chain of command from every country. The Federation forces support the reforms and count them as an opportunity for entering into PfP as well as strengthening the competencies of the State.¹⁰⁶ However, the RS as usual opposes any proposal that could weaken its sovereignty and sticks on the Dayton Agreement to protect its extensive autonomous powers.

In fact, although very slow there had been a gradual progress for the implementation of necessary reforms in the military of BiH, and more cooperation happened with SFOR and OHR. For instance, in February 2003, both armed forces carried out the first joint disaster relief training exercise and also developed a small number of forces that provide state-level and honorary duties, such as VIP protection.¹⁰⁷ All of them were small movements but even that would have been very unlikely shortly after Dayton. They demonstrate gradual progress in this respect.¹⁰⁸

An acceptable way for the harmonization of Republika Srpska could be to bring its training and equipment standards in line with the Federation Army. Under the conditions of the Dayton Agreement, the Federation Army particularly the Bosniaks took training and equipment support to advance their capacity against the Bosnian Serb forces. Therefore, the Federation army gradually came to a better position in terms of training and equipment than the RS forces. Likely progress in cooperation could necessitate harmonized forces who have similar capacities. In fact, such a proposal perceived to function as a motivator for earning the support of the RS forces.¹⁰⁹

In sum, an international workshop conducted by the European Centre for Minority Issues (ECMI) in Sarajevo four years ago, in which number of participants (policy makers, scholars and experts, representatives of international organizations, local and international non-governmental organizations in BiH) concluded that among the most successful aspects of the implementation of the DPA was the

¹⁰⁶ *Ibid.*, p. 2-3.

¹⁰⁷ 'SFOR Informer Online', 20 February 2003. Cited in Valery Perry, 'Military Reform in BiH: Committed Incrementalism', p. 3.

¹⁰⁸ Valery Perry, 'Military Reform in BiH: Committed Incrementalism', p. 3.

¹⁰⁹ *Ibid.*, pp. 3-4.

military aspect of the accords. The discussion identified four key reasons for this case:

(a) the Annex was very detailed and contained specific instructions for parties which could be easily verified; (b) the main implementing agency (NATO/SFOR) was closely involved in authoring this aspect of the accords, allowing for an agreement which could be implemented, while the agencies charged with overseeing the civilian aspects of the agreement were only set up after the signing of the accords and could thus not modify the agreement in the light of their capacity; (c) the Annex was also modest in its aims and sought to outline steps which can be achieved in a relatively short period of time; and (d) the military aspects were widely perceived as a precondition for the remainder of the peace process to continue, which in turn enhanced the investment of all parties involved in this particular aspect.¹¹⁰

As a result of the successful implementation of the military aspects, especially in terms of providing a secure environment, the focus shifted to new areas, such as closer cooperation and the eventual integration of the two armies of Bosnia.¹¹¹ “Although these topics remain controversial, participants remarked that the discussions in the security and military field have progressed beyond the mere implementation of the peace accords to a dynamic debate on the current needs and assets of the parties.”¹¹² This part of Dayton considered to worth especial assessment to identify the causes of successful implementation that could also be used for the civilian implementation of the agreement.¹¹³

A new development concerning the BiH’s security arrangements took place at the 28-29 June 2004 summit in Istanbul, when “NATO announced that an EU-led peace keeping force will replace its Stabilization Force (SFOR) before the end of this year as the organization with primary responsibility for securing peace in Bosnia and Herzegovina under Dayton Agreement.”¹¹⁴ This has been the most important change since the end of war in the international presence. However, “the motives have less

¹¹⁰ Marc Weller, Florian Bieber, Eva Maria Christiansen: ‘Power-sharing in Bosnia and Herzegovina: Strengthening implementation of the Dayton Peace Accords’, Initial Workshop Sarajevo 13 - 15 July 2001, ECMI Report No. 12, Flensburg 2001, <http://www.ecmi.de>, pp. 6-7.

¹¹¹ *Ibid.*, p. 7.

¹¹² *Ibid.*, p. 7.

¹¹³ *Ibid.*, p. 9.

¹¹⁴ ‘Euforia: Changing Bosnia’s Security Arrangements’, Europe Briefing Sarajevo/Brussels, 29 June 2004, <http://www.crisisweb.org>, p.1.

to do with the real security situation in the country than with EU eagerness to bolster its credibility as a security actor and the US desire to declare at least one of its long-term military deployments successfully over.”¹¹⁵

The NATO forces in BiH, as it was mentioned before, regarded the best segment of the international presence in the country. For the people of Bosnia it was the most reliable safeguard of peace in the country. Thus, presence of NATO have been an important symbol for the people to feel safe, although things have changed in Bosnia and Herzegovina since 1995. The main security challenges shifted to “weapons smuggling, the apprehension of war criminals, extremist religious groups and border security rather than the separation of combatants, which was the main achievement of the NATO mission.”¹¹⁶

In December 2004, the European Union Force (EUFOR) took over the mandate of NATO’s SFOR. However, the mission of EUFOR, which is called Operation Althea, is similar to SFOR. Even the number of troops remained the same; 7,000 troops was the number of SFOR troops reduced in the mid- 2004. EUFOR has “soldiers from 33 countries, including 22 of the 25 EU member states and Albania, Argentina, Bulgaria, Chile, Canada, Morocco and Turkey.”¹¹⁷ Nevertheless, NATO is still keeping an armed presence in Sarajevo and Tuzla. The responsibility of NATO forces is to cooperate with EUFOR in defense reform, assist in the detention of persons indicted for war crimes, and fight against terrorism.¹¹⁸

Yet, EUFOR has an additional task missing in SFOR’s mandate that is to support the civilian implementation of the Dayton Peace Agreement. This implies that OHR is entitled to give political guidance and request its intervention when considered necessary.¹¹⁹ This boosts the anxiety that the High Representative might turn to “a pure representative of EU, co-coordinating all military, police, economics aspects”; and realizing the operational “hand-over of peace implementation in Bosnia

¹¹⁵ Ibid, p. 1.

¹¹⁶ Ibid, p. 1.

¹¹⁷ Mirna Skrbic, ‘Bosnia: Changing of the Guard’, Transitions Online, 12/6/2004, p. 2.

¹¹⁸ Ibid., p. 2.

¹¹⁹ ‘Euforia: Changing Bosnia’s Security Arrangements’, p. 5.

to the EU.”¹²⁰ To sum up, international community still considers the security situation in BiH very important and wants to ensure that it will not pose a danger in the region again. Thus, NATO sought to guarantee the security gains that have been made after its departure via a willing partner to take over its mission.

Besides separating the warring factions, security sector reform involves reform of police forces and judicial structures:

4.1.2.2 Police Reform

The Dayton Peace Accords created the UN International Police Task Force (IPTF), with a special task “to provide a safe and secure environment and maintain civilian law enforcement in accordance with respect to internationally recognized standards and fundamental freedoms.”¹²¹ However, “in contrast to Annex 1-A of the Dayton agreement, which stipulates specific tasks and schedules for the NATO implementation forces, Annex 11, which sets up the IPTF, had a vague mandate and no timetable” in the beginning.¹²²

During 1996 the armies of the former warring factions were under the tight control of 60,000 NATO-led troops, but the police were being monitored by less than 2,000 unarmed IPTF personnel. This would not have been so severe if the local police had been trained in law enforcement and public service. Most Bosnian police, however, were former paramilitaries who switched uniforms but retained their weapons and remained responsive to local warlords. Their mandate was more to preserve the status quo than to serve the public interest.¹²³

According to a UN report the local police have ignored or involved in most human right violations and crimes took place in Bosnia shortly after the end of war.¹²⁴ Therefore, reform of police forces in Bosnia deemed to be vital. However, the unarmed and poorly equipped IPTF was not capable to do so. “With little equipment available and no sign of any serious planning for the force at UN headquarters in

¹²⁰ Ibid., p. 5.

¹²¹ Annex 11: Agreement on International Police Task Force, Article I (1).

¹²² Jane Sharp, ‘Dayton report card’, p. 113.

¹²³ Ibid., p. 113.

¹²⁴ UN report ‘Bosnia’s Public Security Deficit: Can It Be Filled’ cited in Jane Sharp, ‘Dayton report card’, from James Schear’s unpublished Manuscript, p. 113.

New York, IPTF officers complained they were the poor relatives of the Dayton process.”¹²⁵ Employment was another problem in addition to funding throughout 1996. Many recruits had to be sent home immediately because they had no language skills, or simply they were not competent for the task.¹²⁶

Heavily armed IFOR troops without much difficulty could have established order in post-war Bosnia. However, in spite of the obvious Dayton mandate specified in Annex 1-A, Article 6, paragraph 3 ‘to respond appropriately to deliberate violence to life or person’ NATO forces in general decline to engage in any police tasks.¹²⁷ As a result there was a lack of order and safe environment in the early years of Dayton.

On the other hand, police reform was very challenging because of the local factors. Police reform has been regarded as an area “where the clash between old entrenched values and new concepts has been especially apparent and dramatic.”¹²⁸

The autocratic Yugoslavian regime needed a loyal and forceful instrument of control, which meant that the police developed into an organization primarily concerned with state security, criminal investigation, executive protection, intelligence, and border services. Another key element of state security was the Ministry of Interior Special Police (known as MUP). These paramilitary units could be assigned to support territorial defense and maintain control of the interior of the country in times of war, martial law and unrest.¹²⁹

In the course of the three years hostility, the Ministry of Interior Special Police in all communities undertook paramilitary functions. Due to the nature of the conflict, the ethnic communities also tried to maintain internal security by establishing ethnically separated police forces. This result in the employment of police officers without an adequate training and equipment. Therefore, Bosnia and Herzegovina’s police forces are divided like the country itself. The two entities preserve their own police forces under the control of their interior ministers.¹³⁰

¹²⁵ Jane Sharp, ‘Dayton report card’, p. 113.

¹²⁶ Ibid., p. 113.

¹²⁷ Ibid., p. 113.

¹²⁸ Per Bergling, ‘Judicial Reform under International Law: Notes from Bosnia and Herzegovina’, Nordic Journal of International Law, vol., 70, 2001, p. 505.

¹²⁹ Ibid., p. 505.

¹³⁰ ‘Policing the Police in Bosnia: A Further Reform Agenda’, International Crisis Group, Balkans Report No. 130, Sarajevo/ Brussels, 10 May 2002, <http://www.crisisweb.org>, p. 9.

Control of the police is more decentralized in the Federation, since each canton also having a ministry of the interior or MUP.¹³¹ The Republika Srpska Ministry of Internal Affairs is in charge of the entity police: The Federation police is ruled by the Federation Ministry of Internal Affairs, whose liability is the enforcement of criminal laws within the Federation.¹³² The RS police is splitted in regional centers and local stations under the RS interior minister. Contrary, “the cantonal ministers of interior have significant autonomy vis-à-vis the Federation ministry.”¹³³ This led to suspicions that although the control is carried out by the ministries of interior, “the nationalist political parties (HDZ, SDA, SDS, etc.) maintain direct linkages to the police forces in their respective areas.”¹³⁴

Therefore, IPTF sought to assist Bosnia’s three ethnically constituted and in essence paramilitary police forces “to adopt modern, professional, non-political and ethnically neutral standards of policing” appropriate to the international standards.¹³⁵ The Dayton Accords stated that entity governments and the respective police forces must “co-operate fully” with the IPTF and specified what this co-operation should entail.¹³⁶ Due to the existence of under-trained police forces, the initial focus of IPTF to monitor the police forces moved on training the Bosnian police.

As a result of the training IPTF started to give certification in 1997 to the Bosnian police officers. IPTF’s core training program for police officers, which is known as “IPTF certification”, “consists of three courses: a two day information course explaining the restructuring and its aims; a three-week transition course that is essentially a condensed version of a police academy course focusing on basic policing skills; and a one week human dignity course that provides a “modern” view of the role of the police officer in society.”¹³⁷ The police officers who are not

¹³¹ Ibid., p. 9.

¹³² Per Bergling, ‘Judicial Reform under International Law: Notes from Bosnia’, p. 505.

¹³³ ‘Policing the Police in Bosnia: A Further Reform Agenda’, p. 9.

¹³⁴ Per Bergling, ‘Judicial Reform under International Law: Notes from Bosnia’, p. 505.

¹³⁵ ‘Policing the Police in Bosnia: A Further Reform Agenda’, p. 9.

¹³⁶ Annex 11: Agreement on International Police Task Force, Article IV (3).

¹³⁷ Per Bergling, ‘Judicial Reform under International Law: Notes from Bosnia’, p. 506.

successful to fulfill the conditions and qualifications required for the certification are barred from the lessons and their entitlement to be in police force is taken away.¹³⁸

Miroslav Zivanovic from the Human Rights Centre of the University of Sarajevo points out that SFOR used to cooperate with the IPTF and currently works with the European Union Police Mission (EUPM) in a project to develop the Police Manual for the police.¹³⁹ There has been a project for more than three years to develop the Police Manual to cover police training in human rights. It is the product of NGOs, Ministry of Human Rights, Internal Affairs and the police office. There is a practical approach to the issue, which is to describe all possible situations where police officers may need in case of human rights violations for the interrogation.

Moreover, the United Nations assisted FBiH and RS authorities to set up police academies in Sarajevo and Banja Luka and to introduce a new police training curricula. Strategy of the international community and the new police academies was based on supporting minority candidates to participate in training. Despite the training itself was delivered by a multi-ethnic staff, too many minority police candidates left the academies because of discrimination. Police forces in BiH are still ethnically homogeneous and perceived as reliable protector of the interests of the three ethnic communities. This situation reflects the absence of responsible domestic authorities to defend minority communities in both Entities and establish non-discriminatory law and order.

Nevertheless, before the end of its mission, IPTF managed to downsize the police forces, and tried to contribute to the creation of multi-ethnic police forces. It also tried to ensure that they are professional and effective. Moreover, IPTF engaged in changing the concentration of the local police from the security of state to the security of the citizens.

From the first of January 2003, the European Union established a police mission (EUPM) in Bosnia and Herzegovina following the end of United Nation's International Police Task Force (IPFT) mandate. The EUPM is supported by the "European Commission's institution building programs, as part of a broader rule of law approach, aims to establish sustainable policing arrangements according to

¹³⁸ *Ibid.*, p. 506.

¹³⁹ Interview with Miroslav Zivanovic, Librarian/Documentalist, Human Rights Centre, University of Sarajevo, 14 July 2003.

European and international practices thereby raise the current BiH police standards.”¹⁴⁰ The European police mission has a duty “to monitor, mentor and inspect local police management.”¹⁴¹ EUPM’s mandate in Bosnia is scheduled until the end of 2005.

The EUPM is the first civilian crisis management operation under the European Security and Defense Policy. It is structured as follows: “the main headquarters is in Sarajevo, composed of the Head of the Mission/Police Commissioner and its staff. Part of the staff consists of a variable number of Liaison Officers to work with other international organizations on the ground. The rest located within the various Bosnia and Herzegovina police structures at various levels, including within Entities, Public Security Centers, Cantons, State Intelligence Protection Agency, State Border Services and within the Brcko district.”¹⁴²

As part of the broader European Union rule of law follow-up the EUMP in BiH have a unified chain of command, as a crisis management operation.¹⁴³ The priorities of the mission defined as follows: to develop police independence and accountability; to fight against organized crime and corruption; to support the establishment of a state level police agency; to improve financial viability and sustainability; and to consolidate State level agencies.¹⁴⁴

Among the seven main programs of the EUPM first is Crime Police Program, which is mainly related to the development of investigation activity in the Police: “The general goal of the program is to improve the current standard of policing; to reform and restructure the Local Police agencies in accordance with democratic society standards in order to leave in place under BiH ownership, sufficient capacity to achieve a modern, sustainable, professional, and multi-ethnic police force trained, equipped and able to assume full responsibility and to independently uphold law

¹⁴⁰ ‘The European Union Police Mission’, <http://www.eupm.org/mission/ms.htm>, p.1.

¹⁴¹ Ibid., 1.

¹⁴² ‘Council Joint Action of 11 March 2002 on the EUPM’, Article 3: Structures, <http://www.eupm.org>.

¹⁴³ Ibid., (Article 7: Chain of Command, <http://www.eupm.org>).

¹⁴⁴ The Status of Forces Agreement (SOFA) between the EU and BiH on the Activities of EUPM in BiH; Statement by the President of the Security Council, 12 December 2002, Strategic Objectives, <http://www.eupm.org/strategicobjectives.htm>, p. 1.

enforcement at the level of international standards.”¹⁴⁵ The second Criminal Justice Program is oriented to the improvement of cooperation between the Police and the Judiciary as institutions, as well as all matters related to Court Police: “The program aims to establish a modern, properly trained and equipped, self-sustaining, professional and multi-ethnic Court Police, able to establish a coordinated relationship between the Police and the Judiciary.”¹⁴⁶

Thirdly, “Internal Affairs Program is in charge of the development of all necessary procedures and tools to manage disciplinary and criminal cases involving police officers; the fourth Police Administration Program is linked to the strengthening of the police as an institution through increased capacity in managing finances, human resources, logistics, and training.”¹⁴⁷ Public Order and Security Program is in charge of advancing the abilities of Uniform Police, Traffic Units, Support Units and Anti-terrorist Units, as well as crime prevention: “The program aims at strengthening BiH police capacities to face rapidly escalating civil disorders or any major confrontation between ethnic groups.”¹⁴⁸ Sixth and seventh programs are the State Border Service Program and the State Information and Protection Agency Program.

Miroslav Zivanovic testified that the EUPM has a different mission than the previous UN coordinated IPTF. Zivanovic upholds that IPTF had a hard work and high influence in Bosnia and pressured the police officers since it had the authority to impose decision and also introduced an ambitious police training.¹⁴⁹ Nevertheless, the EU Police Mission has a role to affect through the OHR since they do not have any enforcement power. They can recommend to the High Representative about the obstructionist officials which should be removed. In fact, EUPM just monitors and reports to OHR about the police and human rights situations.

¹⁴⁵ EUPM Activities, ‘Main Programs’, <http://www.eupm.org/mainprogrammes.htm>, p. 1

¹⁴⁶ *Ibid.*, p. 1.

¹⁴⁷ *Ibid.*, p. 2.

¹⁴⁸ *Ibid.*, p. 2.

¹⁴⁹ Interview with Miroslav Zivanovic, Librarian/Documentalist, Human Rights Centre, University of Sarajevo, 14 July 2003.

In sum, IPTF was mandated by UN Security Council authorization in December 1995 to monitor, advise and train Bosnian police but had not executive authority to investigate, arrest or perform other police functions. In the beginning, the police circumstances in Bosnia was not helpful to unite the country.¹⁵⁰ Ethnically based three separate police forces were not keen on protecting minority groups or committed to refugee return. The IPTF was not experienced enough to confront with the situation. In addition, as “facilitators and advisors rather than actual law enforcement officials, IPTF monitors were unarmed” and it took eight months to get the IPTF to full strength.¹⁵¹

Hitherto, IPTF managed to influence the local police forces and achieved some success in transforming the Bosnian police, training thousands of police officers to operate in accordance with internationally recognized standards of human rights and fundamental freedoms. Nevertheless, the local police could not be counted upon to enforce the law in the country.¹⁵² Thus, the “EU decided in February 2002 to provide a follow on mission”, which is “charged with picking up where the IPTF left off” after UN mission withdrew Bosnia.¹⁵³ The EUPM is expected to safeguard and build on the work of IPTF’s successful programs, such as professionalization, screening and de-authorization, information sharing and so enhance the capacity and sustainability of state level forces.¹⁵⁴

Lastly, the European Commission acknowledged that police reform progressed significantly under UN’s IPTF that is followed by EUPM.¹⁵⁵ A State Level Ministry of Security could be established in 2003 for border control and combat terrorism.¹⁵⁶ However, a Ministry of Defense at the state level could not be

¹⁵⁰ James Dobbins, John McGinn, America’s Role in Nation-Building from Germany to Iraq, Rand Publication, 2003, <http://rand.org>, p. 97.

¹⁵¹ Ibid., p. 98.

¹⁵² ‘Policing the Police in Bosnia: A Further Reform Agenda’, p. i.

¹⁵³ Ibid., p. ii.

¹⁵⁴ Ibid., pp. 58- 60.

¹⁵⁵ ‘European Commission, External Relations Directorate General, Bosnia and Herzegovina Country Strategy Paper 2002-2006’, pp. 27-28. See also ‘Commission of the European Communities, Report from the Commission to the Council’, Brussels, COM (2003), 692 Final, p. 10.

¹⁵⁶ ‘Commission of the European Communities, Report from the Commission to the Council’, Brussels, COM (2003), 692 Final, p. 26.

established. Besides, police in BiH is not completely modernized. They have financial difficulties, use old equipment and still have under-trained personnel. Political authorities control the regional police units but there is neither federal network in the FBiH nor state level coordination. Strong commitment and local ownership of the police reform is lacking.

4.1.2.3 Judicial Reform

The huge amount of atrocities and crimes committed against civilians during the war in Bosnia considered as the consequence of lack of democracy, rule of law and respect to basic human rights and fundamental freedoms. Therefore, the Dayton Peace Accords also underlined that the new Bosnian state should be based on democratic principles and functioning with rule of law. Besides, the state and entity governments should guarantee international human rights standards and fundamental freedoms.

Another point was the expectation that effective legal and constitutional human rights guarantees and respect to the rule of law would encourage the return of millions of refugees and displaced persons after the war.¹⁵⁷ The Constitutional framework of the designed for Bosnia displays the objective of international community to establish a democratic system in the country. A new constitution and democratic elections hoped to contribute a legitimate rule.

Moreover, Preamble of the BiH's Constitution openly expresses that international instruments of human rights, such as the ECHR and the UN 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, must be the highest laws in the country.¹⁵⁸ Nonetheless, implementation of the constitutional regime was very challenging. One of the basic setback has been the division of competencies between the State and the entities, which is imprecise and complex.¹⁵⁹

¹⁵⁷ Per Bergling, 'Judicial Reform under International Law: Notes from Bosnia', p. 490.

¹⁵⁸ Annex 4, Preamble.

¹⁵⁹ Per Bergling, 'Judicial Reform under International Law: Notes from Bosnia', p. 493.

Contrary to most other states, the BiH lacks unified army or police force, and fails to collect taxes. It has a weak judiciary and an institutional capacity together with a legislature that is unable to adopt laws without the approval of the entities.¹⁶⁰ Besides, there is no enforcement mechanism capable of implementing state-level decisions. On the other hand, the State of BiH needs the entities for funding, which makes its institutions weak.¹⁶¹ Since both entities are comparatively stronger than the State, they are able to obstruct the functioning of State institutions or implementation of the necessary laws supposed to strengthen the State level institutions.

In this case, High Representative was left in a situation to impose legislation, which produced the current stalemate in Bosnia. Yet, there is an ironical situation that the High Representative's power to impose legislation has caused the nationalist politicians and decision makers to feel comfortable. They got the opportunity to block legislation for domestic issues "knowing that it will be implemented anyway."¹⁶²

Failure of fully implementing the civilian aspects of the Dayton agreement negatively affects the judicial system in BiH as well. Vulnerable state institutions are impaired by the division between the Bosniak, Croat and Serbian leadership. Hence, the course of rebuilding a democratic system with an easy access to justice and law enforcement was for a long time prevented by the un-cooperative leaders.¹⁶³ Therefore, judicial employees, judges and prosecutors are "vulnerable to political, ethnic and economic pressures, including threats of violence, from those with a vested interest in the status quo."¹⁶⁴

Therefore, to avoid nationalist establishments international community works to make all Bosnian institutions accountable within the legal system, particularly to make every public official acting professionally regardless of the political or ethnic

¹⁶⁰ Ibid., p. 493.

¹⁶¹ Interview with Dario Sikuljak, National Political Officer, OSCE Mission to Bosnia and Herzegovina, 15 July 2003.

¹⁶² Per Bergling, 'Judicial Reform under International Law: Notes from Bosnia', p. 494.

¹⁶³ Zoran Pajic, 'The Role of Institutions in Peace Building: Rule of Law in BiH', in Frances Butler, Human Rights Protection: Methods and Effectiveness, Hague: Kluwer Law International, 2002, p. 113.

¹⁶⁴ Per Bergling, 'Judicial Reform under International Law: Notes from Bosnia', pp. 491-492.

affiliation of the people.¹⁶⁵ The ultimate goal is to assure that every “policeman, judge, municipal official, diplomat or chief of department” is independent from the government political and national leaders.¹⁶⁶ Correspondingly, the aim is to guarantee the rule of law and “access to justice at all levels of government, to secure public trust in state structures and confidence that individual rights and freedoms will be protected without discrimination.”¹⁶⁷

Nevertheless, in practice the decisions and judgments are not appropriately implemented in Bosnia. Thus, ordinary citizens lost their confidence in the judicial system. Malfunctioning of the judicial system and its damage on the other aspects of reconstruction has created frustration among donors and international organizations. This led “demands for more forcible measures, based on the unique international law mandate of the High Representative.”¹⁶⁸ Although judicial reform attempts were initially without much coordination, gradually became more organized. June 1998 Luxembourg and December 1998 Madrid PIC meetings had called for comprehensive judicial reforms coordinated by the High Representative.

An OHR-chaired Judicial Reform Working Group comprising principal international organizations involved in the implementation of legal and judicial reforms. Among them there were the European Commission, the OSCE, and the UN’s Judicial System Assessment Program (JSAP), a body established specifically to monitor and assess the judicial system in BiH. Another actor in the judicial reform effort was the Council of Europe. Its activities focused on constitutional reform, criminal law reform, citizenship legislation, immigration and asylum legislation and other human rights-related issues, aimed at making BiH a member of the Council.¹⁶⁹

With the purpose of stressing the importance of rule of law for the implementation of Dayton and of establishing an agency in charge of guiding the implementation of judicial reforms, the High Representative formed the Independent

¹⁶⁵ Zoran Pajic, ‘The Role of Institutions in Peace Building: Rule of Law in BiH’, p. 116.

¹⁶⁶ *Ibid.*, p. 116.

¹⁶⁷ *Ibid.*, p. 116.

¹⁶⁸ Per Bergling, ‘Judicial Reform under International Law: Notes from Bosnia’, p. 492.

¹⁶⁹ *Ibid.*, p. 492.

Judicial Commission (IJC) in March 2001.¹⁷⁰ This agency later undertook the coordinating role previously enjoyed by the OHR Human Rights and Rule of Law Department.¹⁷¹ In fact, “judicial reform mandate was transferred from the UN to OHR in December 2000, and the UN Judicial Assessment Program (JSAP) was reborn as the Independent Judicial Commission (IJC).”¹⁷² OHR conveys that IJC have a clear mandate with a strict timeline to complete the judicial reform in BiH.

In short, the rule of law and equality of individuals before law regardless of their ethnic background are prerequisites for the establishment of viable democratic state. They are also indivisible components of peace building. In the absence of rule of law BiH can not survive and join European structures.¹⁷³ The rule of law requires judges and prosecutors who are independent and fair; it also requires the application of modern legal and criminal procedures to protect the rights of the citizens.¹⁷⁴ Every citizen should have equal right to a fair and non-discriminatory judicial system, which the decisions are recognized and enforced throughout BiH.¹⁷⁵

On the contrary, rule of law is weak in Bosnia and Herzegovina. What exist in its place has been “nationally defined politics, inconsistency in the application of law, corrupt and incompetent courts, a fragmented judicial space, and half implemented reforms.”¹⁷⁶ As a result, respect for law and confidence in law is weak. Therefore, the Mission Implementation Plan 2004 of OHR, which sets out the issues remaining without progress and accordingly deciding on the core tasks included restructuring the judiciary and adopting new criminal codes.¹⁷⁷

¹⁷⁰ Decision on the Establishment of the Independent Judicial Commission, No. 94/01, <http://www.ohr.int>. Cited in Per Bergling, ‘Judicial Reform under International Law: Notes from Bosnia’, p. 493.

¹⁷¹ Per Bergling, ‘Judicial Reform under International Law: Notes from Bosnia’, p. 493.

¹⁷² ‘Bosnia: Reshaping the International Machinery, International Crisis Group’, Balkans Report No. 121, Sarajevo/ Brussels, 29 November 2001, <http://www.crisisweb.org>, p. 16.

¹⁷³ ‘Our Reform Agenda- The Rule of Law’, <http://www.ohr.int>, p. 1.

¹⁷⁴ *Ibid.*, p. 1.

¹⁷⁵ ‘OHR Mission Implementation Plan 2004’, February 2004, <http://www.ohr.int>, p. 3.

¹⁷⁶ ‘Courting Disaster: The Misrule of Law in Bosnia and Herzegovina’, International Crisis Group, Balkans Report No. 127, Sarajevo/ Brussels, 25 March 2002, <http://www.crisisweb.org>, p. i.

¹⁷⁷ ‘OHR Mission Implementation Plan 2004’, February 2004, <http://www.ohr.int>, p. 3.

For the sake of peace and stability upholding reforms on main laws, development of an independent judicial and prosecutorial service, state level justice institutions, reconstruction of courts and criminal law enforcement, and domestic prosecution of war crimes were all put on the agenda and displayed as core tasks and priorities for making significant progress.¹⁷⁸ In 2005, strengthening the rule of law in Bosnia is still among the primary undertakings of the international community.

¹⁷⁸ Ibid., pp. 3-5.

CHAPTER 5

IMPLEMENTATION OF DAYTON AND INSTRUMENTS OF PEACE- BUILDING IN BiH: II) ELECTIONS AND CIVIL SOCIETY

5.1. Elections

Elections have been at the core of international community's peace building efforts in many war-torn societies. They are the symbol of a major progress in a comprehensive course of creating legitimate political structures. "Elections influence the extent to which the internal politics of fragile new states become stabilized, whether the new political dispensation comes to be viewed as legitimate, and how the rhythm of peaceful democratic politics can evolve and become sustainable."¹ An emphasis on free elections has been given to the peace building process developed for Bosnia and Herzegovina as well.

All former warring sides agreed in the Framework Agreement for Peace to create the environment throughout the country conducive for the organization of free and fair elections. They also called for the Organization for Security and Cooperation in Europe (OSCE) help the Parties to create the necessary circumstances. Consequently, one of the primary instruments for early warning, conflict prevention, crises management and post-conflict rehabilitation in Europe recognized as a regional arrangement by the UN Charter, the OSCE undertook a major role in the creation and development of a stable, peaceful, democratic and self-sustaining BiH. The OSCE emanates from the Conference on Security and Cooperation in Europe that took place in Helsinki in 1975. The first 17 years it operated as an inter-

¹ Benjamin Reilly, 'Post-Conflict Elections: Constraints and Dangers', International Peacekeeping, Special Issue: Recovering from Civil Conflict Reconciliation, Peace and Development, vol. 9, no. 2, Summer 2002, p. 119.

governmental conference with limited staff, provided a forum for Cold War dialogue and outlined human rights, security and disarmament standards.²

Since the collapse of communism the Conference's work became more structural that went beyond a simple conference. Thus, in the Budapest Summit of 1994, it was agreed to change its name to the Organization for Security and Cooperation in Europe, and the organization has taken a more leading role in conflict resolution.³ However, organizing the Bosnian elections has been one of the most challenging tasks the organization has ever undertaken since unlike the United Nations, the OSCE had no experience in the field of organizing elections.⁴ The tight time frame mandated by the DPA was an additional challenge.

According to the Dayton Peace Agreement the OSCE had to organize the elections within "sixth months or if the OSCE determines a delay latest within nine months after the signing of the agreement."⁵ The organization was tasked with overseeing the preparations and managing the elections. However, "a national ballot would take place only if conditions pertained in the country that ensured a comparatively free and fair election, specifically freedoms of expression, press, association and movement; the right to vote without fear or intimidation; and, a politically neutral environment."⁶

The OSCE was to supervise all aspects of elections, including verification of acceptable conditions. Its Head of Mission would chair a Provisional Election Commission (PEC) composed of both international and Bosnian members who would establish all electoral rules and regulations until Bosnia could set up its own permanent commission. Each of the three parties was represented on the PEC, though its international chair was authorized to designate additional members as he or she saw fit, and his or her decisions were final and binding.⁷

² 'Elections in Bosnia and Herzegovina', International Crisis Group, Bosnia Report No. 16, Sarajevo/Brussels, 22 \ September 1996, <http://www.crisisweb.org>, p. 4.

³ For more information see <http://www.osce.org>.

⁴ 'Elections in Bosnia and Herzegovina', International Crisis Group, p. 5.

⁵ Annex 3, Article II (4).

⁶ Elizabeth M. Cousens, Charles K.Cater, Towards Peace in Bosnia Implementing the Dayton Accords, Colorado: Lynne Reinner Publishers, 2001, p. 113. For more information about the conditions: 'Why the Bosnian Elections Must be Postponed,' International Crisis Group, Bosnia Report No. 14, Sarajevo/ Brussels, 14 August 1996, <http://www.crisisweb.org>, pp. 5-10.

⁷ Elizabeth M. Cousens, Charles K.Cater, Towards Peace in Bosnia Implementing the Dayton Accords, p. 112.

Rulings of the PEC superseded pre-existing national laws, and the body was authorized to take counter action in case any person or party breach electoral rules.⁸ The PEC was responsible to determine rules governing “eligibility and registration of parties and candidates, eligibility and registration of voters, method of voting, codes of campaign conduct, and the role of domestic and international observers.”⁹

The PEC was also entitled to establish supplementary commissions if it determines necessary.¹⁰ Since Dayton, PEC has created a network of offices such as “Judicial Election Appeals Sub Commission (EASC), which was mandated to ensure compliance to the PEC Rules and Regulations and to adjudicate complaints about the electoral process.”¹¹ It also had the authority to enforce penalties on any individual, candidate, party, or other body in violation of the PEC Rules and regulations or of the Dayton.¹² Besides, a “National Election Results Implementation Commission (NERIC), was established by the PIC to monitor implementation of election results, especially at the municipal level, and a Media Experts Commission.”¹³ The Media Experts Commission (MEC) was created to search complaints on media. The MEC was authorized to observe the security of journalists, to examine whether the access of political parties and candidates was fair, to view wrong news reporting and warrant that the media followed the PEC Standards of Professional Conduct.¹⁴

Consequently, the OSCE created a mandate in Bosnia and Herzegovina in 1996 headed by the U.S. diplomat Robert Frowick, who established the Provisional

⁸ Annex 3, Article III, par. 2 (d). Cited in Elizabeth M. Cousens, Charles K.Cater, Towards Peace in Bosnia Implementing the Dayton Accords, p. 112.

⁹ Annex 3, Article III, par. 2 (a), (b), (c), (e).

¹⁰ Annex 3, Article III: Mandate of the Commission.

¹¹ Elizabeth M. Cousens, Charles K.Cater, Towards Peace in Bosnia Implementing the Dayton Accords, p. 113.

¹² Annex 3, Article III, par. 2 (d).

¹³ Elizabeth M. Cousens, Charles K.Cater, Towards Peace in Bosnia Implementing the Dayton Accords, p. 113.

¹⁴ ‘Elections in Bosnia and Herzegovina, International Crisis Group’, p. 4.

Election Commission (PEC), the Election Appeals Sub-Commission (EASC), and the Media Experts Commission (MEC).¹⁵ Besides, the OSCE installed around 40 human rights monitors in the Sarajevo office, five regional monitoring centers, and 26 field offices.¹⁶

The OSCE's has organized and supervised the BiH's all post-war elections until and Election Law was adopted in August 2001. This included the general elections in 1996, 1998 and 2000, municipal elections in 1997 and 2000, as well as the 1997 extraordinary elections for the Republika Srpska National Assembly. However, according to the Dayton Accords, elections were to be held by the Organization on one occasion. International community's initial goal was swift normalization of the electoral process and the quick transfer of the responsibility to the locals but when the draft of the new electoral law was delayed, which will be explained further, the OSCE had to continue its work in BiH.

5. 2 Political Party System of the BiH

Structure of the political party system in Bosnia is a key for the internationally supervised political evolution after the war. Political party systems are regarded as the "bedrock institutions" of democratic systems and the "primary mechanisms for both representation of citizens and mediation of differences between citizens."¹⁷ Therefore, they "provide a channel for the expression of conflicts in the society" and a mechanism that contributes to the mediation of those conflicts.¹⁸ Thus, they have the capacity to play an "integrative role", which is very important in ethnically mix societies.¹⁹

However, if military organizations in the period of the armed conflict transform themselves into political parties that are the case in many war-torn

¹⁵ Ibid., 4. (For more information about the commissions see pp. 6-8.)

¹⁶ Ibid., p. 4

¹⁷ Sumantra Bose, Bosnia after Dayton Nationalist Partition and International Intervention, London: Hurst & Company, 2002, p. 206.

¹⁸ Ibid., p. 207.

¹⁹ Seymour Martin Lipset, Stein Rokkan, 'Cleavage Structures, Party Systems and Voter Alignments: An Introduction' in Seymour Martin Lipset and Stein Rokkan (Editors), Party Systems and Voter Alignments: Cross-National Perspectives, New York, 1967, pp. 4-5. Cited in Sumantra Bose, Bosnia after Dayton Nationalist Partition and International Intervention, p. 207.

societies, the integrative capacity of the political parties vanishes, while the ability of post-conflict elections to consolidate peace weakens. Hence, the creation of political parties both able to represent citizens and smoothly overcome the differences in the society is a fundamental element of transition from conflict to peace. In this respect, political party systems play an important role in peace building.

After the dissolution of the former Yugoslavia, the three Bosnian nationalist parties: the Serb Democratic Party (SDS), the Bosnian Muslim Party of Democratic Action (SDA) and the Croat Democratic Union (HDZ) filled the political gap. They replaced the communist party and took over its social and economic functions. The nationalist parties followed the political culture that a political party runs the institutions of state. By maintaining the system of party rule during the war, they achieved direct control over the administrative organs, the military command, and the management of economic assets.²⁰

The key element of this system has been what in the former Soviet Union was named the “nomenklatura system” that was also present in the communist Europe.²¹ The leading party by the use of its numerous bodies and committees “controlled all significant appointments, promotions, allocation of privileges and dismissals.”²² This privilege of employment included all state institutions, such as the legislature and judiciary, and the managerial positions in the economy. In each ethnic group, the leading political parties have entirely assumed “the roles and style of governance of the old apparatus.”²³ Although the idioms of control are different, the Communist-era “nomenklatura” system continues, by infusing the process where political and economic power as well as basic goods and services are allocated.²⁴ Such an overarching influence of the party over the state lowers the status of the state, preserves the loyalty of its members and party discipline. It also protects the party from political challenge.

²⁰ ‘Reshaping International Priorities in Bosnia and Herzegovina Part One- Bosnian Power Structures’, European Stability Initiative Report, 14 October 1999, <http://www.esiweb.org>, p. i.

²¹ *Ibid.*, p. 4.

²² *Ibid.*, p. 4.

²³ Peter W. Singer, ‘Bosnia 2000 Phoenix or Flames’, *World Policy Journal*, vol.17, issue 1, Spring 2000, p. 32.

²⁴ *Ibid.*, p. 32.

The 'nomenklatura' system eliminates the separation of powers, irrespective of what the constitution may provide, and severely undermines the significance of the electoral process. The party controls not only who is permitted to stand for election, but also their future career path, as well as the degree of authority permitted to the electoral body. The system creates a feudal-type hierarchy, with the party leaders controlling appointments to committees and important offices, which in turn control appointments to the lower ranks. This hierarchy gives rise to powerful vested interests within the party, leading to a high degree of institutional inertia and opportunities for corruption.²⁵

Inter-ethnic enmity has been used as an instrument by the nationalist parties to preserve their power. All of the three ethno-centric parties use nationalist rhetoric as a political tool to prevent people's discontent turning to a strong political opposition. Therefore, they overstate the threats posed by other ethnic groups to sustain ethnic solidarity. Ethnic enmity and mutual distrust allow the parties to portray their undemocratic rule as unavoidable for the defense of their communities.²⁶

Even though the three ethnic parties are antagonistic to an extent, their strength relies on the same conditions, which are "ethnic separation; public fear and insecurity; a lack of democratic accountability; breakdown in the rule of law; and a lack of institutions capable of controlling illegal economic activity."²⁷ Having a joint interest in preserving such conditions, they work discretely but in parallel to maintain the ethnic conflict, and altogether refuse reconciliation.²⁸ Under those circumstances, the new institutions created by the Dayton Agreement have great difficulties to acquire real authority.

5. 2.1 Basic Party Profiles

At present four pre-war parties the SDA, SDS, HDZ, SDP and three post-war creations SBiH, SNSD and PDP dominates the political landscape in BiH.

1) Croat Democratic Union (*Hrvatska Demokratska Zajednica* or HDZ)

²⁵ 'Reshaping International Priorities in Bosnia and Herzegovina Part One', p. 4.

²⁶ *Ibid.*, p. 6.

²⁷ *Ibid.*, p. 3.

²⁸ *Ibid.*, p. 3.

Since the establishment of Bosnian HDZ in August 1990, the party was under the control of the “Zagreb-based Herzegovinian lobby led by Gojko Susak, the Minister of Defense of the Republic of Croatia.”²⁹ The party has its roots in the West Herzegovina, and owed its ideology to ultra-nationalist marginal groups among the big Croat diaspora that “cultivated a nostalgia for the fascist Independent State of Croatia of World War II and a fervent hatred of both Serbs and communists.”³⁰

When Franjo Tudjman came to power, the radical elements entitled to control the funds coming from the diaspora to support the independence of the new Croatian state. Their objective was the unification of ethnically-cleansed parts of Bosnia with Croatia. For this end, they created concentration camps, carried out ethnic cleansing, and trusted in “criminals such as Mladen Naletilic (“Tuta”), the leader of the infamous Convicts’ Brigade, to rid their fiefdoms of Bosniaks and Serbs and spread fear among moderate Croats.”³¹

After signing of peace agreement the HDZ remained an anti-Dayton political party, whose goals and strategic interests have been fundamentally opposed to those of the international community. Its conduct and its rhetoric stayed consistent with its war-time aims of Bosnian Croat independence. At the same time, its drive towards maximizing Croat autonomy also serves as a strategy for maintaining its own political power, often at the expense of the people it purports to represent. However, a split in the party in May 1998 led to the formation of the relatively moderate and pro-Bosnian party named New Croat Initiative (NHI) headed by Kresemir Zubak.³²

2) Serb Democratic Party (*Srpska Demokratska Stranka* or SDS)

Headed by Radovan Karadzic, the Serb Democrat Party was established in July 1990, and “functioned as the nationalist leadership of the Serbs in Bosnia.”³³ The SDS is still the most powerful party in Republika Srpska. Therefore it is useful to

²⁹‘Reshaping International Priorities in Bosnia and Herzegovina Part Three-The End of Nationalist Regimes and the Future of the Bosnian State’, European Stability Initiative Report, 22 March 2001, <http://www.esiweb.org>, p. 11.

³⁰*Ibid.*, p. 12.

³¹*Ibid.*, p. 12.

³² For more information see ‘Doing Democracy a Disservice’, International Crisis Group, p. 12.

³³ Steven L. Burg, Paul S. Shoup, *The War in Bosnia and Herzegovina Ethnic Conflict and International Intervention*, New York: M.E. Sharpe, 1999, p. 47.

examine its nature and ideology, its internal structure, and the reasons why it commands so much popular support. A good starting point for such analysis can be party's wartime history. The SDS undertook from 1992 to 1995 a systematic ethnic cleansing policy to change the essence of Balkan history:

Bosnia's national, cultural, religious, social and even topographical diversity was anathema to the zealots, savants, gangsters and frightened sheep who set about creating what had never existed since the Slavs arrived in the Balkan peninsula in the sixth and seventh centuries: national, ideological and political homogeneity. Employing exemplary executions of notables, massacres of common folk, concentration and rape camps, bombardment of cosmopolitan sinkholes like Sarajevo, and the razing of mosques, churches and other architectural artifacts of a despised past, the ethnic cleansers sought revenge on history itself.³⁴

When the war had proved unwinnable by 1995 a compromise peace was provided through Dayton giving the SDS leaders the chance to institutionalize their power and legitimize their state.³⁵ Throughout the war, the SDS had two specific objectives. The first was to establish an ethnically homogeneous Republika Srpska and the latter to organize Republika Srpska for integration with Serbia.³⁶ In 1995, both objectives had been accomplished to a level possible via military way, and "institutionalized" in Dayton with an autonomous Serbian Entity.³⁷ Nevertheless, the political composition in Republika Srpska was not steady and the SDS broke down after the erosion of support from Serbia and the following dispute of factions within the party³⁸

The SDS had never been a monolithic party in its entire history. Inherently, it was a movement encompassing various factions such as regional interest groups and local warlords.³⁹ The recent conflict in the SDS leadership took place between those who had powerful positions during the war and could be punished for war crimes and

³⁴'The Wages of Sin: Confronting Bosnia's Republica Srpska', International Crisis Group, Balkans Report No.118, Sarajevo/ Brussels, 8 October 2001, <http://www.crisisweb.org>, p. 20.

³⁵ *Ibid.*, p. 20.

³⁶ 'Reshaping International Priorities in Bosnia and Herzegovina Part One', p. 11.

³⁷ *Ibid.*, p. 11.

³⁸ *Ibid.*, p. 11.

³⁹'The Wages of Sin: Confronting Bosnia's Republica Srpska', International Crisis Group, p. 20.

those who had lower stance during the conflict or entered politics after the end of war:

Another important aspect of the SDS that reflects its wartime past is the continuing existence of regional centers of power. Local bosses and criminals who exercised life and death authority and controlled both legal and illegal commerce in their own bailiwicks during the war often maintain a stranglehold over these same localities today. Some still hold political office, while others wield power from behind the scenes like Karadzic or through their businesses or organized crime.⁴⁰

Two years after Dayton, power in Republika Srpska was in the hands of the previous war-time leaders, particularly the SDS party leaders Radovan Karadzic, Momcilo Krajisnik and Biljana Plavsic. Those leaders consolidated key ministries and public institutions in the area of eastern Republika Srpska between Bijeljina and Pale.⁴¹ War-time soldiers were transformed into special police forces, operating all over Republika Srpska as the special safeguard of the Serbian leadership. Moreover, the party leaders controlled the local economic activity and corruption was widespread.⁴² “The autonomy of these power structures was maintained through an aggressive ideology of isolation, which included not only a refusal to permit minorities to return to Republika Srpska, but also a rejection of foreign assistance.”⁴³

The party received popular support because of its special status as a wartime party that created the Republika Srpska.⁴⁴ On the other hand, this led to the situation that the party leaders need to recall the past and keep the fears of the people to remind them the party’s achievements during the war and its inevitability in peace. The SDS particularly abused the worry of the displaced Serbs living in the houses of Bosniaks or Croats who were willing to return.⁴⁵ At present, the party takes advantage of the national solidarity rhetoric to divert people’s attention from the poor

⁴⁰ Ibid., p. 20.

⁴¹ ‘Reshaping International Priorities in Bosnia and Herzegovina Part One’, p. 11.

⁴² Ibid., pp. 11-12.

⁴³ Ibid., p. 12.

⁴⁴ ‘The Wages of Sin: Confronting Bosnia’s Republika Srpska’, International Crisis Group, p. 21.

⁴⁵ Ibid., p. 21.

RS economy. At the same time, the party can not sincerely support economic and legal reforms because of the party's connection to organized crime and corruption.⁴⁶

3) Party of Democratic Action (*Stranka Demokratske Akcije* or SDA)

The Party of Democratic Action was created in March 1990 and led by Alija Izetbegovic.⁴⁷ He was in the faction of the party in favor of “an identity defined largely in terms of Islam, and intent on securing a dominant role for the Muslims in Bosnia.”⁴⁸ The SDA's war time history and appeal guided the party to support an independent state of Bosnia. Therefore, contrary to HDZ and SDS, the major Bosniak party SDA “fought a defensive campaign throughout the war to prevent the dissolution of the Bosnian State and to avoid being left with a non-viable Bosniak enclave surrounded by hostile neighbors.”⁴⁹ However, the SDA is not a united party. It displays even bigger diversity of opinion within its ranks compared to the SDS or the other nationalist parties. The party is consisting of supporters of Dayton implementation as well as chauvinistic elements.

Besides, the isolation of Bosniak sections from each other during the war led to the development of localized power structures which are formally part of the SDA, but operate with a high degree of autonomy.⁵⁰ As a result, the central SDA leadership is not always able to control cantonal and municipal authorities. Nevertheless, majority of the SDA leaders continued to support the integrity of the Bosnian state. In spite of the drastic effect of the war, the party leadership in some regions maintained the multi-ethnic ideal, which prevailed in Sarajevo and Tuzla in the beginning of the war.

⁴⁶ Ibid., p. 21.

⁴⁷ Xavier Bougarel, ‘Bosnia and Herzegovina: State and Communitarianism’ in Yugoslavia and After: A Study in Fragmentation, Despair and Rebirth, David A. Dyker, Ivan Vejvoda ((Editors), London: Longman, 1996, p. 96. Cited in Steven L. Burg, Paul S. Shoup, The War in Bosnia and Herzegovina Ethnic Conflict and International Intervention, p. 46.

⁴⁸ Steven L. Burg, Paul S. Shoup, The War in Bosnia and Herzegovina Ethnic Conflict and International Intervention, p. 46.

⁴⁹ ‘Reshaping International Priorities in Bosnia and Herzegovina Part One’, p. 7.

⁵⁰ For more information see ‘Reshaping International Priorities in Bosnia and Herzegovina Part One’, p. 16.

The party generally works together with the international community although this support for the new BiH is the outcome of strategic concerns. The fear from the irredentist claims of Serbia and Croatia drives the party leaders to get international support and secure a majority community within a multi-ethnic state. Some Bosniaks also hope to re-take the Muslim areas lost during the war mainly in the Drina valley. Therefore, one of the key elements of the SDA agenda is returning to the pre-war diffusion of the Bosniak population throughout the territory of Bosnia.⁵¹

4) Social Democratic Party (*Socialdemokratska Partija* or SDP)

The SDP is a multi-ethnic party but mostly dominated by Bosniaks. It is the successor to the Communist party. The party led by Zlatko Lagumdžija has been one of the most promising non-nationalist parties with a moderate political behavior.⁵² The party's voters involve the moderate urban population who wants to see Bosnia part of the European structures.⁵³ Yet, similar to the other political parties in Bosnia its support base is regional. Nearly 90 percent of the SDP vote is concentrated in five Federation cantons Sarajevo, Zenica-Doboj, Tuzla, Bihac and Central Bosnia.⁵⁴

In addition, the SDA and the SDP supporters locate in the same regions, putting naturally both parties into direct competition. Besides, nearly all their voters and candidates fought the war on the side of the Republic of Bosnia and Herzegovina. The competition among the two parties led to the moderation of the discourse of SDA in recent years. This can be regarded promising for the anticipated reunification of the country.

5. 2.1.1 Post-War Moderate Parties

Three moderate parties SBiH, PDP and SNSD took their place in the political scenery of Bosnia and Herzegovina in the post-war era. The problem of SBiH and PDP is that since their establishment they have always been in coalition governments

⁵¹ *Ibid.*, p. 15.

⁵² 'Reshaping International Priorities in Bosnia and Herzegovina Part Three-The End of Nationalist Regimes and the Future of the Bosnian State', European Stability Initiative Report, 22 March 2001, <http://www.esiweb.org>, p. 16.

⁵³ *Ibid.*, p. 16.

⁵⁴ *Ibid.*, p. 16.

with HDZ, SDS and SDA with a balancing and consensus building role.⁵⁵ The last elections in October 2002 left SNSD in opposition.

1) The Party for Bosnia and Herzegovina (*Stranka za Bosnu i Hercegovinu* or SBiH)
The SBiH led by Haris Silajdzic supports strengthening state institutions to the highest possible level. Therefore, it asks the High Representative to impose decisions when achieving a compromise among local authorities is not possible. The party believes that the High Representative should keep the Bonn powers until completing the job of creating a functional state and legal structure in Bosnia. There is not much difference between the SBiH and SDA in this respect. On the contrary, the SBiH supports the idea of “regionalization through the re-emergence of nationally mixed but economically and historically natural regions that would both render the entities redundant while maintaining a functionally decentralized state.”⁵⁶ This is the major difference from the SDA’s devotion to a unified state.

2) Party of Democratic Progress (*Partija Demokratskog Progresa* or PDP)

The PDP is a new party led by the former RS Prime Minister Mladen Ivanic. It was in the parliamentary coalition with the SDS following the 2000 elections. The PDP described itself as a pragmatic party at the center. The party successfully achieved a positive reputation to secure more power than its number of votes or parliamentary seats would justify. The party leader Mladen Ivanic managed to follow a double strategy: Collaborating with the international community when it would be for the advantage of the RS, and defending its autonomous powers as the nationalist SDS. Albeit the voters did not grasp this duality and the party lost blood in the elections, it remained as a crucial party since both the SDS and the SNSD could not form an RS government without the PDP.

Therefore, the policy of the PDP is Serb nationalism when possible, BiH integration when unavoidable, and power at all times. The party program reflects its happy position of being able to have its cake and eat it. The PDP supports BiH entry into NATO’s Partnership for Peace, but has opposed the necessary prerequisite of a single army command. It hails BiH’s European vocation, but has looked to the resolution of the country’s existential fears

⁵⁵ ‘Bosnia’s Nationalist Governments: Paddy Ashdown and the Paradoxes of State Building’, International Crisis Group, Balkans Report No.146, Sarajevo/ Brussels, 22 July 2003, <http://www.crisisweb.org>, p. 24.

⁵⁶ *Ibid.*, p. 25.

and constitutional dilemmas after rather than before EU membership. In the meanwhile, the PDP insists on strengthening the special, parallel relations that the RS has established with Serbia.⁵⁷

3) Alliance of Independent Social Democrats (*Stranka Nezavisna Socijalitica Demokratska* or SNSD)

The SNSD is a Serbian party founded by Milorad Dodik in 1992. SNSD has a social democratic ideology and stands for strengthening state institutions against the Entities. The party supports that the High Representative can impose only framework solutions.⁵⁸ The actual implementation of the reforms necessitates partnership between the OHR and local authorities.

Yet the SNSD owes its success in the October elections and continuing high profile not just to its advocacy of reform, but also to its fervent defense of the RS prerogatives.⁵⁹ Nevertheless, there is a conviction that Dodik is not a nationalist but just pronounces the phrases electorate likes to hear since the political discourse in the RS is based on nationalistic terminology.⁶⁰

5.3 14 September 1996 First Elections of BiH

Dayton Agreement set the first elections in BiH on a very strict schedule. In the beginning of 1996, it was still not clear whether the national poll would be followed by local elections or more importantly when both would take place.⁶¹ There was an intensive discussion on holding the elections as framed and the preparedness of the OSCE to monitor them. There were technical concerns as well. Registration for refugees started late whereas the electoral rules were printed last minute. Furthermore, there was absence of freedom of movement

⁵⁷ Ibid., p. 25.

⁵⁸ Ibid., p. 26.

⁵⁹ International Crises Group interviews with Bosnian and Croat politicians, 28 January, 18 February 2003. Cited in 'Bosnia's Nationalist Governments: Paddy Ashdown and the Paradoxes of State Building', p. 26.

⁶⁰ 'Bosnia's Nationalist Governments: Paddy Ashdown and the Paradoxes of State Building', p. 26.

⁶¹ Elizabeth M. Cousens, Charles K. Cater, Towards Peace in Bosnia Implementing the Dayton Accords, p. 113.

and expression, and no protection against the influence of indicted war criminals and nationalist leaders such as Radovan Karadzic.⁶²

The OSCE chairman-in-office Flavio Cotti tried to warn international community of the “absence of politically neutral environment for free, fair and democratic elections and if minimal prerequisites were not met before polling day, the vote ought not to take place as it would lead to ‘pseudo democratic legitimization of extreme nationalist power structures.’”⁶³ However, the Organization was under pressure to proceed with the elections without delay. Numerous international speakers including High Representative Carl Bildt expressed that “elections were the essential first step in getting Bosnia’s new joint institutions off the ground, which themselves were crucial to knitting the country’s fractured communities back together.”⁶⁴

Actually, the determination to organize elections one year after Dayton was mainly manipulated by the condition that NATO forces were designed to pull out from Bosnia at the end of 1996.⁶⁵ Organization of free electoral campaigns and fair elections regarded “an exercise in democracy and nation building that would justify the NATO presence and a showcase for its departure.”⁶⁶

The OSCE’s chairman Cotti was reluctant to allow the elections to be hold on schedule for a while. Similar to the criticisms of the time, he assumed that the national elections would reinstate the power of the nationalist leaders, who are not committed to building peace, and provide them democratic legitimacy.⁶⁷ In response to those arguments international observers who were in favor of holding elections argued that “the elections are not en end in themselves, but a step in the

⁶² Ibid., p. 113.

⁶³ ‘Why the Bosnian elections Must be Postponed’, International Crisis Group, Bosnia Report No. 14, Sarajevo/ Brussels, 14 August 1996, <http://www.crisisweb.org>, p. 4.

⁶⁴ Elizabeth M. Cousens, Charles K.Cater, Towards Peace in Bosnia Implementing the Dayton Accords, p. 113.

⁶⁵ Paul Shoup ‘The Elections in Bosnia and Herzegovina’, Problems of Post-Communism, Jan/Feb 1997, vol. 44, issue 1, p. 4.

⁶⁶ Ibid., p. 4.

⁶⁷ Elizabeth M. Cousens, Charles K. Cater, Towards Peace in Bosnia Implementing the Dayton Accords, p. 114.

long process of reconciliation and democratization; postponing elections will not improve conditions; by not setting a firm date for elections international community will heighten political uncertainty; and the parties in BiH want to hold the elections.”⁶⁸ Finally, Cotti announced in mid-June that the elections will take place in September on schedule.

Understanding the election procedure in BiH will be helpful before evaluating the results. To make sure that the government has authority directly coming from the people, limited responsibilities delegated to the legislature. The system is built on a directly elected triple presidency, a House of Representatives and House of Peoples elected by the parliaments of the two Entities. The Croat and Muslim members of the presidency are directly elected by voters living in the FBiH. Likewise, the Serb member is elected by the voters in the RS. The FBiH’s lower house is directly elected while the upper house contains representatives of the cantons. The president and vice president of the FBiH are selected by the national assembly. The RS constitution envisages a directly elected presidency and a single-chamber legislature.

The first elections in BiH to chose the people for ruling positions was carried out on September 14 without a major incident. Nevertheless, the election results of 1996 did not a surprise anyone. The three major nationalist parties were successful in all levels.

For the Bosnian presidency, 60 percent of the Bosniak vote went to the Party of Democratic Action’s (*Stranka demokratske akcije* or SDA) candidate Alija Izetbegovic, 67 percent of the Bosnian Croat vote to the Croat Democratic Union (*Hrvatska demokratska zajednica* or HDZ), and 67 percent of the Bosnian Serb vote to the Serb Democratic Party (*Srpska demokratska stranka* or SDS). For the RS presidency, 59 percent of the vote went to the SDS.⁶⁹

Table 3: Results of the September 14, 1996, Presidential Elections: BiH

Presidency

Party	Candidate	Votes	Percent
Muslim candidates (FBiH)			
SDA	Alija Izetbegovic	730,592	80.0

⁶⁸ ‘Elections in Bosnia and Herzegovina’, International Crisis Group, pp. 12-15.

⁶⁹ Elizabeth M. Cousens, Charles K. Cater, Towards Peace in Bosnia Implementing the Dayton Accords, p. 114.

Party	Candidate	Votes	Percent
SzBiH	Haris Silajdzic	124,396	13.6
ZL	Sead Avdic	21,254	2.3
NDZ	Fikret Abdic	25,582	2.7

Croat candidates (FBiH)

HDZ	Kresimir Zubak	330,477	88.7
ZL	Ivo Komsic	37,684	10.1

Serb candidates (RS)

SDS	Momcilo Krajisnik	690,646	67.3
DBP & SPiM	Mladen Ivenic	307,461	30.0
SPP	Milivoje Zaric	15,407	1.5
SPKrajina	Branko Latinovic	12,643	1.2

RS Presidency

SDS	Biljana Plavcic & Dragoljub Miranic	636,654	59.7
SDA	Adib Dozic & Mevludin Sejmenovic	197,398	18.5
SPiM	Zivko Radic & Nejo Jurc	168,024	5.7
DPB	Predrag Radic & Dragomir Grubac	44,755	4.2
SPAS	Slavko Lisica & Kojo Garic	20,050	1.9

Source: Organization for Security and Cooperation in Europe, 'Results of the 1996 Elections,' October 12, 1996; available at <http://www.oscebih.org/results/main.htm>.

The BiH's House of Representatives has 42 members. Out of the total 28 are elected from the FBiH and 14 from the RS. In 1996, SDA was the biggest party with 19 MPs. Sixteen of them were elected from the FBiH and three from the RS. The SDS was the second biggest party with nine MPs elected just from the RS. The following third party was HDZ with eight MPs all elected from the FBiH. The rest of the seats went to the opposition parties four in the Federation and two in Republika Srpska.

For the Presidential elections of the RS, Biljana Plavcic got 636,654 votes, which was 59.2 percent of the total. At that time, Plavcic was one of the members of

the SDS and her closest opponent was the Bosniak Adib Dozic from the SDA that received 197,389 votes, which was 18.4 percent of the total.⁷⁰ Given that the position of president of Republika Srpska was not ethnically defined, Bosniaks and Croats could also run in the elections. In the first election of the National Assembly, the SDS won an absolute majority with 45 of the 83 seats and its ally the SRS took another six positions.

In the Federation of Bosnia and Herzegovina for the House of Representatives, the SDA easily formed the largest group in the 140-member assembly with 78 seats. The HDZ took 36, a coalition of ex-communist parties 11, Haris Silajdzic's *Stranka za Bosnu i Hercegovinu* (Party for Bosnia and Herzegovina or SBiH) party 10 and two minor parties the remaining five seats. Given that Silajdzic rejoined the fold when his party and three others merged with the SDA to form the *Koalicija za cijelovitu i demokratsku Bosnu i Hercegovinu* (Coalition for a Whole and Democratic Bosnia and Herzegovina or KBiH), the ruling KBiH would expect to obtain about 90 seats, if its support was to hold up.⁷¹

However, there were several factors to influence this outcome: "In the first instance, the SDA turn-out was suspiciously high in the 1996 poll which, as a result of a thorough and carefully-monitored voter registration, is unlikely to be repeated; Secondly, many electors who voted for Silajdzic's party in 1996 were, above all, looking for an alternative to the SDA and have switched allegiance since Silajdzic's about-turn. Many of Silajdzic's 1996 supporters voted for the SDP in the 1997 municipal elections and are likely to continue voting in the same manner; thirdly, the SDP has waged a vociferous sniping campaign against the SDA government and its perceived failings and has also benefited from the support of western democracy-building, non-governmental organizations."⁷² Therefore, the opposition increased its votes though not to an extent to threaten the SDA's potential to come to power.

Table 4: Results of the September 14, 1996, Parliamentary Elections: BiH House of Representatives

⁷⁰ 'Doing Democracy a Diservice', International Crisis Group, Bosnia Report No. 42, Sarajevo/ Brussels, 9 September 1998, <http://www.crisisweb.org>, p. 14.

⁷¹ *Ibid.*, p. 15.

⁷² 'Addendum to Elections in Bosnia and Herzegovina Report', International Crisis Group, Bosnia Report No. 17, Sarajevo/ Brussels, 30 October 1996, <http://www.crisisweb.org>, pp. 32-39.

	Seats	Percent	Votes	Percent
Votes from FBiH				
SDA	6	57.1	725,417	53.5
HDZ	8	28.6	338,440	24.9
ZL	2	7.1	105,918	7.8
SzBiH	2	7.1	93,816	6.9
Others	0	0	93,304	6.9
Votes from RS				
SDS	9	64.3	587,723	54.5
SDA	3	21.4	184,553	17.4
SpiM	2	14.3	136,077	12.8
Others	0	0	162,626	15.3
FBiH House of Representatives				
SDA	78	55.7	725,810	54.3
HDZ	36	25.7	337,794	25.3
ZL	11	7.9	105,897	7.9
SzBiH	10	7.1	98,207	7.3
DNZ	3	2.1	23,660	1.8
HSP	2	1.4	16,344	1.2
Others	0	0	27,995	2.1
RS National Assembly				
SDS	45	54.9	568,980	52.3
SDA	14	17.0	177,388	16.3
SPiM	10	12.2	125,372	11.5
SRS	6	7.3	72,517	6.7
DBP	2	2.4	32,895	3.0
ZL	2	2.4	22,329	2.1
SPAS	1	1.2	14,508	1.3
SzBiH	1	1.2	25,593	2.3
SP-Krajina	1	1.2	17,381	1.6
Others	0	0	30,800	2.8

Source: Organization for Security and Cooperation in Europe, 'Results of the 1996 Elections,' October 12, 1996; available at <http://www.oscebih.org/results/main.htm>.

In the Cantonal Elections out of ten the SDA took six cantons and the HDZ four. Joint votes of the two ethnically-based parties ranged from a lowest 65 percent in Canton 9, Sarajevo to the highest 93 percent in Cantons 6 and 7 respectively Central Bosnia and Neretva.⁷³ The biggest competition between the two parties was in Canton 6, Central Bosnia, where the SDA got 49.7 percent and the HDZ 43.5 percent of the votes.⁷⁴

Table 5: Results of the September 14, 1996, Cantonal Elections:

Cantons	SDA	SBiH	HDZ	ZL	DNZ	HSP	HSCP	BP	Others
Cazin	74.6	5.1	3.1	2.7	13.1	--	--	--	1.7
Drvar	12.3	--	77.7	2.7	--	--	2.1	--	--
Gorazde	81.4	2.6	--	4.0	--	--	--	--	1.2
Grudo	--	--	91.0	--	--	6.9	2.0	--	--
Mostar	30.3	2.1	62.7	2.2	--	--	--	--	1.5
Posavina	12.7	--	84.0	2.7	--	--	--	--	5
Sarajevo	59.5	12.6	5.8	17.3	--	--	1.2	--	--
Travnik	49.0	2.3	43.0	2.7	--	--	--	--	--
Tuzla	62.7	9.7	9.2	17.8	--	--	1.2	1.2	--
Zenica	66.0	9.3	14.0	7.2	--	--	1.0	2.0	--

Source: Paul Shoup 'The Elections in Bosnia and Herzegovina', Problems of Post-Communism, Jan/Feb 1997, vol.44, issue 1, p. 20.

5.3.1 Technical Evaluation of the 1996 Elections

On September 14, five simultaneous elections (for the House of Representative of BiH; for the Presidency of BiH; for the House of Representatives of the FBiH; for the National Assembly of the RS; and for the Presidency of RS) conducted in the same day. Observers reported that "voting was conducted properly at 97% of polling stations and the polling station committees conducted their work in a

⁷³ 'Doing Democracy a Diservice', International Crisis Group, p. 16.

⁷⁴ Ibid., p. 16.

professional and impartial manner.”⁷⁵ However, there had been serious technical problems on some major areas such as voter registration, vote at absentee polling stations, and on freedom of movement, especially voters returning to vote in the area where they lived before the conflict.⁷⁶

However, the extent and impact of these technical problems have been open to discussion. The International Crisis Group, one of the tough critics of the 1996 elections, identified the following problems: “a higher number of voters than was technically possible, poor handling of refugee registration and out-of-country voting, a shortfall of between 5 percent and 15 percent of registered voters from official lists, the decision to locate several polling stations at sites of major wartime violence, technical decisions made without full disclosure to candidates and voters, ballots that were not in the custody of accountable parties when they were moved from polling stations to counting centers, and the mystifying OSCE decision to destroy all ballots one week after votes were certified based on a regulation adopted the day before elections were held.”⁷⁷

One of the technical questions that turned out to have great strategic impact was the question of voter registration. According to Dayton, voters in both national and local elections were expected to vote in the municipality where they were registered by the last pre-war census in 1991.⁷⁸ However, considering the large number of refugees and internally displaced Bosnians, Dayton also provided that a citizen “may apply to the Commission to cast his or her ballot elsewhere.”⁷⁹ A refugee’s right to vote was interpreted as confirmation of his or her intention to return to BiH.⁸⁰ The agreement stated the expectation that “by election day, the return of refugees should already be underway thus allowing many to participate in

⁷⁵ ‘The Elections in Bosnia and Herzegovina’, 14 September 1996, Preliminary Statement of the Co-ordinator for International Monitoring (CIM), 16 September 1996, p. 2.

⁷⁶ *Ibid.*, p. 2-3.

⁷⁷ ‘Elections in Bosnia and Herzegovina’, International Crisis Group, Bosnia Report No. 16, Sarajevo/Brussels, 22 September 1996, <http://www.crisisweb.org>, pp. 1-59.

⁷⁸ *Ibid.*, p. 35.

⁷⁹ Annex 3, Article IV.

⁸⁰ Annex 3, Article IV (1).

person.”⁸¹ It is clear that most displaced persons in Bosnia expected to vote in the municipalities in which they were living before the war in order to start the process of reintegration.⁸² However, this did not happen.

Since it became clear that the return of refugees and internationally displaced persons would not be happening soon enough, a mechanism had to be found that people could apply to vote elsewhere.⁸³ The aim of international community was to avoid electoral fraud.⁸⁴ Thus, “the PEC developed a form called P-2 that allowed displaced persons to register ‘in the municipality in which they were currently living or which they intend to live in future.’”⁸⁵ Displaced persons had to fill out the form, apply to the PEC and then vote in person on the election day. Bosniak and Croat displaced persons living in the Federation mostly registered to vote in municipalities in which they used to live in 1991 by absentee ballot.⁸⁶

However, Republika Srpska’s authorities abused the option to vote in the current place of residence or even in a future intended place of residence, making it the rule rather than the exception. They pressured the displaced Serbs to register in RS rather than the municipalities in which they were living in 1991. This was because the RS officials were entirely opposed to: “a) absentee voting, b) out of country voting, or more clearly the right of ethnically cleansed Bosniaks and Croats to have political voice in Republika Srpska.”⁸⁷

In this way they could “engineer a situation in which displaced Serbs voted in the municipalities to which they had fled, thus ensuring a Serb majority in that

⁸¹ Ibid.

⁸² ‘Elections in Bosnia and Herzegovina’, International Crisis Group, p. 35.

⁸³ Elizabeth M. Cousens, Charles K. Cater, Towards Peace in Bosnia Implementing the Dayton Accords, p. 114.

⁸⁴ Ibid., p. 114. For more information see Elections in Bosnia and Herzegovina, International Crisis Group, pp. 35- 37.

⁸⁵ Elizabeth M. Cousens, Charles K. Cater, Towards Peace in Bosnia Implementing the Dayton Accords, pp. 114- 115.

⁸⁶ ‘Elections in Bosnia and Herzegovina’, International Crisis Group, p. 35.

⁸⁷ ‘Is Dayton Failing?: Bosnia Four Years After the Peace Agreement’, International Crisis Group, Bosnia Report No. 80, Sarajevo, 28 October 1999, <http://www.crisisweb.org>, p. 12.

entity and minimal Serb political representation in the Federation.”⁸⁸ Among the displaced Serbs, who have registered to vote in large numbers in their home municipalities in the Federation, were the just from “Drvar, Glamoc and Grahovo where they formed the overwhelming majority of the population before the war.”⁸⁹ In this respect, the first elections has been criticized that it helped cement the ethnic divide in Bosnia. The OSCE led Provisional Election Commission (PEC) blamed to “reward the ethnic cleansers during the writing of the election rules, by permitting the ruling parties to ethnically gerrymander and pack voting districts where they had only a minority presence before the war.”⁹⁰

The OSCE had an enormous task to accomplish in a very short time. It had neither the experience nor the means to conduct highly complicated elections. Besides the problems during the voter registration process strict security measures on polling day disenfranchised tens of thousands of voters as well.⁹¹ There was lack of active protection against “refugees in neighboring countries to vote twice by first casting absentee ballots and then voting in person after traveling to the country.”⁹² However, the preliminary election results announced by the OSCE was more disturbing, which showed a voter turn-out of more than 100%.⁹³

Table 6: Turn out in Bosnian 1996 Elections

Maximum Theoretical Electorate	2,920,000
Refugees who failed to register	259,000
IDP voters who failed to cross IEBL	135,300
Serb refugees in FRY who failed to return on the day	24,600129
Refugee voters who failed to vote	160,000
Maximum Theoretical Voter Turn-out	2,341,100

⁸⁸ ‘Doing Democracy a Disservice’, International Crisis Group, Bosnia Report No. 42, Sarajevo/Brussels, 9 September 1998, <http://www.crisisweb.org>, p. 5.

⁸⁹ *Ibid.*, p. 5.

⁹⁰ ‘Is Dayton Failing?: Bosnia Four Years After the Peace Agreement’, p. 12.

⁹¹ ‘Elections in Bosnia and Herzegovina’, International Crisis Group, p. 57.

⁹² *Ibid.*, p. 57.

⁹³ *Ibid.*, p. 57.

Number of voters who cast ballots	2,431,554
Turn-out as proportion of maximum electorate	103.9 %

Source: Elections in Bosnia and Herzegovina, International Crisis Group, Bosnia Report No. 16, p. 57.

Though elections formed the cornerstone of the Dayton agreement, the conditions for free and fair election failed to exist during the first elections in BiH. Many people who were responsible for the great atrocities and war crimes committed in the conflict occupied key positions of authority; media were under control of the ruling ethnically-based political parties and served their interest; and there was no room under those circumstances to construct civil society.⁹⁴ As a result, the polls simply awarded a democratic mandate to many of those people who were themselves responsible for the outbreak of war in the first place.

Nevertheless, lack of security has been a determining factor over the outcome of the elections. Politicians in the opposition had been attacked, freedom of movement was minimum, and minorities were subject to recurring violence and intimidation by the authorities.⁹⁵ To sum up, the atmosphere in Bosnia was full of insecurity. Thus, “the rational vote for people to cast was for the nationalist parties, which had always promised to protect their interests.”⁹⁶

However, the first elections in BiH was considered by the international community as a first step toward healing the wounds of the civil war. Besides, elections expected to help achieving two objectives. First, they could facilitate the withdrawal of the NATO’s military force IFOR from Bosnia.⁹⁷ Secondly, they could contribute in the process of rebuilding a sustainable, unified and multi-ethnic BiH.⁹⁸ It was argued at the end that “elections are a first step out of the period of deep and violent conflict towards the aspiration of a democratic future for Bosnia and

⁹⁴ ‘Why the Bosnian elections Must be Postponed’, International Crisis Group, pp. 5-10.

⁹⁵ Elizabeth M. Cousens, Charles K. Cater, Towards Peace in Bosnia Implementing the Dayton Accords, p. 115.

⁹⁶ Ibid., p. 115.

⁹⁷ Paul Shoup ‘The Elections in Bosnia and Herzegovina’, p. 5.

⁹⁸ Ibid., p. 5.

Herzegovina.”⁹⁹ Establishing freedom and democracy, and the political institutions that can maintain the required principles need a long-term and laborious process.¹⁰⁰ Nonetheless, international community had to admit that although the first elections were characterized by some imperfections they provided the first and cautious step for the democratic functioning of the BiH.¹⁰¹

5.4 Later Electoral Rounds Organized by the OSCE (1997, 1998, 2000)

During 1996 and 2000, the OSCE organized four more national elections for different layers of government. In September 1998 and November 2000, two times elections were organized for state and entity offices. Municipal elections were held twice: the first in September 1997, and the second in April 2000 as well. Additionally, a special entity level election to the RS National Assembly took place in November 1997, after the rift within the Serbian leadership that led Biljana Plavsic to desert from the SDS.¹⁰²

5.4.1 1997 November Extra-Ordinary Elections for RS National Assembly

President Plavsic decided on 3 July 1997 to dissolve the National Assembly of Republika Srpska dominated by the Pale faction of the SDS, which was not receptive international community’s involvement in Bosnia.¹⁰³ Soon all involved parties agreed to carry out new elections for the Assembly, and the OSCE Mission to Bosnia and Herzegovina took up the role of organizing the elections under the same arrangements.

The new elections were viewed by some members of the Contact Group such as the US as an “opportunity to wrest legislative power from the hard-liners, while other members Russia, France and Germany were skeptical about using the elections

⁹⁹ ‘The Elections in Bosnia and Herzegovina’, 14 September 1996, Preliminary Statement of the Coordinator for International Monitoring (CIM), 16 September 1996, p. 5.

¹⁰⁰ *Ibid.*, p. 5.

¹⁰¹ *Ibid.*, p. 6.

¹⁰² Elizabeth M. Cousens, Charles K. Cater, Towards Peace in Bosnia Implementing the Dayton Accords, p. 116.

¹⁰³ David Chandler, Bosnia: Faking Democracy After Dayton, p. 125.

to change the political scene.”¹⁰⁴ The idea was to support the new party established by Plavsic the Serbian People’s Alliance (SNA) against SDS. Towards this end operations organized against indicted war criminals and SFOR intervened in Banja Luka in summer of 1997. Few months later in October SFOR seized the Bosnian Serb television’s transmitters. Financial base of the hard-line politicians was destroyed, officials and striking candidates dismissed from the electoral lists. However, international support for President Plavsic and attempts to undermine the power of the Pale-based SDS leadership did not work.

Subsequent to the extraordinary election of November 1997, the SDS continued to be the biggest party in the assembly with 24 seats. However, despite in cooperation with the Serb Radical Party (SRS), which took 15 seats failed to form an absolute majority.¹⁰⁵ The new party of Plavsic, SNS won 15 seats “leaving the hard-liners a comfortable mandate but short of a majority due to the 18 seats won by absentee Muslim and Croat candidates.”¹⁰⁶ The Coalition for a Whole and Democratic Bosnia and Herzegovina led by SDA won 16 seats; the SDP won 2 seats that brought the number of Bosniak and Croat representatives in the assembly elected by “absentee voters to 18.”¹⁰⁷ In the meantime, Plavsic’s SNS gained 15 seats, Radisic’s SPRS party 9 and Dodik’s SNSD 2.¹⁰⁸

Then, international pressure was applied to encourage the MPs to accept a government led by Mladen Ivanic, and the High Representative went so far to “threaten that if a suitable candidate could not be agreed by the Assembly he would appoint the Prime Minister himself.”¹⁰⁹ This did not happen since the Assembly elected a moderate government headed by Milorad Dodik.

¹⁰⁴ R. Bonner, ‘Belgrade and Moscow Stall Bosnia Vote Desired by US’, New York Times, 16 October 1997. Cited in David Chandler, Bosnia: Faking Democracy After Dayton, p. 126.

¹⁰⁵ ‘Doing Democracy a Disservice’, International Crisis Group, p. 14.

¹⁰⁶ David Chandler, Bosnia: Faking Democracy After Dayton, p. 127.

¹⁰⁷ ‘Doing Democracy a Disservice’, International Crisis Group, p. 15.

¹⁰⁸ Ibid., p. 14.

¹⁰⁹ ‘Plavsic Says Dodik’s Election Saved RS’, RFL/RL Newline, vol. 2, no. 11, II, 19 January 1998, <http://www.rferl.org/newline/search/>. Cited in David Chandler, Bosnia: Faking Democracy After Dayton, p. 127.

5.4.2. 12-13 September 1998 General Elections

The second general elections in 1998 took place in the context of the conflict resolution process that was designed for BiH. Nevertheless, the political situation did not improve since the first national elections. The return of refugees to their original residences was very slow, the influence of the war criminals over their communities was very large, and there was neither freedom of expression nor independent media. Similarly, the 1998 national elections did not move the country closer to real implementation of the Dayton agreement.¹¹⁰

The institutions to be elected in the elections were Presidency of BiH and House of Representatives (HoR) at national level, President, Vice President and National Assembly of RS, HoR and Cantonal Assemblies of the Federation at the Entity level and Municipal Councils at local level.¹¹¹ The Presidency of BiH was elected a majority system. The same system was used for the election of the President and Vice-President of RS. The Bosniak and Croat candidates were chosen by a single direct ballot by the voters registered in the Federation. The Bosniak and Croat getting most of the votes amongst the candidates of the 'same constituent people' were elected.¹¹² The Serb member was also chosen by a single direct ballot of voters registered in the Republika Srpska. The candidate getting the highest number of votes won in the elections.

House of Representatives of Bosnia and Herzegovina, House of Representatives of the Federation, National Assembly of Republika Srpska, Canton Assemblies of the Federation, Municipal Councils were selected through a proportional representation system based on political party or coalition lists and independent candidates. On the other hand, the proportional distribution system differed from the one used in 1996 or 1997. The difference was that "the distribution curve is somewhat flattened, resulting in a couple of extra seats for smaller parties at

¹¹⁰ 'Is Dayton Failing?: Bosnia Four Years After the Peace Agreement', International Crisis Group, p. 15.

¹¹¹ Office for Democratic Institutions and Human Rights, Election Observation, 'Bosnia and Herzegovina Elections 1998', 12-13 September, p. 5.

¹¹² *Ibid.*, p. 6.

the expense of larger parties although political result of the system change was minimal.”¹¹³

Another change was concerning the voter registration. Since voter registration was problematic in 1996 and 1997, the OSCE initiated pre-registration in these elections. This increased the confidence of the public and parties as well as the international observers. However, the 1998 General Elections have slightly reduced the power of the ruling nationalist parties. The only difference was a more pluralistic political spectrum with new parties participated to the elections. For the House of Representatives of the BiH, the coalition of SDA, SBiH and two minor parties received 40% of the vote, which translated into seventeen mandates.¹¹⁴ Sloga a collation of SNS, SNSD and SPRS won 10% of the vote and four mandates, while SDS alone also took 10% of the vote and four mandates, and the HDZ got six mandates with the 14% of the votes.¹¹⁵

For the Federation House of Representatives the coalition of SDA and SBiH with the same two small parties won almost half (49%) of the votes and sixty-eight mandates. The HDZ got twenty-eight mandates while SDP had twenty-one. In the National Assembly of RS the biggest party was SDS which managed to attract 24% of the votes with 19 mandates. The coalition of SDA, SBiH and two small parties was the second largest party coalition with fifteen mandates.¹¹⁶

Hard-liner Nikola Poplasen was elected as the President of RS, albeit the international community’s open support for Biljana Plavsic.¹¹⁷ 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 had not lost.¹¹⁸ In 1998, apparently the OSCE was not acting as a neutral international authority envisioned by the Dayton agreement. On

¹¹³ Ibid., p. 7.

¹¹⁴ ‘Elections and the development of a Draft Election Law’, The Association of Election Officials in BiH, Technical Issue 1, <http://www.aeobih.com.ba>, p. 2.

¹¹⁵ Ibid., p. 3.

¹¹⁶ Ibid., pp. 6-7.

¹¹⁷ ‘Is Dayton Failing?: Bosnia Four Years After the Peace Agreement’, International Crisis Group, p. 15.

¹¹⁸ Ibid., p. 15.

the contrary, it was involved in the international community's efforts to remove the SDA and HDZ from power as well as the Serb nationalist parties, particularly the SDS and SRS.¹¹⁹

5.4.3 11 November 2000 General Elections

Regardless of the absence of required conditions again, such as effective political party structures, free media, and functioning civil society, which could be the basis for voting rather than the war-time hates and fears, on 11 November 2000 the OSCE organized the third general elections in BiH. All Bosnians from both Entities voted for representatives at the state level House of Representatives. At the Entity level, in the FBiH members for the Federation House of Representatives and the ten Cantonal Assemblies were elected. In the Republika Srpska (RS) representatives for the RS National Assembly as well as the President and Vice President were elected.¹²⁰

Before to the election, the PEC initiated several changes to the election Rules, as decided in the latest Brussels Peace Implementation Council (PIC).¹²¹ The changes comprised "a new method of voting for the Federation House of Peoples, whose members are elected by Cantonal Assemblies, a new system of locally based constituencies for the RS National Assembly, and a preferential voting system for the positions of President and Vice President of the RS."¹²² Some of the rules maintained from the previous elections such as the open list system where voters have an opportunity to indicate the candidates rather than the parties they support.

The objective of the international community was to advance four main goals through the electoral design: "Fostering inter-ethnic reconciliation; Reducing nationalist and extremist politics; Encouraging moderate and multi-ethnic politics and candidates; and Encouraging moderate elements within nationalist political

¹¹⁹ For example an official OSCE internal document was circulated on detailed strategies to help the SDP win in the OSCE Democratization Brach Seminar, Teslic, October 1998. Cited in 'Is Dayton Failing?: Bosnia Four Years After the Peace Agreement', International Crisis Group, pp. 59-60.

¹²⁰ 'Bosnia's November Elections: Dayton Stumbles', International Crisis Group, Bosnia Report No. 104, Sarajevo/ Brussels, 18 December 2000, <http://www.crisisweb.org>, p. 1.

¹²¹ 'Declaration of Peace Implementation Council', Brussels, 23-24 May 2000. Cited in 'Bosnia's November Elections: Dayton Stumbles', International Crisis Group, p. 1.

¹²² 'Bosnia's November Elections: Dayton Stumbles', International Crisis Group, pp. 1-2.

parties.”¹²³ However, the success of the electoral design in achieving these objectives was heavily debated in Bosnia and Herzegovina.

These changes were adopted to bring the Bosnian electoral process closer in line with European standards, meet the necessary conditions for a good electoral system and a fair election law. An open list system gives more option to the electorate and permits them to vote for either a political party or an individual candidate from the party’s candidate list or to independent candidates. The system increases the level of accountability for elected officials as well as gives the voters the option to select candidates irrespective of their order on the party list. In this way, the electorate can change the order of a party list. However, a candidate must get at least 3% of the total number of votes received by the list to win the elections.

Similarly, Bosnia and Herzegovina used the preferential system for the first time in this elections. The preferential system was developed for the election of the President and Vice-President of Republika Srpska. All candidates’ names for the President and Vice-President were put on the preferential ballot for the elections. The ballot was marked by writing the number 1 opposite the name of the candidate chosen as a first preference. In case electorate has subsequent preferences could write the numbers 2, 3, 4 opposite the names of the other candidates. During the counting process of the votes, the ballots are first categorized by the first preferences marked by the voters.

A candidate needs more than 50% first preferences to be elected. If no candidate receives more than 50% first preferences, the candidate with the lowest number of first preferences is eliminated from the count and her/his votes are re-distributed according to second preference votes to other candidates indicated on the ballots. If, again, no candidate receives more than 50%, the procedure will be repeated until one candidate obtains more than 50%. By marking more than one candidate, the voter can influence the outcome of the election with his/her second, third, or higher choice by the transfer of the remaining preferences in the case that his/her first choice is eliminated. The moderate candidates stand a better chance of winning the elections, as they will have greater support from a larger cross-section of the electorate. In this way extreme or radical candidates have less chance to win.¹²⁴

¹²³ ‘Elections and the development of a Draft Election Law’, The Association of Election Officials in BiH, Technical Issue 1, <http://www.aeobih.com.ba>, p. 8.

¹²⁴ *Ibid.*, p. 10.

Multi-member constituencies (MMC) and compensatory mandates were the other innovations in this elections. In the previous elections, MPs elected to the BiH House of Representatives, Federation House of Representatives, and Republika Srpska National Assembly were elected from one of two constituencies covering the Entities in BiH. Under the multi-member constituencies, members of the BiH and Federation Houses of Representatives and the RS National Assembly will represent separate geographic units covering every region in the country that will make legislative bodies more representative geographically.

As a result a new electoral model, the system of compensatory seats was developed for the country. Compensatory seats were provided for the parties that are underrepresented in the BiH and Entity Parliaments, in proportion to a country wide calculation of votes.¹²⁵ Only political parties and coalitions may take part in the distribution of compensatory mandates. First of all, the total amount of seats to for the legislative body is distributed proportionally between the parties and coalitions' lists according to the total vote the party took. From the number of seats a political party would win according to this procedure, the total number of seats won by the same party in each MMC is deducted. The difference gives is the number of compensatory seats the party wins. A compensatory seat received by a political party is distributed one by one to non elected candidates on the party list of candidates for compensatory mandates, starting from the top of the list till all mandates are distributed.¹²⁶

The reason for the introduction of the MMC system was that together with the open list system the MMC would “enhance individual voters’ potential to hold their political representatives responsible.”¹²⁷ Electoral system believed to be a very powerful instrument for accommodation and harmony in severely divided societies. The new electoral changes designed to achieve that goal. The parties who have gained power in Bosnia since 1995 showed that they are unable to co-operate with

¹²⁵ *Ibid.*, p. 13.

¹²⁶ ‘Electoral System of Bosnia and Herzegovina’, <http://www.izbori.ba/English/ElectoralSystem.htm>, p. 2.

¹²⁷ Sumantra Bose, *Bosnia after Dayton Nationalist Partition and International Intervention*, London: Hurst & Company, 2002, pp. 227-228.

each other.¹²⁸ “If Bosnia is to be re-established as a multiethnic state where the three main groups can live side by side, finding the means to break the dominance of political parties who can not work together deemed to be necessary.”¹²⁹

In general, there was a hopeful atmosphere among the international community in the period before the elections. This was partly driving from the expectations in the electoral system changes and partly from the democratic changes first in Croatia and then in Yugoslavia. Moreover, nationalist parties lost power in the April 2000 municipal elections.¹³⁰ Overall, after five years of signing the Dayton and “five billion US dollars” spent to rebuild Bosnia international community anticipate the election results would confirm that Bosniaks, Serbs and Croats began to move away from narrow ethnic politics, and that the conditions for a sustainable peace was created.¹³¹

To the very much disappointment of the international community the third general elections at the level of central, federal and cantonal failed to remove the nationalist parties entirely even though it did not give them an absolute victory. In the RS, the SDS had a clear victory winning the presidency and vice-presidency, and achieved a lead in the elections to the RS National Assembly with 38 per cent of the vote.¹³² In the BiH House of Representatives it won six mandates, which is two more mandates than the 1998 election. The decision of the Provisional Election Commission to ban Serbian Radical Party (SRS) from participating in the elections helped SDS to improve its votes.¹³³

In the Federation, the HDZ won an absolute majority among Croat voters and had five mandates in the BiH House of Representatives although it lost one mandate since the party got six in the previous elections. The moderate Social Democratic

¹²⁸ ‘Breaking the Mould: Electoral Reform in Bosnia and Herzegovina’, International Crisis Group, Bosnia Report No. 56, Sarajevo/ Brussels, 4 March 1999, <http://www.crisisweb.org>, Annex A, p. 16.

¹²⁹ *Ibid.*, p. 16.

¹³⁰ ‘Bosnia’s Municipal Elections 2000: Winners and Losers’, International Crisis Group, Balkans Report No. 19, Sarajevo/ Brussels, 28 April 1999, <http://www.crisisweb.org>.

¹³¹ ‘Bosnia’s November Elections: Dayton Stumbles’, International Crisis Group, p. ii.

¹³² *Ibid.*, p. 13.

¹³³ ‘Elections in 2000 Risks for the Bosnian Peace Process,’ 5 January 2000, European Stability Initiative, <http://www.esiweb.org>, p. 2.

Party (SDP) scored a higher Bosniak vote than the SDA, but with a very little difference contrary to the expectations. SDP improved from 4 mandates won in the 1998 elections to nine mandates in November 2000 elections, while SDA closely followed with eight mandates.

International community could not count certain political realities such as “SDP’s weak appeal among non-Bosniak voters, the absence of any Croat party capable of defeating the HDZ” and the effect of the corrupt Sloga coalition in RS.¹³⁴ Besides, the preferential voting system designed to ensure that voters of smaller parties with little chance of success would still influence the final result between the leading parties could not make the expected impact in an extremely fragmented country like BiH. Bosnian voters were “reluctant to cross ethnic boundaries and support even for purely technical reasons a party of a different national community.”¹³⁵ In a political environment that three ethnic groups lack confidence towards each other the nationalist parties “SDS, HDZ and SDA successfully exploited the rhetoric of fear and hate” to win the elections.¹³⁶

In sum, the November election results were another disappointment for the international community that elections would bring to power moderate and co-operative Bosnian politicians. Even there has been a slight increase on the support for non-nationalist parties, the three nationalist parties which started the war, destroyed the country and still work to impede the implementation of the Dayton Accords has been winning the elections. This proved the failure of international community’s policy by relying merely on elections to create an atmosphere for self-sustaining change.

5.5 Adoption of Election Law

The process of drafting a new election law was intensified after the second general elections in 1998. The organization of a Permanent Election Commission speeded up as well. International community’s goal was to lead normalization of the electoral process in BiH, and transfer the responsibility to the locals as soon as possible as it is the fundamental goal of peace building in war-torn societies. Therefore, the

¹³⁴ ‘Bosnia’s November Elections: Dayton Stumbles’, International Crisis Group, p. 3.

¹³⁵ Sumantra Bose, Bosnia after Dayton Nationalist Partition and International Intervention, p. 234.

¹³⁶ ‘Bosnia’s November Elections: Dayton Stumbles’, International Crisis Group, p. 3.

Declaration of the Peace Implementation Council (PIC), meeting in Madrid on 16 December 1998, stated the objective to work with the people and representatives of Bosnia to develop a new electoral law that would promote a democratic and multi-ethnic process.¹³⁷ That would also make the local authorities more accountable to the voters.

Annex 3 of Dayton agreement articulated that OSCE would run the elections in BiH through the Provisional Election Commission (PEC). Led by the OSCE, PEC set up the rules and regulations for the 1996 elections. The organization and implementation of the elections was transferred to the Provisional Electoral Commission. While waiting for the adoption of an Election Law and a Permanent Election Commission the PIC every year prolonged the PEC mandate. As a result, the PEC Rules and Regulations draw the real electoral law though provisional.¹³⁸

The High Representative to accelerate the adoption of Election Law set up an Independent Expert Commission with seven members in September 1998 for drafting the Election Law that would be endorsed by the BiH Parliamentary Assembly. An international consultative body also engaged in formulating the Election Law to observe international standards. Before the Draft Election Law was presented to the parliamentary procedure, it was submitted to the PIC Steering Board for review and instructions. The Draft Election Law was presented in October 1999 to the BiH Parliament, House of Representatives and House of Peoples for the first time.

Despite the fact that the Draft Election Law was in compliance with the international standards and was already considered an important step for Bosnia and Herzegovina in accession to Council of Europe, the Draft was rejected by the Parliament. Since the BiH Parliament did not adopt the Draft Election Law, both the Municipal and General Elections in 2000 again had to be governed by the PEC Rules and Regulations. However, many of the democratic provisions envisaged in Draft Election Law were incorporated in the PEC Rules and Regulations.¹³⁹

¹³⁷ 'Reinforcing Peace in Bosnia and Herzegovina- A Way Ahead', Annex to the Madrid Declaration of the Peace Implementation Council, Madrid, 16 December 1998, p. 21, <http://www.oscebih.org>.

¹³⁸. 'Short Election Law History', <http://web-oscebih/elections-implementation/history.asp>, p. 1.

¹³⁹ *Ibid.*, pp. 1-2.

The OHR and OSCE provided momentum by the use of a joint working group to the Election Law adoption procedure and changed the version of the document. This modification was based on the expertise obtained in the “2002 municipal and general elections and the Constitutional Court’s decision on constituent peoples.”¹⁴⁰ The new Draft Law was adopted by the Council of Ministers and submitted to the BiH Parliament for adoption in April. In June the Law was rejected due to the provisions on the “manner of election of the BiH Presidency members, House of Peoples of the BiH Parliamentary Assembly and displaced persons voting rights.”¹⁴¹ However, in the August session of the Parliament the Election Law was adopted through the pressure of the High Representative. In fact, the election law was imposed by the OHR and adopted later by the parliaments.

Since the adoption of election law was a pre-condition for joining the Council of Europe, there was an enormous pressure on the political parties, who could not find an agreement on a number of issues. Hence, after it was rejected twice by the Parliamentary Assembly of BiH eventually at the third time the election law could be adopted. Election Advisor of the OSCE Mission to Bosnia and Herzegovina Valentin Nikolov explained the process and stated that the OSCE was successful to bring three political party leaders for election provisions. The Election Commission was composed of four national and three international members. Among the three international members the OHR had one and the OSCE two representatives. OHR was dealing more about the legal aspect of the elections such as the implementation and adoption of the election law while OSCE was focusing on the operational side of the elections such as how to reconcile the contradictory interests. Military stabilization was the first task of international community in BiH. Second prime task has been conducting elections. However, Nikolov admitted that conducting elections was not a big issue in Bosnia because locals already knew how to conduct elections from Former Yugoslavia era.¹⁴²

¹⁴⁰ Ibid., p. 2.

¹⁴¹ Ibid., p.2.

¹⁴² Interview with Dario Sikuljak, National Political Officer, OSCE Mission to Bosnia and Herzegovina, 15 July 2003.

The new Election Law¹⁴³ of BiH endorsed the major amendments of the election system introduced in 2000. These are namely the open list system, multi-member electoral constituencies (MMCs), preferential voting system and the requirement that all parties competing in elections at all levels have at least one-third of their lists comprised of women candidates.¹⁴⁴ Although the passage of the Election Law did not stop the discussions on the BiH's electoral system, it has been a "milestone in defining the electoral framework for the foreseeable future and became legally and constitutionally a *fait accompli*."¹⁴⁵

From 1996 until 2000 elections were organized by the OSCE mission under the supervision of the Provisional Election Commission. Since the election commission of the country was not established and the state was not organizing the elections as it should OSCE established several supplementary bodies in the form of Provisional Election Commission, which lasted much longer than anybody expected. It was established for an interim period but the work of the Provisional Election Commission effectively ended in November 2001 when OSCE eventually could endorse the formation of State Election Commission. However, although the Provisional Election Commission ceased to exist in November 2001, the OSCE managed to maintain its special position in the election process by having two seats out of seven in the State Election Commission.¹⁴⁶

Evaluating the election operation of the OSCE in BiH, National Political Officer of the OSCE Mission to Bosnia and Herzegovina Dario Sikuljak stated that throughout the four years, major troubles the organization has faced were mainly technical, particularly driven from lack of current census, appropriate infrastructure, funding, and to some extent disturbances raised from the fighting among the political rivals in the poll stations.¹⁴⁷ Sikuljak clarified that the predicaments had several

¹⁴³ 'Election Law of BiH', OSCE Sarajevo, August 24, 2001. The full document can be accessed at <http://www.oscebih.org>, or <http://www.izbori.ba>.

¹⁴⁴ Sumantra Bose, *Bosnia after Dayton Nationalist Partition and International Intervention*, pp. 219-224.

¹⁴⁵ *Ibid.*, p. 219.

¹⁴⁶ The Office of High Representative has one and locals have four seats: one for each constituent peoples and one for 'others' the largest of which is the Roma.

¹⁴⁷ Interview with Dario Sikuljak, National Political Officer, OSCE Mission to Bosnia and Herzegovina, 15 July 2003.

aspects: The first one from 1995 until 2000 was purely technical in the process of learning how to organize elections. A persistent problem caused by the insufficient data on the number of population as 1991 census was taken the basis for border registration process.

Others were difficulties in printing and transporting ballots due to the poor infrastructure. However, in the recent elections most technical problems could be resolved as well as the fights between political opponents on the polling stations. Nonetheless, another major obstacle lack of funding remained. That is turning mistakes to a grave deprivation such as the unfortunate incident in 1996 that 300 thousands ballots printed in a wrong way had to be all destroyed and reprinted.¹⁴⁸

Virtually, prior to 2002 in the field of elections control has been omnipresent. The OSCE was the “major player, appointing commissions, training local staff, carrying out the counts, producing the reports and reviewing appeals.”¹⁴⁹ There was a process of learning. All over these years, Bosnia and Herzegovina gained the experience to run its elections alone. October 2002 elections were “the first to be run with an unprecedented national involvement in the face of the newly appointed Election Commission and regulated by an election law approved by the Parliament of Bosnia and Herzegovina.”¹⁵⁰ The mandate of the elected politicians also increased since 1995 to be four years in place of two.

This fact represents a relaxation of control in elections, but after a period of unsuccessful attempts to encourage inclusive politicians and disadvantage exclusive nationalist ones. The OSCE objectives are thus achieved at one end, but missed at the other. On one hand, fostering the expertise to run elections within the country is doubtlessly a huge help towards rooting democracy in its political development. On the other, when elections keep filling the institutions of the country with parties not concerned with unification and reconciliation instead aiming to consolidate their positions in power based on division and ethnic animosity, turns down the efforts of the international community.¹⁵¹

¹⁴⁸ Ibid.

¹⁴⁹ Victor D. Bojkov, ‘Democracy in Bosnia and Herzegovina: Post-1995 Political System and its Functioning’, South East European Politics, vol. 4, no. 1, May 2003, p. 57.

¹⁵⁰ Ibid., p. 57.

¹⁵¹ Ibid., pp. 57-58.

However, the OSCE election experts evaluate their mission considerably different than the above arguments. Election Advisor of the OSCE Mission to Bosnia and Herzegovina Valentin Nikolov, argued that there are timelines for building peace in Bosnia and Herzegovina and the elections were the first mandate given the OSCE.¹⁵² The local and international staff of the organization is very proud that they do not have this mandate anymore and that they have transferred the authority in this field to the locals. Valentin Nikolov tried to legitimate the case that the OSCE Office for Democratic Institutions and Human Rights (ODIHR) a human rights institution based in Warsaw, which provides election advisors and international monitors, during the latest elections reported that the government of BiH managed to conduct their elections.¹⁵³ This is the first tool of peace building, second important thing is to sustain the election results.

5.6 5 October 2002 First Elections Organized by the Local Authorities

The parliamentary and presidential elections organized on the 5th of October in 2002 signaled a new stage in the political history of the country. They were the first post-war elections run by the local authorities without the assistance of the international community.¹⁵⁴ This fact demonstrated a considerable change since in the absence of such a transformation it would not have been possible to organize elections without outside assistance.

The elections also for the first time involved the constitutional amendments at entity level imposed by the former High Representative Wolfgang Petritsch in April 2002.¹⁵⁵ This was expected to “provide fair representation to each of BiH’s three constituent peoples in both entities’ legislatures, governments, judiciaries and administrations.”¹⁵⁶ Moreover, the elected representatives allowed to serve four years rather than two which was the case in

¹⁵² Interview with Valentin Nikolov, Election Advisor, OSCE Mission to Bosnia and Herzegovina, 23 July 2003.

¹⁵³ Ibid.

¹⁵⁴ Early Warning System, ‘Bosnia and Herzegovina 2002 Election Special’, Report of the United Nations Development Program, <http://www.undp.ba>, p. 3.

¹⁵⁵ ‘Bosnia’s Alliance for (Smallish) Change’, International Crisis Group, Balkans Report No. 132, Sarajevo/ Brussels, 2 August 2002, <http://www.crisisweb.org>, p. 1.

¹⁵⁶ Ibid., p. 1.

the previous elections. Four years of mandate hoped to give the victorious parties an opportunity to accomplish their goals, move Bosnia forward instead of pursuing “narrow political or national interest” without a vision.¹⁵⁷ They could adopt their programs in four years both without the rapid re-election pressure and the need for national mobilization.

Institutional levels that have been elected on 5 October 2002 composed the Presidency of Bosnia and Herzegovina from two separate lists; BiH House of Representatives, 28 from the Federation and 14 from the Republika Srpska; Federation House of Representatives with 98 members; National Assembly of the Republika Srpska with 83 members; and Cantonal Assemblies.¹⁵⁸

The international observers noted that there was a broad and active campaign involving 57 political parties; candidates were able to move unhindered; “the campaign environment was largely free of violence with few reports of intimidation and there was respect for the freedom of movement, association, and expression.”¹⁵⁹ The political parties engaged in more cross-entity campaign activities than during previous elections. Although, nationalist rhetoric was less overt in this campaign it remained an underlying issue. An effective print and electronic media also provided “extensive and diverse coverage”.¹⁶⁰

The adoption of election legislation and the creation of electoral administration bodies at the national level resulted in a normalization of the electoral process after years of direct international supervision. However, the elections were held within a “unique constitutional framework in which ultimate responsibility still rested with the international community.”¹⁶¹ The same as in previous elections, the “international community took a number of steps affecting key aspects of the

¹⁵⁷ Ibid., p. 1.

¹⁵⁸ See ‘What are the institutional levels to be elected on 5 October?’ <http://www.izbori.ba>.

¹⁵⁹ International Observation Mission (OSCE, ODIHR, Council of Europe, European Parliament), ‘2002 General Elections Bosnia and Herzegovina, Statement of Preliminary Findings and Conclusions’, Sarajevo, 6 October 2002, pp. 1-2.

¹⁶⁰ Ibid., p. 2.

¹⁶¹ Ibid., p. 1.

electoral process which, while in line with its mandate, would have been irregular by international standards under other circumstances.”¹⁶²

From the 57 political parties participated to the 5 October 2002 elections a total of 26 parties and two coalitions have won seats in the state and entity parliaments. Amongst the 42 deputies in the state parliament; 28 must come from the Federation of BiH; 14 from the Republika Srpska; seven parties and two coalitions sent deputies from the FBiH and seven parties managed to send deputies from the RS.¹⁶³ The House of Representatives of FBiH contained representatives from 16 parties and two coalitions.¹⁶⁴ The two ethnically oriented parties, the SDA and the HDZ, won by far the largest number of seats.¹⁶⁵ Moreover, fifteen parties sent representatives to the National Assembly of the RS, and once again the same parties: the SDS and the SNSD, won most of the seats.

Various conclusions were drawn from the election results of the year 2002. First of all, the same three nationalist parties, the SDA, the SDS and the HDZ, received the majority of the votes again. On the other hand, the elections displayed that the SDP was the big loser in the last elections. The number of votes SDP took went down to almost half of the amount in 2000. In fact, all Bosnian parties apart from the SDA and SNSD performed worse than in the previous elections. The only party certainly gained in this election was the SNSD, which increased its votes by more than 30%.¹⁶⁶

Table 7: Compared number of votes 2000 and 2002

Total number of votes in general elections for the BiH House of Representatives from the Federation BiH – (major parties).

Party	2000	2002	Rise/fall in No. of votes
SDP	235 616	112 258	- 52.4 % fall
SDA	233 352	232 325	- 0.5 % fall

¹⁶² *Ibid.*, p. 1.

¹⁶³ Early Warning System, ‘Bosnia and Herzegovina 2002 Election Special’, p. 8.

¹⁶⁴ *Ibid.*, p. 8.

¹⁶⁵ For more information see ‘Bosnia’s Alliance for (Smallish) Change’, International Crisis Group, Balkans Report No. 132, Sarajevo/ Brussels, 2 August 2002, <http://www.crisisweb.org>, pp. 2-6.

¹⁶⁶ Early Warning System, ‘Bosnia and Herzegovina 2002 Election Special’, p. 9.

HDZ	166 667	114 207	- 31.5 % fall
SBiH	134 917	116 114	- 14% fall

Total number of votes in general elections for the BiH House of Representatives from the RS – (major parties).

Party	2000	2002	Rise/fall in No. of votes
SDS	248 579	172 544	- 30.5 % fall
SNSD	66 684	114 591	+ 71.8 % rise
PDP	95 245	53 177	- 54.2 % fall

Total number of votes in general elections for the FBiH House of Representatives- (major parties).

Party	2000	2002	Rise/fall in No. of votes
SDP	226 440	111 668	- 50.7 % fall
SDA	232 674	234 923	+ 0.9 % rise
HDZ	151 812	113 197	- 25.5 % fall
SBiH	128 883	109 843	- 14.8 % fall

Total number of votes in general elections for the RS National Assembly – (major parties).

Party	2000	2002	Rise/fall in No. of votes
SDS	226 226	159 164	- 30 % fall
SNSD	81 467	111 226	+ 36.5 % rise
PDP	76 810	54 756	- 28.7 % fall

Source: Early Warning System, Bosnia and Herzegovina 2002 –Election Special-Report of the United Nations Development Program.

One of the main reasons for this change in election results was the level of voter abstention that was a big shock for many.¹⁶⁷ “The turnout was a little above 50 % (51.3% in the RS, 55.48% in the FBiH and 53.94% overall), which represents a very significant level of abstention and had a determining affect on the election results.”¹⁶⁸ Bosnian from all ethnic groups who fed up to hear the same rhetoric and promises regarding democracy, rule of law, economic and social progress decided to abstain. Many voters especially the urban populations did not believe that situation would change for the better, thus, had no desire to participate in the process. This

¹⁶⁷ ‘Elections in BiH on the 5th of October 2002’, Coalition of NGOs in BiH, Press Release, Sarajevo, 7 October 2002, <http://www.izbori.ba>.

¹⁶⁸ Early Warning System, ‘Bosnia and Herzegovina 2002 Election Special’, p. 10.

gave advantage to the ethnic parties and the positive trend in favor of moderate parties in 2000 general elections turned down.

Nevertheless, the 5 October 2002 general elections in BiH considered mainly in line with international standards for democratic elections by the international community.¹⁶⁹ The latest elections regarded to “mark important progress toward the consolidation of democracy and rule of law under domestic control.”¹⁷⁰ The other significance of the elections was that they were the first in which all state and entity offices were elected for four years term that the elected governments could have a crucial role in determining the future of the BiH. In addition, the election law that was adopted in August 2001 as a replacement for provisional rules used before, for the first time formed the basis of the domestic elections.

5.7 Position of the International Community in Manipulating the Elections

In the post-war environment international strategy was based on seeking out political moderates to co-operate for implementing the Dayton Agreement. Since international officials overtly blame nationalist parties and irresponsible politicians for slow progress they suspected that they would not be able to hand over responsibility to the domestic authorities when they complete the mission without driving the nationalist parties from office.¹⁷¹ Hence, international influence used to manipulate the electorate, exclude nationalist elements from power and support the moderate political parties with the hope that peace will be straightforward without them.

Campaigns to control who holds public office in Bosnia have attracted a great deal of international attention over the last few years but brought mainly negative results. This process has started with the split within the SDS, which resulted in the formation of a new Serb coalition of SNSD, SNS and SPRS in 1998 by Milodrad Dodik in RS.¹⁷² International community evaluated this event as a success. The new

¹⁶⁹ International Observation Mission, ‘Statement of Preliminary Findings and Conclusions’, pp. 1-8.

¹⁷⁰ *Ibid.*, p. 1.

¹⁷¹ ‘Reshaping International Priorities in Bosnia and Herzegovina Part Three-The End of Nationalist Regimes and the Future of the Bosnian State’, p. 6.

¹⁷² SNS (*Srpski Narodni Savez*) is a small Serbian party founded by Biljana Plavsic in 1997 when she left the SDS. SPRS (*Socialisticka Partija Republike Srpska*) is another minor Serbian party, founded by Radisic. For more information see Nina Fallentin Caspersen ‘Good Fences Make Good

government of Dodik presented a “new rhetorical tone, promising the return of 80,000 minorities in its first year of office and a new relationship with the Bosnian state. It also moved the seat of government from Pale to Banja Luka, a change of both symbolic and practical importance which left the old regime isolated.”¹⁷³

Thus, more than two years keeping Dodik’s fragile coalition unified became the international community’s primary objective. In early 1998 the government received special budgetary support for unpaid salaries. Moreover, although Dodik’s parliamentary coalition collapsed the international community supported him to against votes of no confidence.

As an international favorite, Dodik was also exempt from the standards to perform unpopular Dayton obligations that he could retain power. Therefore, in most key Dayton areas it failed to deliver on its promises. On the other hand, his coalition did not act different than the SDS and passed a number of unconstitutional resolutions affirming the primacy of Republika Srpska over the state. Besides, Dodik openly repudiated his promise of 80,000 minority returns to Republika Srpska. In other areas of governance, the government performed equally poorly, overseeing a period of institutional and economic decline.¹⁷⁴

When the 2000 elections approached, “during the election campaign many international officials informed voters in plain language that continuing international economic support to Republika Srpska was conditional upon the government’s re-election.”¹⁷⁵ Yet, international community’s efforts to manipulate the elections were not helpful to stop Dodik’s defeat in the presidential elections. Since Dodik’s “key constituency was the international community, his government became increasingly out of touch with its voters, and widely perceived as arrogant and corrupt.”¹⁷⁶ His

Neighbours? A Comparison of Consociational and Integrative Conflict Regulation in post-Dayton Bosnia’, Conference Paper, Australia, 13-17 July 2002, Annex I: Bosnian Parties, pp. 53-54.

¹⁷³ ‘Reshaping International Priorities in Bosnia and Herzegovina Part Three-The End of Nationalist Regimes and the Future of the Bosnian State’, p. 10.

¹⁷⁴ ‘In Search of Politics: The Evolving International Role in Bosnia and Herzegovina’, ESI Discussion Paper, 1 November 2001, <http://www.esiweb.org>, p. 7; ‘Reshaping International Priorities in Bosnia and Herzegovina Part Three-The End of Nationalist Regimes and the Future of the Bosnian State’, pp. 10- 11.

¹⁷⁵ ‘Reshaping International Priorities in Bosnia and Herzegovina Part Three-The End of Nationalist Regimes and the Future of the Bosnian State’, p. 11.

¹⁷⁶ *Ibid.*, p. 11.

government's failure enabled the SDS to restore its political chance, and regain the presidency and a place in the government.

However, Dodik's defeat thought crucial lessons to the international mission in Bosnia. To begin with, international involvement to eliminate illicit and authoritarian power structures might have a harmful effect on the political atmosphere. International efforts to manipulate the voters in support of a candidate are artificial and counter-productive. Lastly, a moderate politician exempt from the democratic process is capable to behave undemocratically.

Internationally sponsored Dodik government in Republika Srpska, from 1998 to 2000, put the economy in chaos and the government in corruption.¹⁷⁷ Subsequently, international community's determination to leave the SDS out of the government after November 2000, notwithstanding its strong parliamentary position, caused the party controlling the government without any electoral responsibility.¹⁷⁸ International community once again involved and invested considerable effort to bring together the "Alliance for Change". That was a non-nationalist loose coalition of a number of parties uniting different regions and levels of government. At the core of this coalition, there was SDP and SBiH in need of the support of smaller parties at the federal level. The government depended on the parties from RS, the PDP and SNDS, at the state level. Due to this set-up all leading parties were associated to the others in BiH.¹⁷⁹

Likewise, numerous disagreements between the international community and the HDZ in 2001 contributed the party to uphold its unity and popular support, regardless of its failure to address the economic and social deterioration in Herzegovina.¹⁸⁰

International attempts to control the political process tend to produce distorted outcomes, creating perverse incentives for the moderate politicians who are being assisted. If the international community becomes their most

¹⁷⁷ 'In Search of Politics: The Evolving International Role in Bosnia and Herzegovina', p. 7.

¹⁷⁸ 'The Wages of Sin: Confronting Bosnia's Republica Srpska', International Crisis Group. Cited in In Search of Politics: The Evolving International Role in Bosnia and Herzegovina, p. 7.

¹⁷⁹ 'Reshaping International Priorities in Bosnia and Herzegovina Part Three-The End of Nationalist Regimes and the Future of the Bosnian State', pp. 16-17; 'In Search of Politics: The Evolving International Role in Bosnia and Herzegovina', p. 3.

¹⁸⁰ 'In Search of Politics: The Evolving International Role in Bosnia and Herzegovina', pp. 7-8.

important constituency they are capable to neglect their own support base. Furthermore, if they are encouraged to believe that they enjoy unconditional support in their fight against the nationalist parties, they have no need to engage in compromise and consensus-building with their political opponents. As a result, their capacity to develop and implement policy is spoiled and they became increasingly dependent on international authority to secure their objectives.¹⁸¹

However, many experts criticize international community's strategy of playing moderates against nationalist parties. Dr. Caroline S. Hornstein, director of Konrad Adenauer Foundation in BiH, claimed that the removal of nationalist parties representing the ethnic identities is both unreasonable and unnecessary for creating a self-sustaining Bosnian democracy.¹⁸² Ethnic identities have been a determining factor in the voting patterns of the Bosnians during their history.¹⁸³ The separate voting blocs have been remarkably stable in Bosnia as the results of the 1990, 2000 and 2002 elections illustrate.

Table 8: Assessment of the electoral results: November 1990 general election, November 2000 and October 2002 elections to the House of Representatives of Bosnia and Herzegovina.

18 November 1990	11 November 2000	5 October 2002
SDA 30.4 %	SDA and SBiH 32 %	SDA 32,4 %
HDZ 15.5 %	HDZ 12 %	SBiH 16,2 %
SDS 25.2 %	SDS 15 %	HDZ 15,9 %
SDP & others 28.9 %	SDP 22 %	SDP 15,7 %
	PDP 5 %	SDS 33,7%
		SNSD 22,4%
		PDP 10,4%

Sources: Reshaping International Priorities in Bosnia and Herzegovina Part Three-The End of Nationalist Regimes and the Future of the Bosnian State, European

¹⁸¹ Ibid., p. 8.

¹⁸² Interview with Dr. Caroline S. Hornstein, Director, Konrad Adenauer Foundation, Sarajevo, Bosnia and Herzegovina, 23 July 2003.

¹⁸³ Reshaping International Priorities in Bosnia and Herzegovina Part Three-The End of Nationalist Regimes and the Future of the Bosnian State', p. 7. For more information see Steven L. Burg, Paul S. Shoup, The War in Bosnia and Herzegovina Ethnic Conflict and International Intervention, New York: M.E. Sharpe, 1999, pp. 50-55.

Stability Initiative Report, 22 March 2001, <http://www.esiweb.org>; and Bosnia's Nationalist Governments: Paddy Ashdown and the Paradoxes of State Building', International Crisis Group, Balkans Report No.146, Sarajevo/ Brussels, 22 July 2003, <http://www.crisisweb.org>.

The results of the 1990 elections displayed significant historical compatibility with previous Bosnian elections, "whether in 1910 the Austrian period or in the 1920s the royal Yugoslav era."¹⁸⁴ Majority of the Bosnians used to vote in 1990 for ethnically based parties, and one party representing one ethnic group achieved an overwhelming majority among the voters of each nationality.¹⁸⁵ This fragmentation of the voting communities "does not imply anything as to the ideology or political behavior of the parties."¹⁸⁶ Therefore, ethnic party spectrum in BiH anticipated to continue in a fairly long time and not regarded by all as such a drama.

For instance Dr. Caroline S. Hornstein argued that it was misleading to push the development of multi-ethnic parties in BiH because it does not make sense neither from the historical point of view nor from the composition of the Bosnian society. Hence, it fails to accomplish any success although the Foundation supports such a development and aims to encourage inter-ethnic communication especially among the younger generation.¹⁸⁷ The OSCE and OHR have been severely criticized that there are still strong nationalist parties existing in BiH. However, it is not possible to impose multi-ethnic parties and manipulate the people to support them. Dr. Hornstein emphasized that "this dooms to fail because you can not create parties and expect that they will function in such a historical and political situation. You either have to ban parties but they will somehow disappear and reappear on a new disguise or you have a period of non-existence of parties. Alternatively, local representations such as the local councils might be the counterpart for international interlocutors for a while."¹⁸⁸

¹⁸⁴ Robert J. Donia, John V.A. Fine, JR., Bosnia and Herzegovina: A Tradition Betrayed , London: Hurst&Co, 1994, p. 211.

¹⁸⁵ Ibid., p. 211.

¹⁸⁶ 'Reshaping International Priorities in Bosnia and Herzegovina Part Three-The End of Nationalist Regimes and the Future of the Bosnian State' , p. 7.

¹⁸⁷ Interview with Dr. Caroline S. Hornstein, Director, Konrad Adenauer Foundation, Sarajevo, Bosnia and Herzegovina, 23 July 2003.

¹⁸⁸ Ibid.

Another point from the perspective of Dayton implementation, the nationalist parties are no longer inherently a threat to the peace process.¹⁸⁹ There have been many signs of a decline in public support for the nationalist regimes over the last years. Changing relationships with motherland Serbia and Croatia reduced the financial abilities of the nationalist parties. Widespread corruption and deteriorating economic condition are the other reasons. Nevertheless, the nationalist parties are still inevitable elements of the Bosnian political setup and people will continue to vote for them regardless their daily hardships as long as the overriding concern is fear of domination by the other ethnic groups.

5.7.1 Voting Incentive for Nationalist Parties

The OSCE supervised three general elections in BiH held in 1996, 1998, and 2000. Last election that took place in 2002 was organized by the locals. In all elections, “three out of four times the parties that have been blamed for not being able to reconcile their positions and politically responsible for the war won the majority of votes.”¹⁹⁰ The nationalist parties of SDA, SDS and HDZ developed already in 1995 a useful strategy to mobilize the voters by using ethnic fears, hostility and nationalism.

Thus the main national political actors of democratization in post-Dayton Bosnia and Herzegovina were to be the nationalist parties locked in territorially separated constituencies and posed to prevent their de-homogenization through exclusionary campaigning and obstructing return of refugees and displaced person. As late as 2000 their electoral slogans were still the same. The main feature of the dominant political parties in Bosnia and Herzegovina is that their programs are based on the protection of interests of their respective ethnic groups, which makes it very difficult to classify them as parties of the centre, the left or the right.¹⁹¹

The number of votes that goes to nationalistic parties according to OSCE accounts tends to decrease in every election. Nevertheless, these parties have a permanent electoral base especially in rural areas. Since the main reasons and consequences of war even with the presence of international community have not

¹⁸⁹ ‘Reshaping International Priorities in Bosnia and Herzegovina Part Three-The End of Nationalist Regimes and the Future of the Bosnian State’, p. 7.

¹⁹⁰ Victor D. Bojkov, ‘Democracy in Bosnia and Herzegovina: Post-1995 Political System and its Functioning’, *Southeast European Politics*, vol. 4, no. 1, May 2003, p. 51.

¹⁹¹ *Ibid.*, p. 51.

been eradicated in BiH national parties are still seen as the ultimate protectors of people and their interests. Voters in post-conflict elections tend to vote for the parties that offer security in the context distorted by fear.¹⁹²

For example, “the Croat Democratic Party (HDZ) issued advertisements warning that the ‘survival of their nation’ depended on the vote, while Republika Srpska television warned that a vote against the Serb Democrat Party (SDS) would constitute a vote ‘against the Serb people.’”¹⁹³ Bosniaks used similar slogans such as: ‘A vote for the SDA (Party of Democratic Action) is a vote for the survival of the Muslim nation’.¹⁹⁴ That was the main slogan in 1996.

In fact, the nationalist parties have led the armed resistance during the war. For example the SDA was organizing the electorate, protection of the country and protection of the Bosniak people. The HDZ were organizing the defense of the Croat people. Likewise, the SDS was organizing the resistance of the Serb people and the creation of the Republika Srpska. National political officer of the OSCE Mission to BiH Dario Sikujak put forward that the war time credits are still at hand. In addition, the nationalist parties have control over all public companies. Profit of the public companies are used to buy votes as the public companies are the only source of jobs in the country. This is because very small amount of people are employed in private companies. Currently, these private companies are also owned by the people who is in charge of political parties.

In 80 per cent of the cases the people who have sufficient funds to open a private company in the country are those who are close to or supported via members of the political parties. The electorate is dependent on these sources of income and they can only rely on political parties for financial screen.¹⁹⁵

¹⁹² Terrence Lyons, Postconflict Elections: War Termination, Democratization, and Demilitarizing Politic, Working Paper No. 20, Institute for Conflict Analysis and Resloution, George Mason University, February 2002, p. 15.

¹⁹³ Elections in Bosnia and Herzegovina, International Crisis Group, Bosnia Report No. 16, Sarajevo/Brussels, 22 September 1996, <http://www.crisisweb.org>. Cited in Terrence Lyons, Postconflict Elections: War Termination, Democratization, and Demilitarizing Politic, p. 15.

¹⁹⁴ Suzan L. Woodward, ‘Bosnia and Herzegovina: How not to End a Civil War’ in Civil Wars, Insecurity and Intervention, p. 96. Cited in Terrence Lyons, Postconflict Elections: War Termination, Democratization, and Demilitarizing Politic, p. 15.

¹⁹⁵ Interview with Dario Sikuljak, National Political Officer, OSCE Mission to Bosnia and Herzegovina, 15 July 2003.

The consideration of ethnic interest together with the feeling of fear since the other side perceived as a constant threat have been the major motive to vote for the nationalist parties. That was believed to be the only way to protect an ethnic group from the others. The situation that everybody is still afraid of what might happen when international community leaves create the environment that nationalist parties have been trusted to protect the existence and national interest of each ethnic community. Therefore, the conditions of the country enable the nationalist parties to have control over the police, military and economic activities in BiH.

Dario Sikujak confirmed that nationalist parties have built their policy on the vulnerability of the ethnic communities in Bosnia. The alternative to nationalist parties is multi-national/multi-ethnic parties. However, multi-national parties are still considered to be derailed from the previous communist system. The communist party ruling the country from 1945 until 1990 was multi-ethnic. On the other hand, the multi-ethnic party and the multi-ethnic structure brought about the war because it was unsustainable. That was not possible for all the three communities to live in such a way that had been purely multi-ethnic. Multi-ethnicity before the war was forced upon the Bosnians, thus, the system broke down. Therefore, people currently seek safe heaven from the nationalist parties because they do not want to repeat the 1992 situation.¹⁹⁶

An alternative explanation was offered by the election advisor of the OSCE Mission to Bosnia and Herzegovina Valentin Nikolov, who clarified that there are no political parties with unified interests in BiH. The Bosnian people are politically, ethnically and spiritually divided. Valentin Nikolov argues that the ethnicity problem in Bosnia dates back to the historical memories of the Second World War. He points out that national character of the people in Bosnia also matters: “Obstinacy, stubbornness, people have to always say no!.. You have to count cultural, national reasons as well as the fear and insecurity.”¹⁹⁷

Religion is the backbone of identity in Bosnia and Herzegovina. Therefore, its an important factor that influences the democratic process. Religious circles such as the the Ulema, Muslim religious leaders, and the Catholic Archbishop in Sarajevo

¹⁹⁶ Ibid.

¹⁹⁷ Interview with Valentin Nikolov, Election Advisor, OSCE Mission to Bosnia and Herzegovina, 23 July 2003.

take part in the election campaigns. For instance, the Orthodox Bishop in Banya Lucka used to support Karadzic. Another case in point is the mayor of Vishegard who was holding a huge cross in his office.¹⁹⁸ However, Vishegard is a well-known town defined by Ivo Andric in his Nobel Prized novel the “Bridge on the Drina” with its multi-ethnic and multi-religious character. Apparently, following the recent war in Bosnia provocative attitudes came to forefront as the erection of a huge cross in the city of Mostar.

In BiH, the parties whose programs suggest state level solutions to the depressing political, economic and social questions are in minority. Besides, even the rift in the major parties in BiH, the SDS, SDA and HDZ, failed to reduce the need to use nationalism as a political tool.

Parties such as SNSD of Milodrad Dodik, the Party for Bosnia and Herzegovina of Haris Silajdzic and the Social Democratic Party of Zlatko Lagumdžijal that are moderate in their platforms and stand for reconciliation have only managed to secure short and un-sustained access to political power. In addition, they have been unable to attract mass membership and to establish substantial party infrastructure.¹⁹⁹

In sum, the ethno-centric and nationalistic approach to politics in post-Dayton Bosnia and Herzegovina dominated the reconciliatory attitude. Valentin Nikolov stated that main problem of the elections in which the opposition parties won derive from the fact that both the SNS of Plavdsic and SNSD of Dodic were equally corrupt as the previous ones. However, they were the only political parties that approached to the international community. As a matter of fact they sounded moderate but declined to implement the necessary reforms.

On the other hand, the SDP is essentially a Bosnian party despite the head and vice-head were Croat and Serb respectively. Nevertheless, they can hardly be accepted by the Serbs as neutral political leaders. The party failed in the last elections since they could not offer people better living standards. They complied with international community’s rules and imposed hard measures, for instance reduced the

¹⁹⁸ Ibid.

¹⁹⁹ Victor D. Bojkov, ‘Democracy in Bosnia and Herzegovina: Post-1995 Political System and its Functioning’, p. 52.

salaries and pensions. They did a good job for the country but a bad job for themselves.²⁰⁰

Although the conduct of free and fair elections is guaranteed by the presence of international community in BiH, difficulties persist in relation to the “availability of opportunities to exercise democratic choice.”²⁰¹ Since politics in any case is subject to ethnic considerations rather than interests, electoral results are easily predictable.²⁰² From the signing of Dayton Peace Agreement till today there has been lack of substantial party platforms regarding contested issues. Therefore, there is no real opportunity to elect parties or candidates according to considerations outside of ethnic affiliation.²⁰³

In conclusion, as a fundamental component of a peace building process, post-conflict elections seek to end civil wars and contribute to sustainable peace building. According to the international community post-settlement elections function as symbolic endpoints for the complex peace implementation phase of their involvement.²⁰⁴ However, organizing post-conflict elections carry an enormous burden since they are expected to solve contentious issues such as internal and external legitimacy, and they are organized under difficult or sometimes chaotic circumstances of societal disorder, general insecurity and institutional breakdown.²⁰⁵ While they are organized with the purpose to terminate war, advance legitimacy and democracy there is a danger that post-conflict elections may entrench and provide legitimacy to authoritarian parties.²⁰⁶ As it has been the case in BiH they often

²⁰⁰ Interview with Valentin Nikolov.

²⁰¹ Marc Weller, Florian Bieber, Eva Maria Christiansen, ‘Power-sharing in Bosnia and Herzegovina’, p. 14.

²⁰² Ibid., p. 14.

²⁰³ Ibid., p. 14.

²⁰⁴ Stephen John Stedman, Donald Rothchild, Elisabeth M. Cousens, Ending Civil Wars The Implementation of Peace Agreements, London: Lynne Rienner Publishers, 2002, p. 215.

²⁰⁵ Dankart A. Rustow, ‘Transitions to Democracy: Towards a Dynamic Model’, Comparative Politics, vol. 2, no. 2, 1970, pp. 337-363. Cited in Stephen John Stedman, Donald Rothchild, Elisabeth M. Cousens, Ending Civil Wars The Implementation of Peace Agreements, p. 215.

²⁰⁶ Stephen John Stedman, Donald Rothchild, Elisabeth M. Cousens, Ending Civil Wars The Implementation of Peace Agreements, pp. 216-217.

contributed to keep nationalist politicians in power who do not have any interest in peace building since their source of power is the status quo.

Besides, electoral systems argued to have a constructive potential in mitigating conflict in divided societies. Nonetheless, the experience of Bosnia and Herzegovina suggests that it can not always provide the expected outcome since the electoral changes in Bosnia throughout the years from 1996 have not been successful in reducing the electoral support of the nationalist political parties or overcoming ethnic fears. Therefore, it is argued by some peace building experts that a multi-ethnic state will not be forged by elections and that such a peace building mechanisms is not a panacea for consolidating a pluralist political system. Elections in BiH contributed to the termination of war in the short-run but could not bring democratic consolidation or sustainable peace yet.

5.8 Empowering Civil Society

The definition of civil society is essentially imprecise and the term frequently employed to indicate non-governmental organizations (NGOs). However, the notion is more extensive and includes “civic initiatives” that might not officially registered their actions and association as NGOs.²⁰⁷ Civil society mentions a space in which “formal and informal groups and associations exist.”²⁰⁸ Hence, the civil society will be used in this broader context referring not only the NGOs but also the citizen networks and associations.

Although the meaning as a concept and “political contribution of civil society to democratization is controversial for some”²⁰⁹, civil society understood by international organizations and policy makers as a crucial agent in influencing the political system and in providing a more solid foundation to democratization, the rule of law and the respect of human rights.²¹⁰ Thus, development of civil society

²⁰⁷ Bosnia and Herzegovina, Human Development Report/Millennium Development Goals 2003, UNDP BiH, June 2003, p. 31.

²⁰⁸ *Ibid.*, p. 31.

²⁰⁹ Adam B. Seligman, *The Idea of Civil Society*, New York: The Free Press, 1992, p. ix. Cited in Roberto Belloni, ‘Building Civil Society in Bosnia and Herzegovina’, Human Rights Working Papers, no. 2, 12 January 2000, <http://www.du.edu/humanrights/workingpapers/index.html>, p. 1.

²¹⁰ Roberto Belloni, ‘Building Civil Society in Bosnia and Herzegovina’, Human Rights Working Papers, no. 2, 12 January 2000, <http://www.du.edu/humanrights/workingpapers/index.html>, p. 1.

acquired a worldwide acknowledgment and a “new dimension in the context of democratization”²¹¹ and reconciliation, and widely seen as an essential element of peace building.

Civil society development is usually considered “as involving support for the associational sphere of interest groups which stand between the private economic sphere and the public sphere of the state and government.”²¹² In this respect, civil society believed to “mitigate polarities of political conflict and develop a democratic culture of tolerance, moderation and compromise.”²¹³ The focal point of civil society building is generally the local non-governmental organizations (NGOs), which is seen as capable of “articulating needs independently of vested political interests and involving grassroots community voices.”²¹⁴ Simply, NGOs are regarded vital for the reconstruction of civil society.

In Bosnia and Herzegovina, civil society supposed to play a critical role, “both symbolically and practically.”²¹⁵ For instance, the Human Development Report stated that improving civil society, particularly by supporting non-governmental organizations (NGOs) has a prime significance.²¹⁶ The organizations or individuals asking financial support felt compelled to include the concept as well. Besides, a project’s achievement is frequently considered through its effect on civil society. Shortly, civil society has turned into an essential element of the international community’s peace building efforts in Bosnia.

²¹¹ OECD Development Assistance Committee, Final Report of the Ad Hoc Working Group on Participatory Development and Good Governance, Parts I and II, 1997, Paris: OECD, p. 7. Cited in Roberto Belloni, ‘Building Civil Society in Bosnia and Herzegovina’, Human Rights Working Papers, no. 2, 12 January 2000, <http://www.du.edu/humanrights/workingpapers/index.html>, p. 2.

²¹² David Chandler, ‘The Limits of Peacebuilding: International Regulation and Civil Society Development in Bosnia’, International Peacekeeping, vol. 6, no. 1, Spring 1999, p. 110.

²¹³ L. Diamond, ‘Rethinking Civil Society: Toward Democratic Consolidation’, Journal of Democracy, vol. 5, no. 3, 1999, pp. 4-17. Cited in David Chandler, ‘The Limits of Peacebuilding: International Regulation and Civil Society Development in Bosnia’, International Peacekeeping, vol. 6, no. 1, Spring 1999, p. 110.

²¹⁴ David Chandler, ‘The Limits of Peacebuilding: International Regulation and Civil Society Development in Bosnia’, p. 110.

²¹⁵ Roberto Belloni, ‘Building Civil Society in Bosnia and Herzegovina’, Human Rights Working Papers, p. 2.

²¹⁶ UNDP, Human Development Report, Bosnia-Herzegovina 1998, p. 12. Cited in Roberto Belloni, Building Civil Society in Bosnia and Herzegovina, Human Rights Working Papers, p. 2.

Civil society building becomes a priority in BiH owing to the conviction that “the wars of Yugoslavia’s dissolution were the product of ethnic segmentation reflecting a lack of civil society leading to a failed transition to democracy.”²¹⁷ The CARE’s report on Bosnia stated that:

Rebuilding tolerance and pluralism in BiH is perhaps more important than anywhere else in the former Yugoslavia... Without it, the Dayton Accord ... and the hope of a united Bosnia will be lost ... Accountability, legitimacy and competence in public life are the key, and these can only be achieved through the active participation of the electorate, buoyed by a strong, plural, associational base, by a web of social, cultural and functional relationships which can act as a ‘societal glue’ and as counterbalance to the market and the state. The alternative for Bosnia... is paternalism, exploitation, corruption, and war.²¹⁸

Thus, civil society turned up to be international community’s one of the channels for resolving ethnic tensions in Bosnia. The disparate civil society “envisaged as an arena where tolerance for others is achieved through exchange, dialogue and compromise, facilitating and sustaining the process of reintegration of the country in a unified polity.”²¹⁹ More than facilitating reintegration, a strong and diverse civil society might contribute to the basis for “sustaining a viable post-war democratic transition.”²²⁰ Since democratization requires more than “holding regular elections”, the presence of a social network could enable the process towards democratic stability.²²¹

²¹⁷ Steven Burg, ‘Bosnia and Herzegovina: a Case of Failed Democratization’ in K. Dawisha and B. Parrot (Editors), Politics, Power, and the Struggle for Democracy in South-East Europe, Cambridge University Press, 1997, pp. 122-145; B. Denitch, Ethnic Nationalism: The Tragic Death of Yugoslavia, London: University of Minnesota Press, 1996, 1996. Cited in David Chandler, ‘The Limits of Peacebuilding: International Regulation and Civil Society Development in Bosnia’, p. 110.

²¹⁸ Ian Smillie, ‘Service Delivery or Civil Society?: Non-Governmental Organizations in Bosnia and Herzegovina’, CARE, Canada, 1996, p.13. Cited in David Chandler, Bosnia: Faking Democracy After Dayton, p. 136.

²¹⁹ Roberto Belloni, ‘Building Civil Society in Bosnia and Herzegovina’, Human Rights Working Papers, p. 3.

²²⁰ Ibid., p. 3.

²²¹ For more information see Mary Kaldor and Ivan Vejvoda, ‘Democratization in Central and East European Countries’, International Affairs, vol. 73, no. 1, (1997), pp. 59-82; Fareed Zakaria, ‘The Rise of Illiberal Democracy’, Foreign Affairs, vol. 76, no. 6, 1997, pp. 22-43. Cited in Roberto Belloni, ‘Building Civil Society in Bosnia and Herzegovina’, Human Rights Working Papers, p. 4.

A tolerant and multi-ethnic social environment also seemed as a remedy to the failure of implementing crucial provisions of the GFPA such as Annex 7 regarding the refugee return. Thus, a lot of international attention in Bosnia has been focused on building civil society. Moreover, it is also believed that “without civil society economic reconstruction aid has little impact on political and social division within Bosnia.”²²² Leading analysis have argued that “European Union funding of over US\$ 2,500 per head to residents of Muslim and Croat-divided Mostar has done little to reduce tensions and that US aid to Bosnia, amounting to US\$ 1,200 per head in fiscal year 1998, is creating dependency and acting as a disincentive for Bosnians to resolve problems.”²²³

There has been a similar disappointment in the political sphere.²²⁴ Elections in BiH allowed three nationalist parties to legitimate their political control in 1996. This led to the comment that “elections without civil society will not produce democracy.”²²⁵ Hence, international support for Bosnian NGOs and civil society building hoped to have a conservative effect.

Consequently, it is argued that the discourse on civil society did grow among the international community due to the “lack of success in fostering reconciliation through economic means; the inefficiency in the workings of joint institutions; and the slow progress in refugee return.”²²⁶ International supervision initially failed to achieve considerable progress in the implementation of the Dayton Accords. Hitherto, a “rationale developed behind the novel focus on civil society development that democratization and reconciliation is a long-term process that also called into

²²² David Chandler, *Bosnia: Faking Democracy After Dayton*, p. 136.

²²³ B. Deacon and P. Stubbs, ‘International Actors and Social Policy Development in Bosnia and Herzegovina: Globalism and the “New Feudalism”’, *Journal of European Social Policy*, 1998; G. Kenney, “‘New Imperialism’ of Bosnia Mission”, Letters, *The Times*, 20 December 1997. Cited in David Chandler, ‘The Limits of Peacebuilding: International Regulation and Civil Society Development in Bosnia’, p. 111.

²²⁴ David Chandler, ‘The Limits of Peacebuilding: International Regulation and Civil Society Development in Bosnia’, p. 111.

²²⁵ *Ibid.*, p. 111.

²²⁶ Roberto Belloni, ‘Building Civil Society in Bosnia and Herzegovina’, Human Rights Working Papers, p. 7.

question the role international community plays and the means it adopts” alone, without the contribution of indigenous actors.²²⁷

Thus, in the final document of December 1998 meeting in Madrid, the Peace Implementation Council (PIC) for the first time acknowledged civil society development as an indispensable part of democratization in Bosnia.²²⁸ In addition, there has been a growing concern among the international community that civil society is an essential component of peace building in post-conflict situation through its potential to transcend ethnic divisions by creating new partnership and addressing the needs of society beyond the state mechanism.²²⁹ The Secretary-General’s Agenda for Development report stated that:

The vigorous civil society is indispensable to creating lasting and successful development. Locally based NGOs, in particular, can serve as intermediaries and give people a voice and an opportunity to articulate their needs, preferences and vision of a better society in countries where civil society is weak, strengthening civil society should be a major purpose of public policy.²³⁰

In this respect, civil society is seen as a “middle ground between the individual and the state.”²³¹ It is an “intermediary arena that tries to protect the individual against possible state’s abuses”, the focus is on the individual as a holder of rights against the unlimited power of the state.²³² Furthermore, Roberto Belloni argues that “the function of the state should be limited to the preservation of the social order, while civil society is understood as a sphere of individual interaction where the power of the state is limited by the individuals’ capacity to collectively organize themselves: The focus is on the capacity to resist, individually and

²²⁷ *Ibid.*, p. 8.

²²⁸ For more information see ‘Reinforcing Peace in Bosnia and Herzegovina’, Peace Implementation Council, Madrid, 16 December 1998,, Available at <http://www.oscebih.org>.

²²⁹ For more information see Julia Demichelis, ‘NGOs and Peacebuilding in Bosnia’s Ethnically Divided Cities’, United States Institute of Peace, Special Report 32, 1999, <http://www.usip.org>, pp. 1-18.

²³⁰ ‘Agenda for Development’, 17 December 1996, <http://www.library.yale.edu/un/un3d3.htm>. Cited in David Chandler, ‘The Limits of Peacebuilding: International Regulation and Civil Society Development in Bosnia’, p. 110.

²³¹ Roberto Belloni, ‘Building Civil Society in Bosnia and Herzegovina’, Human Rights Working Papers, p. 9.

²³² *Ibid.*, p. 10.

collectively, oppression, abuse and violence, an important task especially for a country trying to recover from a devastating war.”²³³

After Dayton, years of Bosnian post-conflict experience revealed that nationalist political leaders and authorities did not work to promote peace building. Through strengthening civil society and training new civil society leaders international community tried to create such an intermediary ground and also challenge the government officials who were not performing their jobs as it should be.²³⁴ Bosnian civil society activists hoped to be constructive in the future peace building efforts in this way. As a result, NGO capacities targeted to be build up through training and practice to play a critical role in the design and implementation of a reconciliation strategy.²³⁵

Besides being an intermediary ground between the state and citizens, civil society in BiH also anticipated by the international community to contribute toleration, respect and accommodation of diversity in ethnic, religious and linguistics terms. Thus, transform the society, create a moderate climate and provide a platform for the non-violent resolution of conflicts or ethnic tensions. In this manner, civil society expected to shape the indigenous initiatives to peace building and complement international efforts.

Therefore, as part of international community’s strategy for civil society construction OSCE’s Democratization Branch sought to encourage citizens to support civil society. The OSCE Democratization Program was planned to move the international community closer to “grassroots groups and associations that could provide a counterpoint to the politics of the governing authorities and nationalist parties, and through this, to open political debate and create new opportunities for alternative voices to be heard.”²³⁶ On the other hand, there is an opinion that

²³³ *Ibid.*, p. 11.

²³⁴ ‘Civil Society in Bosnia-Herzegovina After Dayton: An Assessment, International Research and Exchanges Board’, 1996, <http://www.irex.org/index.asp>, p. 9.

²³⁵ *Ibid.*, pp. 10-13.

²³⁶ ‘Democratization Programme: Strategies and Activities for 1997’, OSCE Democratization Branch, <http://www.oscebih.org>. Cited in David Chandler, ‘The Limits of Peacebuilding: International Regulation and Civil Society Development in Bosnia’, p. 112.

international personnel can do a limited job, the citizens should participate and take responsibility in democratic grassroots projects.²³⁷

Paradoxically, there are some experts who argued that Bosnians are not experienced enough to initiate their own grassroots projects, which can lead to civil society development.²³⁸ However, Civil Society Report of the Soros Foundation contested the above argument that:

Bosnia has a history of civil society even restricted depending on the definition of the term. Former Yugoslavia was known to have developed forms of social organization. There were different civic associations and their role was mainly in the field of culture and sports. When the issues became political the Party used to intervene. Even in such conditions the creation of public opinion could achieve a certain measure of autonomous dynamics and exercise authentic influence over the decision-making.²³⁹

After the war, civic associations started to be defined as non-governmental organizations and the civil society concept became a general point of reference. However, the content of the concept for different speakers referred not the same issue, and this created confusion in the public discourse. Meanwhile, numerous NGOs have been established and those with pre-war history have been revived. They all tried to adjust to the current situation in accordance with their own understanding of the idea of civil society. Thus, possible development of civil society depends on the understanding of the very concept of civil society “among the general population as well as activist, the people who founded different NGOs and developed specific projects.”²⁴⁰

In general, Bosnian view of civil society and its functioning among the local NGO participants is compatible with the international view, as an “elementary space” for the “development of democracy and human rights”.²⁴¹ Similar to

²³⁷ ‘OSCE Democratization Branch’, Monthly Report, No.1, February 1997. Cited in David Chandler, Bosnia: Faking Democracy After Dayton, p. 136.

²³⁸ For more information see David Chandler, ‘The Limits of Peacebuilding: International Regulation and Civil Society Development in Bosnia’, p. 119.

²³⁹ ‘The Longest Road To A Distant Goal’, 2001 Civil Society Report, <http://www.soros.org>, p. 2.

²⁴⁰ Ibid., p. 6.

²⁴¹ Roberto Belloni, ‘Building Civil Society in Bosnia and Herzegovina’, Human Rights Working Papers, p. 13.

international understanding it is equated with non-governmental organizations.²⁴² Yet, “this equation is not always accurate and it does not reflect the Bosnian vision of civil society.”²⁴³ A research four years after the war demonstrated that Bosnian citizens are generally troubled and “confused by the term civil society and its frequent equation to civilized society.”²⁴⁴ The research notes that this equation prevents participation of some biased Bosnians to the activities of international civil society programs.²⁴⁵ That is due to the fact that Bosnians think of themselves as clever and educated people, whose society produced many well known figures such as Ivo Andric, Mehmet Selimovic, Emir Kusturica, and Goran Bregovic. For such people the call of the international community to involve in “civilized activities” created a barrier.

Nevertheless, since the end of the war, thousands of new NGOs were established through the promotion of the very need for civil society in BiH and the donations which assisted a more rapid development of civil society infrastructure.²⁴⁶ The Report of the Soros Foundation states that the “impetus” in the growth of the civil society “had to be accompanied by a considerable artificiality of the entire process.”²⁴⁷ Similar to many other things in BiH nowadays, the development of civil society for the most part is not an independent phenomenon since the international community is the main player for many years.

In addition, the majority of NGOs are donor oriented, rather than program oriented. Instead of concentrating on local needs they act on the basis of the desires

²⁴² ‘NGOs as a vehicle for socio-political change’, <http://www.oscebih.org/democratization/eng/demngo-conference.htm>. Cited in Roberto Belloni, Building Civil Society in Bosnia and Herzegovina, Human Rights Working Papers, p. 14.

²⁴³ Roberto Belloni, Building Civil Society in Bosnia and Herzegovina, Human Rights Working Papers, p. 15.

²⁴⁴ Daniel Curran, Notes on Civil Society in Bosnia-Herzegovina, Sarajevo, July 1998, Unpublished paper, p. 4. Cited in Roberto Belloni, Building Civil Society in Bosnia and Herzegovina, Human Rights Working Papers, p. 15.

²⁴⁵ Ibid.

²⁴⁶ Since NGOs are registered on the basis of different laws and at different levels (entity, canton, municipalities) in FBiH and the RS, no accurate statistics exist on the number of NGOs, excluding the type of citizens’ associations inherited from the former, socialist system that have fallen inactive. However, a fair estimate would put the number of NGOs in BiH around 1,500-200 NGOs. Cited in ‘Bosnia and Herzegovina, Human Development Report/Millennium Development Goals 2003’, p. 31.

²⁴⁷ ‘The Longest Road To A Distant Goal’, p. 3.

of the foreign donors. Although from time to time they undertake useful programs in general donor oriented NGOs performs on the direction of the objectives of foreign institutions and donors. However, donor oriented NGOs can not contribute to a long term development of a genuine civil society in BiH.

Furthermore, the improvement of the civil society infrastructure, mainly the establishment and raise of NGO capacities, are not equal across Bosnia and Herzegovina:

This is influenced by the general state of the society, varying from region to region, from place to place. Some of the reasons are: specific war history in the particular part of Bosnia and Herzegovina; war-generated migration processes and their social and cultural implications; long term ethnic and cultural heritage of the area; organized political forces active in the area at the moment and the structure of the political arena; economic situation; level of urbanization; presence of international elements and their specific intentions and interests at the location; and human resources currently available at the given place.²⁴⁸

Uneven regional distribution of NGOs is an impediment if international community is in the opinion that strengthening NGOs means strengthen the overall opportunities for democratization and reconciliation. Besides, many local NGOs have serious obstacles to work such as lack of financial means paying “current expenses of their organization like staff salaries, rent, office costs; insufficient public knowledge of what they do; constant changes in donor priorities; shortage of trained staff and disloyal competition, including both local and foreign organizations,” and several similar problems.²⁴⁹ Among the above challenges local NGOs face in BiH, financial dependence on foreign donors for their expenses and survival is the biggest obstacle for the viable development of civil society structures and the culture in the long run.

In short, regardless of all international efforts, financial assistance, support and encouragement for the development of civil society and establishment of many local NGOs, civil society in Bosnia remains weak. Additionally, international community’s funding of local NGOs does not ensure broad participation. Most of the ordinary people do not see the gains of civil society. This is to some extent due to

²⁴⁸ .*Ibid.*, p. 3.

²⁴⁹ *Ibid.*, p. 3.

lack of enthusiasm to confidence building and reconciliation, then again as part of mistrust and anger.

Although on the surface “Bosnian civil society NGOs and citizens associations have gained international standing and the power to influence policy-making” such as the Citizens’ Alternative Parliament (CAP)²⁵⁰ and Coalition for Return²⁵¹ ; when “scratching the surface” basically these are the same 20 people.²⁵² In this respect, the Bosnian experience is very much similar to Cyprus. For long years international community, such as American Fulbright Commission, initiated and sponsored bi-communal activities to strengthen bi-communal cooperation and civil society dialog, which failed to produce a widespread impact and broad participation from different segments of the society. Like in Bosnia the same small group of peace loving citizens from both sides participated to the events and activities every time, which result in a very limited success in terms of reconciliation and confidence building among the two communities. This demonstrates that funding of civil society or local NGOs is not sufficient to encourage participation, which is a major obstacle for the international community.

The OSCE Mission to Bosnia and Herzegovina Civil Society Policy Paper on 18 January 2003 analyzed basically the domestic reasons for the weakness of civil society in Bosnia. Lack of understanding was stated as the first reason:

There is little tradition of civic activism and citizens have no experience or understanding of how to organize themselves effectively. Secondly, even when organize themselves, there is often an innate tendency to emulate the structures of the state which they should be challenging. Most Bonians feel there is no point in taking action since state has an irresistible power which renders civic action pointless. Thirdly, political discourse is still largely mediated through the conceptual framework of nationalism that predisposes people to perceive divisions rather than synergies. This makes it difficult to achieve compromise and focus on common issues.²⁵³

²⁵⁰ CAP is a network supported by OSCE for strengthening and coordinating the work of Bosnian NGOs.

²⁵¹ An information and aid network which negotiates directly with international agencies on issues of return and reconstruction.

²⁵² Interview with Adrien Marti, OSCE Coordinator for Political Party Development, Sarajevo, 14 June 1997. Cited in David Chandler, ‘The Limits of Peacebuilding: International Regulation and Civil Society Development in Bosnia’, p. 113.

²⁵³ OSCE Mission to Bosnia and Herzegovina, ‘Civil Society Policy’, <http://www.oscebih.org>, 18 January 2003, pp. 2-3.

From a more technical point of view it was stated that infrastructure in BiH make communication and transportation quite difficult. People in one community are often not aware of what has happened in another, as a result, information is not shared.²⁵⁴ Difficult regulatory environment both legally and bureaucratically pointed out to hurdle the development of civil society as well.²⁵⁵ The report is self-critical also about the role played by the international community that it has pursued strategies, which have increased dependency, rather than promoted an active and engaged civil society.

In conclusion, strengthening civil society regarded vital to the long-term sustainability of the reform process, crucial to establishing the conditions necessary to safeguard the peace process and build a viable democracy in Bosnia. These have been the preconditions for the international community necessary to build an exit strategy. Therefore, engagement with civil society was seen fundamental that an active and engaged civil society would contribute achievement of the stated targets of the international community.

Yet, the support given to grassroots civil associations or NGOs by the international community have so far not resulted in success. The incentive to develop civil society and local NGOs, which can challenge the nationalist parties and their programs, create an intermediary ground between state and citizen, facilitate reintegration and promote reconciliation proved to be unproductive and artificial since external support is not the guarantee of building a base for popular support or active participation. It also have not lead to the creation of essential indigenous structures, understanding and culture among the people for the viable development of the civil society in the long-run.

²⁵⁴ Ibid., p. 3.

²⁵⁵ Registration, legal and taxation systems of civil society organizations remain unclear in BiH due to the multiple layers of governance; entity, cantonal and municipal, which was mentioned before.

CHAPTER 6

IMPLEMENTATION OF DAYTON AND INSTRUMENTS OF PEACE-BUILDING IN BiH: III) HUMAN RIGHTS AND RETURN OF REFUGEES

6.1 Human Rights

Post-Cold War peace building policy vigorously supports post-conflict societies and their institutions to reconstruct a political system within liberal democratic principles. This policy includes employing democratic institutions, putting civilian control over the military, reforming the police and judiciary as well as providing protection of human rights and freedoms.¹ Therefore, another fundamental goal of the international community in BiH is to improve human rights conditions of the country. Improving human rights conditions after bringing an end to internal conflicts regarded an important element of peace building since massive violation of human rights has been a valid reason to intervene many civil wars in the post-Cold environment.

International community's insistence upon the need for parties emerging from civil war to commit formally upholding human rights came to the agenda in early 1990s. As it could be seen in many peace treaties including Dayton, human rights materialized as a constitutive element of comprehensive peace building and the commitment to the protection and promotion of human rights took place in the early stages of implementation.² Additionally, the allegations of war crime atrocities, ethnic cleansing, torture, mass rapes, death camps and genocide which was referred

¹ Tonya L. Putnam, 'Human Rights and Sustainable Peace' in Stephen John Stedman, Donald Rothchild, Elisabeth M. Cousens, Ending Civil Wars The Implementation of Peace Agreements, London: Lynne Rienner Publishers, 2002, p. 244.

² Ibid., pp. 243-246.

to be the “second after the Nazi holocaust” in Europe led human rights issues to occupy a prominent place within the whole Dayton peace settlement.³

As a result, Annex Six of the Dayton Peace Accord entitled Agreement on Human Rights “provided a detailed system of human rights protection in the newly established State of Bosnia and Herzegovina, including the catalogue of rights to be protected and the machinery” to guarantee this protection.⁴ However, the enumerated rights of the individuals to be guaranteed regarded very ambitious and far reaching at the first sight.⁵ For instance Article I of Annex Six states that “The parties shall secure within their jurisdiction the highest level of internationally recognized human rights and fundamental freedoms, including the rights and freedoms provided in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols and the other international agreements listed in the Appendix to this Annex.”⁶ This appendix incorporated 16 international human rights agreements which are:

1. 1948 Convention on the Prevention and Punishment of the Crime of Genocide
2. 1949 Geneva Conventions I-IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I-II thereto
3. 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto
4. 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto
5. 1957 Convention on the Nationality of Married Women

³ M. Nowak, ‘Lessons for the international human rights regime from the Yugoslav experience’, Collected Courses of the Academy of European Law, vol. VIII, book 2, 2000, p. 147. Cited in Viktor Masenko Mavi, ‘The Dayton Peace Agreement and Human Rights in Bosnia and Herzegovina’, Acta Juridica Hungarica, vol. 42, no. 1-2, 2001, p. 59.

⁴ Viktor Masenko Mavi, ‘The Dayton Peace Agreement and Human Rights in Bosnia and Herzegovina’, Acta Juridica Hungarica, vol. 42, no. 1-2, 2001, p. 59.

⁵ Ibid., p. 60.

⁶ Annex 6 Agreement on Human Rights, Chapter One: Respect for Human Rights, Article I. Cited in Viktor Masenko Mavi, ‘The Dayton Peace Agreement and Human Rights in Bosnia and Herzegovina’, Acta Juridica Hungarica, vol. 42, no. 1-2, 2001, p. 60.

6. 1961 Convention on the Reduction of Statelessness
7. 1965 International Convention on the Elimination of All Forms of Racial Discrimination
8. 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto
9. 1966 Covenant on Economic, Social and Cultural Rights
10. 1979 Convention on the Elimination of All Forms of Discrimination against Women
11. 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
12. 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
13. 1989 Convention on the Rights of the Child
14. 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
15. 1992 European Charter for Regional or Minority Languages
16. 1994 Framework Convention for the Protection of National Minorities.

At least in theory, this extraordinary acceptance of all international human rights protection mechanisms “provides the citizens of Bosnia more human rights protection than any other citizen in the world.”⁷ Moreover, the Bosnian constitution gives priority to the European Convention for the Protection of Human Rights and Fundamental Freedoms over domestic legal provisions.⁸ This direct application is both a significant derogation of sovereignty and unique condition that underlines the special relationship between international community and Bosnian institutions.⁹

On account of Annex Six the Dayton Agreement also required the establishment of a Commission on Human Rights to ensure that a sustainable

⁷ David Chandler, Bosnia: Faking Democracy After Dayton, p. 92.

⁸ Annex 4, Article II, par. 2 states that ‘The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law’. Cited in Viktor Masenko Mavi, ‘The Dayton Peace Agreement and Human Rights in Bosnia and Herzegovina’, Acta Juridica Hungarica, vol. 42, no. 1-2, 2001, p. 60.

⁹ David Chandler, Bosnia: Faking Democracy After Dayton, p. 92.

mechanism to address human rights violations was put in place and assist the Parties fulfilling their obligations regarding human rights.¹⁰ The Commission on Human Rights composed of two parts: the Office of the Ombudsman and the Human Rights Chamber, whose mandate was over in 2003. They both assumed to consider “alleged or apparent violations of human rights as provided in the European Convention for the Protection of Human Rights and Fundamental Freedoms, or alleged or apparent discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status arising in the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to Annex Six.”¹¹

The Office of Ombudsman is not a judicial body. The Ombudsman is appointed for a “non-renewable term of five years by the chairman-in-office of the OSCE and may not be a citizen of Bosnia and Herzegovina.”¹² He or she is entitled to “investigate alleged human rights violations, to issue findings and conclusions following the investigation, to present reports and recommendations to the competent governmental bodies, and to publish reports on the established violations.”¹³ However, the Ombudsman has no competence of issuing binding decisions. In brief, the Ombudsman receives individual or group submissions and examines allegations. The Ombudsperson’s findings and recommendations “rely on local authorities to comply out of good will” but non-compliance with the Ombudsperson’s recommendations has been the major problem in BiH.¹⁴

In contrast, the Human Rights Chamber was the judicial body. Its decisions were final and binding. The Chamber consisted of fourteen members. Six of the members were Bosnia and Herzegovina citizens while the remaining eight members were foreigners:

¹⁰ Viktor Masenko Mavi, ‘The Dayton Peace Agreement and Human Rights in Bosnia and Herzegovina’, p. 60.

¹¹ Annex 6, Part A; General, Article II: Establishment of the Commission, par. 2 (a) and (b).

¹² Annex 6, Part B: Human Rights Ombudsman, Article IV, para 2.

¹³ Annex 6, Part B: Jurisdiction of the Ombudsman, Article V, para 2, 3, 4.

¹⁴ ‘Is Dayton Failing?: Bosnia Four Years After the Peace Agreement’, International Crisis Group, Bosnia Report No. 80, Sarajevo, 28 October 1999, <http://www.crisisweb.org>, p. 28.

The six national members were appointed by the Federation and the Republika Srpska. The Federation was entitled to appoint four members two Bosniaks and two Croats, and the other two national members were appointed by the RS. The international members were appointed by the Committee of Ministers of the Council of Europe for five years.¹⁵

The third paragraph of Article Seven concerning the members of the Chamber states that all members should possess the qualification required for appointment to high judicial office or should be jurists of recognized competence. Both the Ombudsman and the members of the Chamber should not be held criminally or civilly liable for any acts carried out within the scope of their duties, and the international members and their families should be accorded the same privileges and immunities as enjoyed by diplomatic agents under the Vienna Convention on Diplomatic Relations.¹⁶

Nevertheless, both bodies had judicial functions although from the formal legal perspective they were not part of the judicial system. The Entity authorities were obliged to respect the decisions of the Human Rights Chamber even “the Chamber was not a local institution and did not fall under internal entity and cantonal legal norms regarding the judicial system.”¹⁷ The Chamber’s decisions that had a binding position depended on the political authority of the High Representative.

When the Dayton Agreement was drafted Bosnia was neither one of the member states of Council of Europe nor a contracting party of the European Convention. However, a mechanism was developed binding Bosnia to comply with ECHR. The architects of Dayton created the Commission of Human Rights provisionally, until BiH joins the Council of Europe, to substitute the system working in Strasbourg.

The Office of Ombudsman should have been the substitute of the European Commission of Human Rights and the Human Rights Chamber should have functioned in the capacity of the European Court of Human Rights although it has not been materialized fully in practice. The two parts of the Commission developed their practice separately and the Office of Ombudsman has not

¹⁵ Viktor Masenko Mavi, ‘The Dayton Peace Agreement and Human Rights in Bosnia and Herzegovina’, p. 61.

¹⁶ Annex 6, Part A: General, Article III, para. 4.

¹⁷ Bosnia and Herzegovina, ‘Human Development Report/Millennium Development Goals 2003’, UNDP BiH, June 2003, p. 38.

functioned similar to the European Commission of Human Rights since its mandate has been formulated differently.¹⁸

Irrespective of the constitutional set up including comprehensive list of international human rights agreements, human rights situation on the ground remained problematic. Human rights violations especially against national minorities living in the majority areas of the other ethnic groups have been common, dominant nationalist parties oppressed their political opponents and free media.¹⁹ There has been violence against minority returnees and war crimes addressed very slowly in the beginning. As a result Human Rights Ombudsman and Human Rights Chamber overloaded with investigating human rights violations and their work have been expanded in the past years.

However, initially the Chamber received limited individual submissions. The rise in the case load of the Chamber considered as an obvious sign of its rising importance and the reliability within the Bosnian legal system. Majority of issues discussed by the Chamber was about the property rights, in particular the cases that legal remedies of the domestic legal system were exhausted or ineffective. A number of other cases before the chamber were concerning “unlawful arrests, abuses of powers by police and other authorities, endangering the right to free trial and smaller number of cases regarding the right to freedom of religion and other issues such as discriminatory practices in labor relations, and frozen bank account and pension cases.”²⁰ In deciding such cases the Chamber faced serious difficulties connected with the complexity of the Bosnian legal system.

The Human Rights Chamber was a *sui generis* institution. It was neither a domestic institution nor a typical international body that was empowered with exclusive competencies from the start of its operation. The Chamber was entitled to

¹⁸ Victor Masenko Mavi, ‘The Dayton Peace Agreement and Human Rights in Bosnia and Herzegovina’, p. 62.

¹⁹ For more information see ‘Situation in Media in Bosnia and Herzegovina from the Aspects of Human Rights’, January-December 2001, Helsinki Committee for Human Rights in Bosnia and Herzegovina, <http://www.bh-hchr.org>.

²⁰ Bosnia and Herzegovina, Human Development Report/Millennium Development Goals 2003, p. 38.

receive applications directly from the applicants and not only via the referral of the Ombudsman, and also empowered with the right of review.²¹

Article Eight, paragraph (a) of Annex Six clarifies who can apply to the Chamber: “any Party or person, non-governmental organization, or group of individuals claiming to be a victim of violation by any Party or acting on behalf of alleged victims who are deceased or missing”. However, the applicants had to prove that they took all necessary measures before the competent domestic organs. They were expected to show that the application has been sent to the Chamber six months before the final decision. Besides, there was a further condition. The Chamber could not handle any application that:

a) contain substantially the same matter which has already been examined by the Chamber or has already been submitted to another procedure or international investigation; b) which it considers incompatible with the Agreement, manifestly ill-founded, or an abuse of the right of petition; c) which are pending before any other international human rights body responsible for the adjudication or any other Commission established by the Annexes of the Dayton Peace Agreement.²²

The Human Rights Chamber was authorized to examine the complaints covering the violations that took place after the signing of the Dayton Agreement. Consistent with the universally accepted principles of international law, it could not decide if any incident before the Dayton Agreement was in force, contained human rights violations.²³ Moreover, all applications should concern the human rights under the protection of the Agreement. Therefore, “complaints alleging the violation of those rights which did fall outside the scope of the protected rights would be declared as incompatible.”²⁴ The Chamber had to clarify also the issues related to the

²¹ Victor Masenko Mavi, ‘The Dayton Peace Agreement and Human Rights in Bosnia and Herzegovina’, p. 64.

²² Annex 6, Article VIII, par. b.

²³ Victor Masenko Mavi, ‘The Dayton Peace Agreement and Human Rights in Bosnia and Herzegovina’, p. 65.

²⁴ Human Rights Chamber Decisions: Case No. CH/98/548, CH/99/189, CH/99/2340. <http://wwwuser.gwdg.de/~ujvr/hrch/hrch.htm>. Cited in Victor Masenko Mavi, ‘The Dayton Peace Agreement and Human Rights in Bosnia and Herzegovina’, p. 65.

standing of the parties, which was responsible for the alleged violation and to find out whether the applicant could be considered as a victim or not.²⁵

Nevertheless, the DPA established that responsibility of the Chamber would be transferred “from the Agreement’s parties to BiH institutions five years after the signing of the Agreement in 1995.”²⁶ However, the mandate of the Chamber was extended until the end of 2003 with the consent of the parties. The mandate of the Human Rights Chamber of Bosnia and Herzegovina ended on 31 December 2003. It transferred its responsibilities to the Constitutional Court. According to the Dayton Peace Agreement the work of the Human Rights Chamber should be handed over to a Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina. The Human Rights Commission could work from the 1st of January 2004 to the 31st of December 2004 at the latest.²⁷ It had competency to “decide the cases registered before the Human Rights Chamber before 1 October 2003, and those provisionally registered between 1 October and 31 December 2003.”²⁸

This development came following the endorsement of the joint OSCE, OHR and Council of Europe proposal on the future of the Human Rights Chamber by the Steering Board of the Peace Implementation Council in its session on 12 June 2003. BiH has now joined the Council of Europe and is subject to the jurisdiction of the European Court of Human Rights. As a result of BiH’s accession to the European Convention on Human Rights and Fundamental Freedoms, the European Court of Human Rights has direct jurisdiction over Bosnia and Herzegovina and a State agent to the Court is required.²⁹

Evaluating the effectiveness of the Human Rights Commission since Dayton the major obstacle has been the “lack of enforcement mechanism.”³⁰ While Dayton enumerates all human rights provisions the Constitution does not specify enforcement mechanisms for human rights and leaves this responsibility to the

²⁵ Victor Masenko Mavi, ‘The Dayton Peace Agreement and Human Rights in Bosnia and Herzegovina’, pp. 65-66.

²⁶ Annex 6, Article XV.

²⁷ OSCE Mission to BiH, Human Rights, ‘Building Human Rights Institutions in BiH, The Constitutional Court’, http://www.oscebih.org/human_rights/institutions.asp?d=1, p. 1.

²⁸ *Ibid.*, p. 1.

²⁹ *Ibid.*, p. 2.

³⁰ ‘Is Dayton Failing?: Bosnia Four Years After the Peace Agreement’, International Crisis Group, p. 30.

entities rather than the state.³¹ Besides, the Commission was a small body working with limited capacity where continuous human rights violations took place throughout the country.³² Moreover, complex human rights structure in BiH undermined the efficiency of the Human Rights Commission.

Besides the Commission on Human Rights there are five local institutions, which are currently mandated to promote and protect human rights, either nationally or within the entities. These are the BiH Ombudsman, the Constitutional Court of Bosnia and Herzegovina, the Federation Ombudsman, the Republika Srpska Ombudsman and the BiH Ministry for Human Rights and Refugees.³³ To make human rights operational for everyone, it is envisaged that there must be a strong local legislative framework in line with international human rights standards: This domestic framework should also monitor and assure that violations are addressed.³⁴

The Constitutional Court of BiH hold authority over the cases sent by any court in BiH about the compatibility of a law with the Constitution, the European Convention for Human Rights and Fundamental Freedoms and its Protocols, and the laws of Bosnia and Herzegovina.³⁵ Furthermore, the Court takes appeals against any court in Bosnia if there are accusations that the decisions violate human right provisions and the Constitution.³⁶ Since its establishment in 2000, Ministry for Human Rights and Refugees has been responsible for the consistent application of human rights throughout the country: It is particularly focusing on proper regulation of immigration, refugee and asylum policies.³⁷ The Commission on Human Rights has been working closely with the BiH Ministry for Human Rights and Refugees

³¹ Elizabeth M. Cousens, Charles K.Cater, Towards Peace in Bosnia Implementing the Dayton Accords, Colorado: Lynne Reinner Publishers, 2001, p. 120.

³² Is Dayton Failing?: Bosnia Four Years After the Peace Agreement, International Crisis Group, p. 30.

³³ 'OSCE Protecting human rights in BiH', http://www.oscebih.org/human_rights, p. 1.

³⁴ OSCE Mission to BiH, 'Legal Framework: Methods', http://www.oscebih.org/human_rights, p. 1.

³⁵ Ibid., p. 1.

³⁶ OSCE Mission to BiH, Human Rights, 'Building Human Rights Institutions in BiH, The Constitutional Court,' http://www.oscebih.org/human_rights/institutions.asp?d=1, p. 1. For more information about the Constitutional Court see <http://www.ccbh.ba>

³⁷ OSCE Mission to BiH, Human Rights, 'Building Human Rights Institutions in BiH, The Ministry for Human Rights and Refugees', http://www.oscebih.org/human_rights/institutions.asp?d=1.

(MHRR) to this end. The MHRR as a central national authority responsible for human rights needs to be empowered for reaching the level to take the whole responsibility.³⁸

The Human Rights Ombudsman for BiH is entitled to investigate human rights violations and suggest on their resolutions. The Ombudsman acts either following complaints or personal initiatives. When the Ombudsman can not accomplish any solution, it can send a report to the OHR for political action or to the Human Rights Chamber for a final legal resolution of the matter.³⁹ The Mandate of the provisional international Ombudsman was expired at the end of 2003. The office of the Federation Ombudsman has been operating after Dayton through a main office in Sarajevo and six field offices. It is responsible for the protection of human dignity, rights, and liberties stated in the Constitutions of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and international treaties.⁴⁰ Similarly, the Republika Srpska Ombudsman is assigned to protect the rights as outlined in the Constitutions of Bosnia and Herzegovina, the Republika Srpska and international treaties.⁴¹ The RS Ombudsman comprises three persons; one Bosniak, one Croat and one Serb. Its main objective is building a consistent and accessible human rights protection system in the Entities.⁴²

As a result of the complex human rights protection machinery that was established in the BiH following the war, many citizens especially in the Federation are uncertain which institution to apply first.⁴³ Therefore, the “natural tendency” of most BiH citizens is to ask for assistance from an international organization.⁴⁴ An international organization would direct the complaint to the Office of Ombudsmen. Furthermore, applicants to the Human Rights Chamber, before it ceased to exist, had

³⁸Ibid.

³⁹ ‘Human Rights Ombudsman for BiH’, http://www.oscebih.org/human_rights/institutions.asp?d=1.

⁴⁰ ‘Federation Ombudsman’, http://www.oscebih.org/human_rights/institutions.asp?d=1.

⁴¹ ‘The Republika Srpska Ombudsman’, http://www.oscebih.org/human_rights/institutions.asp?d=1.

⁴²Ibid..

⁴³ ‘Is Dayton Failing?: Bosnia Four Years After the Peace Agreement’, International Crisis Group, p. 30.

⁴⁴Ibid., p. 30.

to first exhaust all available judicial remedies before them. In the Federation “exhaustion of domestic remedies involved the following intervention of a municipal court, a Cantonal Court, The Supreme Court, the Human Rights Court, and then the Ombudsperson of the BiH before reaching finally the Constitutional Court or the Human Rights Chamber.”⁴⁵

In addition to the complex legal system of the Bosnia “the situation is further complicated by the fact that the implementation of sixteen international documents on the protection of fundamental human rights is entrusted to various bodies whose work and powers are confusing even for professional in this field, let alone an ordinary citizen as a potential user of those regulations or an applicant before those bodies.”⁴⁶ Article XIII of the Annex 6 authorized the United Nations Commission on Human Rights, the OSCE, the United Nations High Commissioner for Human Rights, and other intergovernmental, regional or non-governmental human rights organizations to monitor closely the human rights situation in Bosnia and Herzegovina and supervise the implementation.

However, the problem from the perspective of implementation has been that none of the vast number of institutions for the protection of human rights had the lead. The OSCE and the Council of Europe authorized to supervise the implementation as the European Court of Human Rights. Besides a growing network of human rights monitoring organizations have operated in Bosnia since Dayton Agreement. Therefore, “the Office of High Representative established a Human Rights task force to co-ordinate international monitoring and later created Human Rights co-ordination Center (HRCC) for day-to-day co-ordination and support.”⁴⁷

International institutions that take part in monitoring included the UN Mission in Bosnia and Herzegovina (UNMIBH), the OSCE which has a role for monitoring and reporting human rights abuses, and the UN High Commissioner for Refugees,

⁴⁵ 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, p. 18. Cited in ‘Is Dayton Failing?: Bosnia Four Years After the Peace Agreement’, International Crisis Group, p. 31.

⁴⁶ Bosnia and Herzegovina, ‘Human Development Report/Millennium Development Goals 2003’, p. 37.

⁴⁷ David Chandler, Bosnia: Faking Democracy After Dayton, p. 97.

whose office in Bosnia is responsible for human rights assessment.⁴⁸ The UN High Commissioner for Human Rights engaged in monitoring as well. There have been also other organizations such as International Committee of the Red Cross, Human Rights Watch, Amnesty International, the Helsinki Federation and some local NGOs active on the human rights ground.⁴⁹

Since there has been lack of a leading agency in respect to the implementation of human rights provisions the UN efforts were conducted parallel to the OSCE on related issues partly due to the shortage of resources. As a consequence, a comprehensive and fully developed policy for the establishment of a system ensuring respect for fundamental human rights could not be set up in Bosnia. None of the international institutions as well as the local authorities could have a broad policy or a vision of a program for the protection of fundamental human rights. Since a policy or program failed to be brought up there is also an uncertainty about who should be accountable for the failures: the international community or the local authorities in the field of human rights.⁵⁰

6.1.1 The Range of Human Rights Abuses in BiH

Despite the ambitious goals stated in the Annexes of Dayton concerning the protection of human rights government officials and institutions in Bosnia and Herzegovina continue to systematically discriminate against people on the basis of ethnicity. Some government administrators carried out discrimination to stop refugee return and tried to warn returnees and other minorities that they have no prospect as an ethnic minority in a particular area.⁵¹ However, ethnic discrimination does not form the only basis for human rights abuses in BiH:

The inefficient and heavy administrative structure is coupled with a law enforcement system that is widely corrupt. There is a system called “veze”, which works in a way that people with contacts get things done and those without risk discrimination. For example, there are still cases where some

⁴⁸ *Ibid.*, p. 97.

⁴⁹ *Ibid.*, p. 97.

⁵⁰ Bosnia and Herzegovina, ‘Human Development Report/Millennium Development Goals 2003’, p. 37.

⁵¹ ‘Is Dayton Failing?: Bosnia Four Years After the Peace Agreement’, International Crisis Group, p. 27.

people are favored at the expense of others in getting phone lines, infrastructure and utilities such as water, electricity or roads.⁵²

People facing discrimination in BiH involve minority pensioners, minority workers, displaced persons, political opposition supporters, women and ordinary citizens who are not politically linked to the SDA, HDZ or any Serb nationalist political party having local control in Republika Srpska.⁵³ The most frequent acts that adversely affect the relations between the ethnic groups are planting of explosive devices in front of religious facilities, destruction of graveyards, verbal injuries, harassment and threats, as well as acts of religious intolerance. Referring individual cases of human rights abuses in BiH one can demonstrate the level of non-compliance with Annex Six.

In comparison with previous years, when the main obstacle to return appeared obstructing implementation of property laws, and threats to security of person and property as next in order of importance, in 2003 the monitors of the Helsinki Committee and the fact-finding mission of the Committee for the area of human rights situation have found out that the problems have now moved to the economic and social sphere.⁵⁴ However, the discriminatory attitudes on grounds of ethnic origin are still present. Yet, the safety of returnees and their property improved throughout Bosnia and Herzegovina.

The main stress concerning the human rights issues has moved “from the area of security of people and inefficiency of courts and law enforcement, to the area of discrimination in the employment process, social welfare and health care entitlements, violation of employees’ rights in the process of privatization, and violation of labor and employment rights.”⁵⁵ The process of privatization has become for most part improper and left a large number of workers deprived of their rights. New owners are not fulfilling their fundamental legal obligations. Employees are not receiving their salaries on regular basis and “in some of the enterprises, the

⁵² *Ibid.*, pp. 27-28.

⁵³ *Ibid.*, p. 28.

⁵⁴ ‘Report on the State of Human Rights in BiH 2003’, Helsinki Committee for Human Rights in Bosnia and Herzegovina, <http://www.bh-hchr.org>, pp. 5-6.

⁵⁵ ‘Fact Finding Mission in the field of human rights in the regions of BiH, 2003’, Helsinki Committee for Human Rights in Bosnia and Herzegovina, <http://www.bh-hchr.org>, pp. 7-9.

contributions for pension and health fund are not being paid at all, which meant a denial of even the minimum rights of the employees.”⁵⁶ There are also cases of unlawful dismissals from work, conducted in breach of legally prescribed procedures.

Until now problems with the judiciary have not been solved. Judiciary in Bosnia is still fragmented, disorganized and extremely slow at the municipal and cantonal levels. Difficulties with the administration generally upset the returnees. They complain how complicated for them to find a job or to return to their pre-war positions, especially in government and public institutions. Returnees are not equally handled for employment in public administration, institutions, companies and they are not equally represented in executive boards.⁵⁷

The majority of returnees are not provided economical, social and health care. Discriminating attitude towards them in the field of employment is evident and even “obligations arising from legal amendments are not being respected.”⁵⁸ Domestic authorities failed to support sustainable return. The returnees need a job, health care, education for their children and safe environment. The reforms of education have not been completed as well:

Many returnee children have not been enabled to have education in their mother language, although numerous agreements were signed in order to have this constitutional right implemented in practice. In some of the places of return, even four years after the returnees have not been provided with electricity or water supply, roads are ruined, and there are no schools and surgeries. The returnees are forced to pay high fees to get connected to electricity, water supply networks and telephone lines.⁵⁹

Nevertheless, along with the general assessment about human rights, at present there is a move in positive direction that the implementation of property legislation is being brought to its final stage. There is no more organized obstruction to the return and the security situation is more favorable. However, violation of rights has been transferred to economic and social rights such as the right to work, the right to health

⁵⁶ *Ibid.*, p. 11.

⁵⁷ *Ibid.*, p. 13.

⁵⁸ ‘Report on the State of Human Rights in BiH 2003’, Helsinki Committee for Human Rights in Bosnia and Herzegovina, p. 8.

⁵⁹ *Ibid.*, p. 9.

protection, the right to get education in one's own language. Poor economic situation represents a poor environment for all categories of population. Thus, local governments from institutional, material and personnel aspect are unable, in some cases unwilling, to make progress in creating more favorable living conditions.

In short, the social problems and employment rights of the workers became in the course of 2003 one of the biggest problems in the area of human rights.⁶⁰ In numerous cases the process of privatization resulted in unlawful dismissals. The social programs for taking care of redundant workers were not developed. Another human rights problem in Bosnia and Herzegovina is that women's human rights still have not gained full recognition. Although they compose "more than half of the population (51%) in Bosnia and Herzegovina, the women are not even close to being proportionally present in the sphere of labor and social relations (employment rate of women is about 44%), in the political life (about 14,2%), or in the political parties (about 18,5%)."⁶¹

BiH has sufficient number of mechanisms for implementation and safeguarding human rights including women's human rights. However, the social practices do not produce satisfactory results in the protection and promotion of these rights. For instance the entity laws provide equal right to employment for men and women but in practice employers rarely employ women. There also exist widespread sexual harassment in different environments.

Likewise, there are cases of violation of the rights of children on the grounds of their ethnic origin, religion or of political opinions of their parents. The rights of children are almost invisible in the social life of Bosnia and Herzegovina. The most frequent cases of violation relate to lack of access to school facilities, and the issue of the subject of religious instruction being imposed on children from mixed marriages. The general poverty and difficult socio-economic situation in BiH society affects mostly the population of women and children.⁶²

⁶⁰ Ibid., p. 10.

⁶¹ 'Fact Finding Mission in the field of human rights in the regions of BiH, 2003', Helsinki Committee for Human Rights in Bosnia and Herzegovina, <http://www.bh-hchr.org>, p. 17.

⁶² For more information see Report on the 'State of Women's human rights, in Bosnia and Herzegovina', January -December 2001, Helsinki Committee for Human Rights in Bosnia and Herzegovina, <http://www.bh-hchr.org>.

Additionally, as part of the largest non-constituent ethnic minority group in BiH, Roma communities experience a cycle of discrimination that leaves them without jobs, education, health care or adequate housing.⁶³ According to the estimates, there are about 80,000 to 85,000 Roma people in Bosnia and Herzegovina.⁶⁴ At the same time, they are in the worst position among the minority groups, both in terms of economic situation and in terms of access to education, use of language and cherishing own culture.

Roma people face a range of problems related to the lack of respect for their human rights. Denial of the right to property stems from longstanding uncertainty about the legal status of Roma settlements.⁶⁵ Denial of other rights, such as access to social welfare and education, in part stems from problems many Roma face in registering with the civil authorities. In return, a “lack of education creates an unfair disadvantage in finding a job and making it difficult or impossible for a Roma to secure employment.”⁶⁶ At present, with little access to social welfare, unemployed Roma people have become one of the poorest groups in society.

International community particularly the OSCE supports the political empowerment of the Roma minority to ensure full and effective participation of Roma in governmental bodies, structures and decision-making. The Mission has been closely involved in the establishment of the Council of Roma and the National Advisory Board on Roma in support of efforts to address, with local authorities, the many challenges facing Roma communities. One of the main goals is to have informal Roma settlements recognized as legal residences. This will enable Roma to register, permitting them access to education, health care and other public services.⁶⁷

Enumeration of human rights provisions in Dayton could not do much in the absence of institutions and actors willing and able to implement them. Even though “international instruments provide standards for the protection of human rights, they

⁶³ ‘Human Rights Fact Sheet’, http://www.oscebih.org/human_rights/, p. 2.

⁶⁴ ‘Fact Finding Mission in the field of human rights in the regions of BiH 2003’, p. 18.

⁶⁵ ‘Roma Rights –Overcoming Exclusion From Society’, http://www.oscebih.org/human_rights/, p. 1.

⁶⁶ *Ibid.*, p. 1.

⁶⁷ ‘Human Rights Fact Sheet’, p. 2.

alone can not provide promotion and protection of those standards.”⁶⁸ You need functioning local institutions but “in societies emerging from civil wars such institutions are normally weak or nonexistent.”⁶⁹ In addition to building such institutions and assisting them functioning efficiently, international community should enable the citizens to understand their rights as individuals as well as the system designed to protect those rights.

Towards this end, the Human Rights Centre opened in 1996 at Sarajevo University by the support of OSCE and OHR, which has a mission in human rights education primarily within the university.⁷⁰ The Centre is publishing books about human rights, organize conferences, seminars and summer schools with locals and international community. It has a library to support human rights education in the university, which is also open to domestic NGOs and government organizations. The Centre provides information and support for those involved in human rights. However, the Human Rights Centre documentalist Miroslav Zivanovic explained that the Centre is not active in human rights issues about the records or violations since it does not have any sources or funds to find out daily human rights violations. It collects all documents, periodicals, domestic literature which deals with human rights in BiH and when people go there to complaint the Center directs and guide them to Ombudsman or to other relevant organizations.⁷¹

In sum, concerning human rights as an element of peace building the people in Bosnia might have the highest level of human rights at least in theory but what is the extent that this contributes to the peace building process and reconciliation is not clear.⁷² Nevertheless, the human rights component of peace building mission is widely recognized by the international community as crucial for operational peace

⁶⁸ Tonya L. Putnam, ‘Human Rights and Sustainable Peace’, in Stephen John Stedman, Donald Rothchild, Elisabeth M. Cousens, Ending Civil Wars The Implementation of Peace Agreements, p. 248.

⁶⁹ Ibid., p. 248.

⁷⁰ Interview with Miroslav Zivanovic, Librarian/Documentalist, Human Rights Centre, University of Sarajevo, 14 July 2003.

⁷¹ Ibid.

⁷² David Chandler, Bosnia: Faking Democracy After Dayton, p. 94.

building.⁷³ Therefore, the majority of the “UN peace building missions included a human rights component to monitor post-conflict human rights violations, and strengthen local capacity to address such violations through education and institution building activities.”⁷⁴ It is believed that human rights mechanisms should be properly “equipped to fully and effectively contribute to peace building and development of rule of law and thereby prevent conflicts from reigniting.”⁷⁵

6.1.2 Bringing War Criminals to Justice

The Dayton Peace Agreement on top of endorsing powerful human rights protections also “confirms the signatory parties’ obligation to cooperate fully in the investigation and prosecution of war crimes.”⁷⁶ Punishment of war criminals was one of the areas given priority in human rights concerns.⁷⁷ Influence of suspected war criminals over the society has been regarded a major barrier to democracy and human rights protections. Furthermore, persecution of war criminals from all sides, believed to be essential for reconciliation that conviction of responsible individuals will prevent the whole society particularly Serbian to be blamed for alleged war crimes.⁷⁸

However, impact of the persecution of war criminals on the peace process was a contentious issue for some time. International spectators, mainly the British, supported that “the war crimes issue is a huge boulder in the way of any spirit of reconciliation, and it may prevent implementation of the Dayton Accords.”⁷⁹ The

⁷³ ‘Report of the Panel on United Nations Operations (Brahimi Report)’, (A/55/305 – S/2000/809), 21 August 2000, http://www.un.org/peace/reports_operations. Cited in Kaoru Okuizumi, ‘Peacebuilding Mission: Lessons from the UN Mission in Bosnia and Herzegovina’, *Human Rights Quarterly*, vol. 24, 2002, p. 721.

⁷⁴ Kaoru Okuizumi, ‘Peacebuilding Mission: Lessons from the UN Mission in Bosnia and Herzegovina’, *Human Rights Quarterly*, vol. 24, 2002, p. 721.

⁷⁵ *Ibid.*, p. 735.

⁷⁶ Christopher Warren, ‘The Dayton Peace Agreement: Building Peace with Justice’, *US Department of State Dispatch*, December 1995, Supplement Bosnia, vol. 6, issue 48, p. 16.

⁷⁷ Dayton obligated Bosnian authorities to comply with all international human rights and enforcement efforts, expressly including the International War Crimes Tribunal for Yugoslavia (ICTY) at the Hague. GFAP, Annex 6, Article XIII (4) and Annex I, Article X mentioned in both the military and human rights annexes of Dayton. This provision widely interpreted as obligating IFOR and its successor SFOR to apprehend ICTY war criminal indictees.

⁷⁸ Paul R. Williams, Michael P. Scharf, *Peace with Justice? War Crimes and Accountability in the Former Yugoslavia*, New York: Rowman&Littlefield Publishers, 2002, pp. 12-18.

⁷⁹ Anthony Borden, ‘Moving Dayton to Bosnia’, *The Nation*, vol. 262, issue 12, 3/25/1996, p. 20.

crises was defused when former Assistant Secretary of State Richard Holbrooke, “the main architect of the accords, forced an emergency summit with the Balkan Presidents to reconfirm their commitment to the agreement.”⁸⁰

Traditionally, it was feared that quest for justice through the pursuit of war criminals might damage the prospects for a peace settlement. If the leading figures know that they may end up in a war crimes tribunal they will not agree on a peaceful resolution. This can extend the conflict, facilitate the continuation of atrocities and intensify human suffering.⁸¹ Therefore, in many cases the way to avoid war instead of justice has been stressed in the negotiations. Insistence of justice and punishment of war crimes viewed as a potential threat to ruin the efforts in the negotiations for peace.

However, due to the poor record of international community to prosecute crimes against humanity such as “Pol Pot in Cambodia, Idi Amin in Uganda, Saddam Hussein in Iraq, and Mohammed Aided in Somalia”, there has been an increasing demand for the inclusion of justice in peace building since the end of Cold War.⁸² The reason behind was that unpunished crimes encourage rough leaders’ policy of ethnic cleansing with the expectation that they would not be held accountable for their crimes. Failure to punish previous war crimes for many encouraged the Serbs to launch their policy of ethnic cleansing in Bosnia and later in Kosovo.⁸³

Therefore, recently there has been a rising argument to use the tool of justice in the peace building process. The traditional approach started to be criticized that there can not be a contradiction between peace and justice when a lasting peace and proper reconciliation is concerned. As a consequence, great political emphasis placed on the need of punishing the war criminals, employing justice, creating and utilizing justice based institutions in BiH, which was not the case in other peace building process in history. Thus, Bosnia provides a case for assessing the role of justice in peace building. If international community understands the utility and limits of

⁸⁰ Ibid., p. 21.

⁸¹ Paul R. Williams, Michael P. Scharf, Peace with Justice? War Crimes and Accountability in the Former Yugoslavia, New York: Rowman&Littlefield Publishers, 2002, p. 30.

⁸² Ibid., p. 33.

⁸³ For more information see Peggy Hicks, ‘Painful Lesson on Peacekeeping’, ABA Journal, vol. 85, issue 7, July 1999.

justice in peace building process, it can more effectively be accommodated in future conflicts:

The tendency is that punishment of war criminals within the context of creating stable and peaceful societies out of war-torn states may serve several functions. These include establishing individual responsibility and denying collective guilt, dismantling and discrediting institutions and leaders responsible for the commission of atrocities, establishing an accurate historical record and promoting deterrence when war crimes are punished. Another important reconciliatory factor can be that sufferings of the victims will be addressed that they will not seek for revenge.⁸⁴

Towards this end, the International Criminal Tribunal for the Former Yugoslavia (ICTY) which was established by the United Nations on 25 May 1993, “seeks to replace the widespread concept of communal guilt with the reality of individual responsibility, and thus establish a basis for long-term reconciliation.”⁸⁵ The President of the Yugoslav Tribunal Antonio Cassese explains that “far from being a vehicle for revenge by individualizing guilt in hate-mongering leaders and by disabusing people of the myth that adversary ethnic groups bear collective responsibility for the crimes, the Yugoslav Tribunal is an instrument of reconciliation.”⁸⁶

Nonetheless, the ICTY’s primary mandate is “to prosecute individuals responsible for serious violations of international humanitarian law in the former Yugoslavia from January of 1991.”⁸⁷ It was the first international war crimes tribunal established after Nuremberg and Tokyo. The Tribunal consists of three organs, which is the Registry, Chambers and the Office of the Prosecutor:

The Registry is responsible for the administration and judicial support services of the Tribunal. The Chambers consist of 16 permanent judges and a maximum at any one time of nine ad litem judges. The two principal tasks of the Office of the Prosecutor (OTP) are to investigate and prosecute persons, who were responsible for the planning, implementation and execution of the

⁸⁴ Paul R. Williams, Michael P. Scharf, Peace with Justice? War Crimes and Accountability in the Former Yugoslavia, pp. 16-22.

⁸⁵ Anthony Borden, ‘Moving Dayton to Bosnia’, p. 21.

⁸⁶ Paul R. Williams, Michael P. Scharf, Peace with Justice? War Crimes and Accountability in the Former Yugoslavia, p. 17.

⁸⁷ UN Security Council Resolution 827, May 25, 1993. Cited in Elizabeth M. Cousens, Charles K. Cater, Towards Peace in Bosnia Implementing the Dayton Accords, p. 118 and Jane Sharp, ‘Dayton report card’, p. 114.

most serious violations of international humanitarian law that have occurred in the territory of the former Yugoslavia since 1991. Conducts investigations by collecting evidence, identifying witnesses, exhuming mass graves and prepares indictments and presents prosecutions before the judges of the Tribunal.⁸⁸

The stated objectives of ICTY's as in the founding resolution is fourfold: Bringing to justice persons allegedly responsible for violations of international humanitarian law; Rendering justice to the victims and deter further crimes; Contributing the restoration of peace by promoting reconciliation in the former Yugoslavia.⁸⁹ The Tribunal's primary responsibility is to prosecute and try four groups of offences: "Grave breaches of the 1949 Geneva Conventions, violations of the laws or customs of war, genocide and crimes against humanity."⁹⁰

Investigator Don King, from the ICTY Sarajevo Field Office UNICITY, explained that the task in the beginning was about gathering as much evidence and information possible, putting them together and examining. If the information indicated that certain areas, certain commands or individuals were notorious investigations carried out. Huge files of evidence were gathered by the teams in 1995, 1996, and 1997. However, the evidences were gradually shifted and refined until better evidences obtained to deal with the persons who were responsible and assign whom can be daunted.⁹¹ This has been one of the most important concerns by now.

Despite the fact that ICTY could print indictments, carry out prosecutions, provide judgments, and enforce sentences, "it was entirely dependent on others to bring indictees into custody unless they voluntarily surrendered, as some did."⁹² The principal responsibility was on the governments in whose territory war crime suspects lived or moved around such as Bosnia, Serbia and Croatia.⁹³ Due to the lack

⁸⁸<http://www.un.org/icty/glance/profactindex-e.htm>.

⁸⁹ <http://www.un.org/icty/glance/keyfactindex-e.htm>.

⁹⁰ Ibid.

⁹¹ Interview with Don King, Investigator, UNICITY, ICTY Sarajevo Field Office, 21 July 2003.

⁹² Elizabeth M. Cousens, Charles K.Cater, Towards Peace in Bosnia Implementing the Dayton Accords, p. 118.

⁹³ Ibid., p. 118.

of cooperation with international criminal procedures, ICTY depended on international community's implementation agencies to arrest the suspects.

The ICTY was established under Chapter 7 of the UN Charter, which authorizes the use of force to arrest suspects.⁹⁴ The western delegates at Dayton, however, demonstrated little enthusiasm for specifying ICTY arrest procedures:

The agreement stipulates that indicted war criminals may not hold public office or run for election, but Contact Group delegates rejected proposals from the Bosnian delegation for tough arrest procedures and for detailed vetting of police and military personnel to take out indictees. As a result, several local police forces remained under the control of indicted war criminals during the first few years after Dayton.⁹⁵

Nevertheless, the procedure for the trial of the war criminals is more compact. Don King clarified that "the policy has been to deal with the middle and upper levels in international tribunals. However, in the first incidents a number of lower level people and simple war cases were conducted internationally. Currently, the policy is to deal with the most senior case in international tribunals and to encourage the local judiciary to deal with the lower and lower middle cases. Selection of cases is about taking the responsibility for notorious crimes but a number of low level cases initially were conducted internationally."⁹⁶

A determining factor in relation to the trial of serious crimes in ICTY has been "the widespread belief that on the part of many from outside the region that justice would not be done through indigenous courts."⁹⁷ On the other hand, though there were quite a lot of low level crimes conducted in Bosnia, Don King argued that the ICTY was not set up to deal with all level war crimes. There were thousands of war crimes alleged and some of the cases have to be carried locally. Yet, the Tribunal's initial focus on the low-level crimes and the trial of foot soldiers, policemen and guards of the prisoner camps have been criticized despite they helped drawing the procedures. The core of the criticism was that instead of focusing on

⁹⁴ UN Security Council Resoultion 808. Cited in Jane Sharp, 'Dayton report card', p. 114.

⁹⁵ Jane Sharp, 'Dayton report card', p. 114.

⁹⁶ Interview with Don King, Investigator, UNICITY, ICTY Sarajevo Field Office, 21 July 2003.

⁹⁷ John B. Allock, 'The International Criminal Tribunal for the Former Yugoslavia: International Intervention and Political Response in Croatia and Serbia', Second METU Conference on International Relations, 23-25 June 2003, Ankara, Turkey.

high level officials who gave the orders, the Tribunal missed the opportunity to prevent their negative influence on the early peace building process.⁹⁸

Concerning the punishment of war criminals, Article 9 of the Dayton agreement “obliges all parties to cooperate in the investigation and persecution of war crimes and other violations of international law”.⁹⁹ The duty to capture war criminals also comes from the UN Security Council Resolution 808 that calls for states to undertake necessary measures to implement the provisions of the Resolution.¹⁰⁰ On the other hand, due to the lack of pressure from Dayton, both the local authorities and the international NATO’s implementation force, did not carry out arrests or cooperate with the ICTY.¹⁰¹

The Yugoslav Tribunal has no power to arrest or investigate the suspects. The requirement is on the governments of different entities, on the local authorities and the local police to carry out the arrests. That is the law on cooperation with the Tribunal. However, the ICTY staff generally relies on SFOR to find the indictees and carry out arrests since they do not get any people handed over by the local police.¹⁰² Nevertheless, it is a big commitment and a dangerous work to get out and find them. UNICITY staff considers it as the job of local authorities to find the criminals and hand them over, and complain that the authorities are not doing as they should do. It was also mentioned that there are lots of stories that the local authorities instead sometimes hide the information and help them.

Under those circumstances, the Tribunal adopted a policy of encouraging indictees to surrender. It was hoped that if people believe that it will be for their interest to surrender they will do so. If an indictee surrenders there is a chance of being provisionally released from custody and to come back to his/her country to

⁹⁸ Interview with Don King, Investigator, UNICITY, ICTY Sarajevo Field Office, 21 July 2003.

⁹⁹ The General Framework Agreement in BiH, Article IX, <http://www.oscebih.org/essentials/gfap>. Cited in Jane Sharp, ‘Dayton report card’, p. 114.

¹⁰⁰ Jane Sharp, ‘Dayton report card’, p. 114

¹⁰¹ *Ibid.*, p. 114.

¹⁰² Interview with Don King, Investigator, UNICITY, ICTY Sarajevo Field Office, 21 July 2003.

wait for the trial. This policy proved to work well. Many people surrendered and have been given provisional release.¹⁰³

By the end of the war in Bosnia, “ICTY enumerated a total of sixty-seven persons publicly indicted for war crimes: By September 2000, international forces detained twenty indictees, twelve alleged war crimes voluntarily surrendered, and nine were arrested by national police outside Bosnia.”¹⁰⁴ During September 2004, fifty-one¹⁰⁵ accused were in custody at the detention unit of the ICTY, among which a Bosnian Serb general Radislav Krstic found guilty of genocide, in a landmark verdict of the UN Tribunal on 2 August 2001, for the mass killing of over 7,000 Muslims at Srebrenica.¹⁰⁶ By September 2004, seven of the accused provisionally released¹⁰⁷, seventeen arrest warrants have been issued against all accused currently at large¹⁰⁸ and fourteen accused are transferred to serve their sentences.

The fourteen convicted persons were namely Dusko Sikirica, Vladimir Santic, Drago Josipovic, Stevan Todorovic, Anto Furundzija, Dusko Tadic, Zoran Vukovic, Radomir Kovac, Dragoljub Kunarac, Goran Jelusic, Biljana Plavsic, Esad

¹⁰³ Ibid.

¹⁰⁴ Elizabeth M. Cousens, Charles K. Cater, Towards Peace in Bosnia Implementing the Dayton Accords, p. 118.

¹⁰⁵ Tihomir Blaskic, Dario Kordic, Mario Cerkez, Miroslav Kvočka, Mlado Radic, Zoran Zigic, Milorad Krnojelac, Radislav Krstic, Radoslav Brdjanin, Vinko Martinovic, Stanislav Galic, Mitar Vasiljevic, Dragoljub Prcac, Mladen Naletilic, Momcilo Krajisnik, Dragan Nikolic, Blagoje Simic, Milomir Stakic, Dragan Obrenovic, Slobodan Milosevic, Vidoje Blagojevic, Milan Simic, Simo Zaric, Miroslav Tadic, Predrag Banovic, Pasko Ljubic, Dusan Fustar, Momir Nikolic, Dragoljub Ojdanic, Nikola Sainovic, Milan Martic, Mile Mrksic, Dusan Knezevic, Darko Mrdja, Ranko Cesic, Miroslav Deronjic, Radovan Stankovic, Milan Milutinovic, Haradin Bala, Isak Musliu, Vojislav Seselj, Fatmir Limaj, Naser Oric, Dragan Jokic, Miroslav Radic, Franko Simatovic, Jovica Stanisic, Ivica Rajic, Veselin Sljivancanin, Zeljko Mejakic, Mitar Rasevic. See <http://www.un.org.icty>.

¹⁰⁶ ‘Bosnia and Herzegovina’, World Almanac and Book of Facts, World Almanac Education Group Inc., 2004, p. 764.

¹⁰⁷ Pavle Strugar (provisionally released on 1 December 2001), Enver Hadzihasanovic (provisionally released on 13 December 2001), Amir Kubura (provisionally released on 13 December 2001), Sefer Halilovic (provisionally released on 14 December 2001), Miodrag Jokic (provisionally released on 20 February 2002), Rahim Ademi (provisionally released on 20 February 2002) and Momcilo Gruban (provisionally released on 17 July 2002). For more information see <http://www.un.org.icty>.

¹⁰⁸ Details of accused at large Goran Borovnica, Radovan Karadzic, Ratko Mladic, Gojko Jankovic, Dragan Zelenovic, Milan Lukic, Sredoje Lukic, Stojan Zupljanin, Ante Gotovina, Vladimir Kovacevic, Dragomir Milosevic, Savo Todovic, Vinko Pandurevic, Ljubomir Borovcanin, Vujadin Popovic, Drago Nikolic and Ljubisa Beara. For more information see <http://www.un.org.icty>.

Landzo, Hazim Delic, and Milorad Krnojelac.¹⁰⁹ Besides, six sentences already served, which were Zlatko Aleksovski imprisoned in Finland, Drazen Erdemovic in Norway, Dragan Kolundzija, Milojica Kos, Damir Dosen in Austria and finally Zdravko Mucic.

In all over Bosnia and Herzegovina, Republika Srpska has the biggest number of suspected war criminals. “Among them are former President Karadzic and General Mladic, who have been indicted on several counts of genocide including responsibility for the massacre of some 8,000 Muslims at Srebrenica in July 1995.”¹¹⁰ Moreover, amongst local parties, Republika Srpska has been initially the most hostile to the ICTY and the least cooperative.¹¹¹ Karadzic before he was replaced by Biljana Plavsic in 1996, had been extremely uncooperative and stating that the Serb entity forbids extradition.¹¹² Similarly, after Plavsic became the President of RS told UN Secretary-General Kofi Annan that the ICTY’s indictments were no longer applicable since the war was over.¹¹³ However, Plavsic herself later surrendered to the Court and now serving her sentence in Sweden.

However, although there had been cases of tension, comparably the Federation has a better record and “has changed its domestic legislation to extradite those who have been indicted.”¹¹⁴ The Federation police apprehended eight Bosnian Serbs in early 1996, which was not driven from the ICTY indictments but on the

¹⁰⁹ ICTY United Nations Press Release, ‘Milan Simic Granted Early Release’, The Hague, 28 October 2003, C.T./P.I.S./796e.

¹¹⁰ Jane Sharp, ‘Dayton report card’, p. 114.

¹¹¹ Officials in the former Republic of Yugoslavia, comprising Serbia and Montenegro, also plead lack of appropriate domestic legislation to extradite indicted war criminals. Milosevic refuses to hand over indicted JNA officers and permits both Karadzic and Mladic to travel freely in the former republic. On June 24, 1997, for example, Mladic hosted a party for three hundred guests at the Hotel Jugoslavija in Belgrade to celebrate his son's wedding, and in October Karadzic attended his niece's wedding in Montenegro. Croatia has a mixed record. General Tihomir Blaskic, who was indicted for ‘cleansing’ ethnic Serbs from the Krajina region, gave himself up, but only after threats to block a World Bank loan did Croatia send other indicted Croats to The Hague. Cited in Jane Sharp, ‘Dayton report card’, p. 114.

¹¹² Jane Sharp, ‘Dayton report card’, p. 114.

¹¹³ ‘The Unindicted: Reaping the Rewards of Ethnic Cleansing’, Human Rights Watch, vol. 9, no. 1, January 1997. Cited in Jane Sharp, ‘Dayton report card’, p. 114.

¹¹⁴ Including Zejnil Delacic, Hazim Delic and Esad Landzo indicted for their role in the Celebici camps. See Mirko Klarin, ‘The Exceptional Case for the Celebici Four’, Tribunal, no. 8, April-May 1997, p. 3. Cited in Jane Sharp, ‘Dayton report card’, p. 115.

information gathered by the Bosnian authorities.¹¹⁵ “Six of the eight were released because the evidence met ICTY standards in only two cases.”¹¹⁶ A more recent example Milan Simic, President of the Executive Board of the Bosanski Samac Assembly, from 30 May 1992 until 24 June 1993, voluntarily surrendered on 14 February 1998:

He was transferred to the Tribunal on 15 February 1998 and was provisionally released on 7 June 2000. He returned to the Tribunal on 13 August 2001 and pleaded guilty to two counts of torture as crimes against humanity on 15 May 2002. On 17 October 2002, the Trial Chamber sentenced him to five years’ imprisonment.¹¹⁷

Investigator Don Kings portrayed the issue that in the Federation of BiH the Tribunal first failed, but then managed to attain the support of the people to the extent that even if heroes are arrested there are minor demonstrations. Conversely, in the Republika Srpska authorities have not worked with the international community as they are bound to. The most frequently asked question concerning the war criminals in Bosnia has been the whereabouts of Radovan Karadzic and the reasons why international community failed to capture him:

It has been difficult to get a clear answer since it is unknown whether there is a reluctance or just lack of interest in some courts in the Sarajevo. Another stated reason is that the terrain is so tough, it is extremely mountainous and remote with lots of caves and tiny villages without proper roads. Besides, it is claimed that Karadzic is guarded about 90 men that there is a great potential for a major fire-fight and casualties. Therefore, the policy is draining the resources away from the people who believed to support the war criminals instead of shedding blood. In this direction, the Office of High Representative took some measures such as freezing the bank accounts of the supporters of war crimes.¹¹⁸

As a consequence, assessing the success of the Yugoslav Tribunal and the punishment of war criminals in BiH, it can be said that the Dayton requirement to fully cooperate with the ICTY is not occurring. There has been an obvious non-

¹¹⁵ Jane Sharp, ‘Dayton report card’, p. 115.

¹¹⁶ *Ibid.*, p. 115.

¹¹⁷ ICTY United Nations Press Release, ‘Milan Simic Granted Early Release’, The Hague, 28 October 2003, C.T./P.I.S./796e.

¹¹⁸ Interview with Don King, Investigator, UNICITY, ICTY Sarajevo Field Office, 21 July 2003.

compliance and among the three ethnic groups the Bosniaks, which have the least war criminals, appear to be the only side handing over its indictees. Moreover, there is another criticism that due to the fear of NATO casualties, international community avoided to take a direct action and relied on the good will of the local officers to comply with their commitments.

In case of examining the contribution of punishment of war criminals in the peace building process it is obvious that although many crimes committed in Bosnia and people want to see justice for their victims, punishment of war criminals is a very sensitive issue. All sides have claims to be the victims when an indictee is captured from their ethnicity. In all three ethnic groups, publicly indicted persons are seen either heroes if he/she is from their ethnicity or criminals if he/she is in the other ethnicity. Nevertheless, having war criminals amongst the people has a destabilizing effect as well: This is because the other ethnicity will accuse them of hovering a war criminal.¹¹⁹ Thus, punishment of war crimes is one of the prerequisites for peace-building and reconciliation even in practice it might sometimes create reaction or resentment in the society.

However, the local authorities are still far from having the incentive for taking the lead in war crimes investigations and persecutions. Thus, in the year 2003, international community financed through a donor conference the setting up of a specialized War Crimes Chamber in the Court of Bosnia. The goal was to provide Bosnia and Herzegovina the institution necessary to try individuals accused of committing war crimes in BiH during the 1992-1995 war. In November 2002, the High Representative Paddy Ashdown and the former President of the ICTY Judge Claude Jorda, commenced the debate to prosecute war crimes in Bosnian courts. They decided that successful trial of war crimes in BiH is a fundamental element to prove that justice is done. That is also very crucial for promoting reconciliation between the three communities and providing closure to the families of around 250,000 war victims.¹²⁰

BiH's modernized criminal code, enacted in 2003, gives the Court of BiH jurisdiction in all serious crime cases, including war crimes. The specialized

¹¹⁹ Ibid.

¹²⁰ ICTY United Nations Press Release, ' Donors Raise 15.6 million Euros for War Crimes Chamber of BiH Court', The Hague, 30 October 2003, OM/P.I.S./797e.

War Crimes Chamber decided to be strengthened by a temporary component of International Judges and Prosecutors for a transitional period of up to five years. There will be close cooperation with the ICTY during this initial period and thereafter the specialized Chamber will continue to prosecute war crimes in BiH. In addition, the proposal included formation of a War Crimes Department within the Prosecutors Office of BiH, the renovation of facilities with adequate safety and security provisions, and detention facilities. A witness protection program and an increased investigative capacity assured as well.¹²¹

In sum, the signatory parties of Dayton agreed to cooperate with the Tribunal in the investigation and prosecution of war crimes. The Constitution of BiH also states that “no person who is under indictment by the Tribunal may stand as a candidate or hold any appointive, elective, or other public office in the territory of Bosnia and Herzegovina.”¹²² International community initially regarded this as an important provision limiting the ability of war criminals to influence the implementation of the Accords and halt indictees such as Karadzic be a candidate in the forthcoming elections.

However, the instrument of justice could not be effective in the peace building process of Bosnia. It is believed that many individuals indictable for major war crimes still hold important positions of power and influence in some municipalities and political structures across the RS: “In the government the president of the supreme court, the minister of defense and the high ranking police officers were among such individuals.”¹²³ In accordance with the International Crises Group certain renowned indictable war criminals were tolerated by the international community to take positions of power because they were accepted important for the implementation of the Dayton Accords:

These included paramilitary leader Ljubisa Savic, whose forces were responsible for numerous acts of ethnic cleansing, was allowed to hold position of deputy minister of the interior; Biljana Plavsic, later indicted for genocide, was supported in her position as the president of Republika Srpska; Petar Cancar, responsible for the ethnic cleansing of Foca and the

¹²¹ Ibid.

¹²² Article IX, Annex 4 to the General Framework Agreement.

¹²³ ‘War Criminals in Bosnia’s Republika Srpska’, International Crisis Group, Balkans Report No. 103, Sarajevo/Brussels, 2 November 2000, <http://www.crisisweb.org>, p. 2. Cited in Paul R. Williams, Michael P. Scharf, Peace with Justice? War Crimes and Accountability in the Former Yugoslavia, p. 167.

establishment of rape camps, served with international support for a time as the Srpska minister of justice; and Momcilo Krajisnik, who with international backing, was elected as the Serbian representative on the Bosnian presidency. Krajisnik was subsequently indicted for genocide against the people of Bosnia.¹²⁴

The widespread presence of indictable war criminals in the RS and the failure of international community to capture them, especially Karadzic gave the impression to the RS authorities that they can obscure the implementation of Dayton without punishment.¹²⁵ Therefore, the failure to arrest Karadzic and Mladic had been a strong blow against the early implementation of the peace process. According to a Serbian judge interviewed by the International Crises Group, “Karadzic and Mladic represent the single knot holding together a twisted thread of collective and individual guilt that must be united for Bosnia to begin the reconciliation process.”¹²⁶

The present situation to a certain extent demonstrates that ethnic cleansing in Bosnia worked. Moreover, war criminals appear to enjoy respected status in RS, control essential political and economic institutions and paralyze the fulfillment of the Dayton conditions and reconciliation. The presence of indicted and indictable war crimes also suppressed the necessary public debate concerning the acts of Serbian forces during the conflict and impaired the efforts to promote reconciliation.¹²⁷ For example, “when a newspaper editor, Zeljko Kopanja, ran a series of editorials in *Nezavisne Novine* asking why individuals responsible for war crimes in Korican and Teslic had not been arrested and trailed by the Srpska government, he became the victim of a car bomb which destroyed both his legs.”¹²⁸

In brief, the initial failure to arrest war criminals significantly undermined the implementation of the Dayton Accords and set back the peace-building efforts. However, gradual arrest and voluntary surrender of a number of indicted persons

¹²⁴ Ibid., pp. 167-168.

¹²⁵ ‘War Criminals in Bosnia’s Republika Srpska’, International Crisis Group, p. iii.

¹²⁶ Ibid., p. 77.

¹²⁷ Paul R. Williams, Michael P. Scharf, Peace with Justice? War Crimes and Accountability in the Former Yugoslavia, p. 169.

¹²⁸ Ibid., p. 169.

improved the level of Dayton implementation by removing some individuals impeded its progress and enhanced peace building to a certain degree.

6.1.3 Educational Reforms

In addition monitoring post-conflict human rights violations; enabling local authorities to respond such violations; and punishment of war criminals, international community currently has a further aim to increase awareness on human rights through educational reforms. At the moment, education is a key priority for the international community in terms of reconciliation, building up and reinforcing peace in Bosnia and Herzegovina. The OSCE is coordinating the development of international community's education strategy. However, educational reform was not a main concern for international community in the years immediately following the signing of the Dayton Peace Agreement.¹²⁹

During the early years key focus of peace building was converging reconstruction, separation of warring sides, elections and the return of refugees. Despite roughly referred in Annex Six (Article I, Fundamental Rights and Freedoms, point 12 signifies the right to education), international community's peace building mandate through implementation of the Dayton declined to grant any priority to education.¹³⁰ As a consequence, none of the international or local institution was given the mandate to handle educational reforms.

The only remark of Dayton Agreement on education was that "education would be decentralized and thereby become the responsibility of the local cantons and the entities within which the cantons found themselves:"¹³¹ In both Entities children continued to be educated that their loyalties should be to their ethnic community rather than to the federation that is supposed to represents three communities.

From the Dayton Agreement onwards the three ethnic groups essentially taught their students different things in terms of the meaning of the country.

¹²⁹ Valery Perry, 'Reading, Writing and Reconciliation: Educational Reform in Bosnia and Herzegovina', European Center for Minority Issues (ECMI), Flensburg, Germany, Working Paper no 18, September 2003, <http://www.ecmi.de>, p. 2.

¹³⁰ *Ibid.*, p. 2.

¹³¹ Seth Spaulding, Book Review of Holger Daun, Penny Enslin, Lidia Kolouh Westin, Dijana Plut, Democracy in Textbooks and Student Minds: Educational Transitions in Bosnia-Herzegovina, Yugoslavia, Mozambique and South Africa, New York: Nova Science Publishers Inc., 2002. In *Comparative Education Review*, February 2004, p. 95.

Although there were some NGO efforts to develop a common curriculum for the three ethnic groups, the history, and related materials of the Croatian entity were dominated by the curriculum of Croatia, and the curriculum in the Republika Srpska was dominated by the curriculum of Serbia and Montenegro. The federation curriculum was used primarily by the Muslims and largely ignored by the other two ethnic groups.¹³²

However, what “BiH needs is a state that all citizens and ethnic groups will experience as theirs: Instead a resurrection of nationhood and of new identities based on ethnic labels is appearing in what can be called ethnic nationalism.”¹³³ The condition in the Dayton Agreement that education would be under the responsibility of every ethnic group was a fault recognized as BiH tries to “build a country out of chaos.”¹³⁴ Consequently, the actors of international community engaged in peace building in Bosnia and Herzegovina recently accepted “the failure of both the international community and domestic authorities to respond the educational issues soon enough.”¹³⁵

The debate on educational reforms in BiH came to the agenda when international community was increasingly frustrated with the pace of change in Bosnia. As a result, donors’ interest shifted to other trouble spots across the world. Besides, BiH local politicians continued to fail to create and consolidate a vision of state based on multi-ethnicity, equality and power sharing. Instead they have promoted ethnic divisions, fear and distrust to sustain their power. At his point, educational reforms appeared as a prerequisite in the short and long term to create new generation of citizens for self-sustainable and democratic BiH.

Principal Deputy High Representative of OHR Donald Hays in a conference on educational reforms admits that: “We are late in tackling this issue, one that should have been viewed as a core issue for BiH post-war recovery and an issue that

¹³² Ibid., pp. 95-96.

¹³³ Holger Daun, Penny Enslin, Lidia Kolouh Westin, Dijana Plut, Democracy in Textbooks and Student Minds: Educational Trantitions in Bosnia-Herzegovina, Yugolsavia, Mozambique and South Africa, New York: Nova Science Publishers Inc., 2002, p. 37. Cited in Seth Spaulding, Book Review, Comparative Education Review, February 2004, p. 96.

¹³⁴ Seth Spaulding, Book Review of Holger Daun, Penny Enslin, Lidia Kolouh Westin, Dijana Plut, Democracy in Textbooks and Student Minds: Educational Trantitions in Bosnia-Herzegovina, p. 96.

¹³⁵ Valery Perry, ‘Reading, Writing and Reconciliation: Educational Reform in Bosnia and Herzegovina’, p. 3.

will definitely influence the success or failure of all our efforts to create a free, democratic and stable BiH.”¹³⁶ Conflict resolution, human rights and democratization experts have a consensus on the central role that education can play on promoting these processes.

Education with no doubt “plays a vital role in the development of person’s identity.”¹³⁷ “Next to the family, education is one of the most important agencies for cultural reproduction, socialization and identity formation.”¹³⁸ However, in ethnically divided societies particularly where conflict lasts for generations, children have taught to fear, distrust and hate “the enemy”. Social mechanisms particularly schools play a key role indicating “the enemy” or building prejudices.

Common in many post conflict societies such as in Cyprus, education is obviously used as a tool to promote the conflict on the divided island: Schools in part are used for promoting nationalism, and militarism through activities like celebrating national motherland days, naming schools after military heroes, showing pictures of atrocities and holding competitions in poetry and essay-writing based on nationalistic themes or glories of the past of each nation.¹³⁹ The situation is very similar in Bosnia in the sense that education system promotes ethnic divisions.

Throughout the war, education had become extremely politicized and the “ethnic separations that continued after Dayton ensured that students in BiH were not being educated in an objective and harmonized manner.”¹⁴⁰ School books developed

¹³⁶ ‘PDHR Donald Hays calls for urgent education reform’, OHR Press Release, 22 January 2002, at <http://www.ohr.int>. Cited in Valery Perry, ‘Reading, Writing and Reconciliation: Educational Reform in Bosnia and Herzegovina’, p. 3.

¹³⁷ Valery Perry, ‘ECMI Civil Society Project in Bosnia and Herzegovina: National Minorities and Educational Reform in Bosnia and Herzegovina’, (ECMI Workshop, Sarajevo, BiH, 22 November 2002), Report no 38, December 2002, <http://www.ecmi.de>, p. 4.

¹³⁸ C.H. Williams. ‘The Cultural Rights of Minorities: Recognition and Implementation’, in *Minorities in Politics: Cultural and Language Rights*, J. Plichtova (ed.), 1992. Referred in Kristin Henrard, ‘Education and Multiculturalism.’ *International Journal on Minority and Group Rights*, vol. 7, 2000, pp. 393-410. Cited in Valery Perry, ‘ECMI Civil Society Project in Bosnia and Herzegovina: National Minorities and Educational Reform in Bosnia and Herzegovina’, p. 4.

¹³⁹ Maria Hadjipavlou, ‘Partnership Between Peace and Education and Conflict Resolution: The Case of Cyprus’, 2000, <http://www.construct.haifa.ac.il/~cerpe/papers/mariaht.htm>. For more information see ‘Education for Peace, Pilot Application of the History and Literature Books of the 5th Grade of the Elementary School’, Bi-Communal Development Programme funded by USAID and UNDP, executed by UNOPs, December 2004, Nicosia. http://www.postteam.org/EducationForPeace_POST.htm.

¹⁴⁰ Valery Perry, ‘Reading, Writing and Reconciliation: Educational Reform in Bosnia and Herzegovina’, p. 48.

by the different parties described the past in accordance with “their own interpretations, cultural myths, stereotypes and prejudices.”¹⁴¹ Therefore, elimination of such dividing elements from the textbooks and curriculums used in schools of the three ethnic communities in BiH has been essential for peace and reconciliation over the years.¹⁴²

The Organization for Economic Co-operation and Development (OECD) sponsored project describes that fragmentation is the most prevalent characteristics of nowadays BiH.¹⁴³ However, politicization of education is dangerous for peace and reconciliation. Ethnic attitudes are shaped early and “once positive or negative prejudices are formed they tend to increase over the time.”¹⁴⁴ Thus, “early education and socialization experiences are critical in the formation of ethnic attitudes.”¹⁴⁵ An education system that constructs enmity and fear, and promote distrust or hatred apparently can not help international community to achieve its goals in BiH.

On the contrary, education especially in multi-ethnic communities should promote a spirit of equality and tolerance among ethnic and cultural groups. Instead of discrimination and exclusion an integrative approach can play a role to bridge ethnic divisions, promote coexistence, tolerance and reconciliation. Therefore, nowadays the primary goal of international community in BiH is to ensure that “all children have access to education in integrated and multi-cultural schools that is free from political, religious, cultural and other biases and discrimination, which respects the rights of all children.”¹⁴⁶

¹⁴¹ Ibid., p. 48.

¹⁴² Ibid., p. 48.

¹⁴³ ‘Reform in a Fragmented System: Higher Education in Bosnia-Herzegovina’ in Higher Education Management Policy, Journal of the Programme on Institutional Management in Higher Education, vol. 14, no.2, OECD 2002, p. 87.

¹⁴⁴ Valery Perry, ‘Reading, Writing and Reconciliation: Educational Reform in Bosnia and Herzegovina’, p. 5.

¹⁴⁵ Kenneth D. Bush and Diana Saltarelli, ‘The Two Faces of Education in Ethnic Conflict’, UNICEF (August 2000), p. 3. Cited in Valery Perry, ‘Reading, Writing and Reconciliation: Educational Reform in Bosnia and Herzegovina’, p. 5.

¹⁴⁶ ‘A Message to the People of Bosnia and Herzegovina’, Education Reform, OSCE Document, 21. 11. 2002, p. 9.

For this end, the OSCE started to co-ordinate the education reform in BiH, based on July 4, 2002 mandate from the OSCE Permanent Council in Vienna.¹⁴⁷ Consequently, the Education Department was set up additional to the OSCE's human rights work. Head of the OSCE Mission to BiH expressed that "education is one of the most basic human rights and we would be failing the people of Bosnia and Herzegovina if we did not become actively involved in making sure that every child has access to a quality education."¹⁴⁸ Since the summer of 2002, the profile of the education increased "as key element of peace building, economic growth and post-war reconstruction."¹⁴⁹

Educational system regarded to be in a pressing need of change to contribute the establishment of a stable and democratic society.¹⁵⁰ As an alternative to the education system that "divides and segregates children on the ethnic basis, international community urges the education system of BiH to enable the children to go to school together and learn to respect and cherish the precious cultural diversity that makes Bosnia unique."¹⁵¹ In the following months since the OSCE engaged in educational issues, on 21 November 2002, the authorities of Bosnia and Herzegovina the Education Ministries and the Ministry of Human Rights and Refugees agreed with the international community upon an Education Reform Agenda.¹⁵²

Consequently, the OSCE expressed its mission as reforming education to give BiH a better future. The primary objective of the OSCE is to "depoliticize education, while creating the conditions that will ensure equal access to a high-quality, modern education throughout BiH."¹⁵³ They state that quality education is needed:

¹⁴⁷ 'Education Fact Sheet', Organization for Security and Cooperation in Europe (OSCE) Mission to Bosnia and Herzegovina, <http://www.oscebih.org/education>, p. 1.

¹⁴⁸ *Ibid.*, p. 1.

¹⁴⁹ Valery Perry, 'ECMI Civil Society Project in Bosnia and Herzegovina: National Minorities and Educational Reform in Bosnia and Herzegovina', p. 2.

¹⁵⁰ 'Education Fact Sheet', Organization for Security and Cooperation in Europe (OSCE) Mission to Bosnia and Herzegovina, p. 1.

¹⁵¹ 'A Message to the People of Bosnia and Herzegovina', Education Reform, p. 7.

¹⁵² 'Education Reform Agenda: An Update', June 2003, <http://www.oscebih.org>, p. 1.

¹⁵³ 'A Message to the People of Bosnia and Herzegovina', Education Reform, p. 8.

1. For the individual: It brings confidence and personal growth, as well as the skills, knowledge, values and attitudes that are critical for a young person to become a good and successful citizen.
2. For the community: It produces an aware and engaged citizenry, and enhanced potential for prosperity, and a society that is both fair and just.
3. For the country: As BiH strives to become a modern European state, quality education is essential to prosperity and progress.¹⁵⁴

The organization seeks to “put an end to segregation and discrimination through education, and to encourage returnees with school-age children to continue to go back their original homes.”¹⁵⁵ Basically the goal is “providing returnee children ready access to education in integrated multi-cultural schools in their area of return, that is free from political, religious, cultural biases and discrimination and ensuring that all children who are members of national minorities, particularly Romani children, are appropriately included in the education system, and present all children the opportunity to complete primary education.”¹⁵⁶

Thus, education reform in BiH targets to offer children “greater access to all classrooms regardless of their religious or ethnic backgrounds” and revise the “textbooks in national subjects like history, language and geography to contain material that is acceptable to all.”¹⁵⁷ Blair Blackwell, Information Officer of the OSCE’s Education Department in BiH explained that local education authorities employed by the Ministry of Education are supposed to revise the textbooks, especially history books, and find a way to teach contested history of the country.¹⁵⁸ For the sake of objectivity in the committees to revise the Serbian history book there are Bosniak and Croat experts and it is the same for the revision of Bosniak and

¹⁵⁴ Ibid., p. 8.

¹⁵⁵ Ibid., p. 8.

¹⁵⁶ Ibid., pp. 9-10.

¹⁵⁷ ‘Education Fact Sheet’, Organization for Security and Cooperation in Europe (OSCE) Mission to Bosnia and Herzegovina, p. 1.

¹⁵⁸ Interview with Blair Blackwell, Information Officer, Education Department, OSCE Mission to BiH, 23 July 2003.

Croat history books. Nevertheless, education is politicized in a great deal that it is still early to fix teaching of history in the curriculum process.¹⁵⁹

The OSCE also aims to harmonize the school curriculum that “what students learn and the level which they learn will be similar throughout BiH.”¹⁶⁰ Thus, students if moving to another part of the country will have a better possibility of success in their new schools.¹⁶¹ Key education issues include the modernization of the education system as well. The OSCE tries to encourage that students should learn analytical skills and new technologies, instead of memorizing large amount of often out-dated information. Therefore, Pledge 2 of the reform agenda is about “providing basic education of good quality with a modern curriculum and a modern system of assessment and certification of students and teachers and that the OSCE will ensure that students are taught by well-trained teachers in properly equipped schools.”¹⁶²

To support the economic development of Bosnia and Herzegovina the organization added vocational education to its reform agenda. Vocational education and training aim to improve the student skills in the working world and it’s “activities are responsive to local market requirements.”¹⁶³ Raising the quality of higher education and research in BiH, and enabling the universities to meet European norms and standards are also within the scope of the OSCE’s reform schema in Bosnia and Herzegovina.¹⁶⁴ Overall, the OSCE intends to raise the level of education and integrate the schools for reconciliation.

In this respect, OSCE facilitates coordinates and monitor implementation of the reform strategy. It organizes regular meetings between Entity, Cantonal Ministers and “Education Issue Set Steering Group members, which is co-chaired by OSCE and OHR” that also involves organizations engaged in education.¹⁶⁵ Yet, for

¹⁵⁹ Ibid.

¹⁶⁰ ‘Education Fact Sheet’, Organization for Security and Cooperation in Europe (OSCE) Mission to Bosnia and Herzegovina, p. 1.

¹⁶¹ Ibid., p. 1.

¹⁶² ‘Education Reform Agenda: An Update’, June 2003, OSCE Document, p. 7.

¹⁶³ Ibid., p. 10.

¹⁶⁴ ‘Education Reform Agenda: An Update’, pp. 12-13.

¹⁶⁵ ‘Education Fact Sheet’, Organization for Security and Cooperation in Europe (OSCE) Mission to Bosnia and Herzegovina, p. 1.

accomplishing its objectives in educational reforms international community needs the commitment and active support of the local education experts. Since the education reform strategy adopted in November 2002, it would be premature to assess the success and failure in this field. Reform of education requires a long-term commitment and this also explains why international community did not include an education mandate in Dayton as they had initially one or two years exit strategy in mind.

Nevertheless, the BiH experience illustrates that we can not categorize educational reforms as a soft issue compared to the security sector reform of military and police or post-conflict elections and return of refugees. Education is an important element of peace building for many aspects comprising reconciliation, promotion of tolerance, democracy and respect to human rights. Thus, ultimate success of the educational reform in BiH will depend on the success of the other elements of peace building in BiH. For its own part, the success of educational reform in BiH will reflect the extent to which education can contribute to the reconciliation of different ethnic groups after a brutal civil war.

6.2 Return of Refugees and Displaced Persons

At the end of the war there were approximately 1.2 million refugees and around 1 million internally displaced persons in Bosnia. This means that overall about half of the population, which was merely 4.4 million according to the last prewar census, were either forced from their homes or fled to avoid violence and save their lives. Thus, return of these refugees to their homes has been one of the central promises of the Dayton Agreement.¹⁶⁶ The Agreement and its implementation aimed to “reverse the effects of the deliberate mass displacement”, which was the primary tactic of ethnic cleansing that eventually mono-ethnic Bosnian regions could be united with Serbia or Croatia.¹⁶⁷

Hence, the right of refugees to return has been considered the key to a sustainable peace and restoring a unified multiethnic society in Bosnia and

¹⁶⁶ ‘Dayton Implementation The Return of Refugees’, Special Report 26, The US Institute of Peace, 1997, http://www.usip.org/pubs/specialreports/early/dayton_imp/refugees.html, p. 1.

¹⁶⁷ Elizabeth M. Cousens, Charles K. Cater, Towards Peace in Bosnia Implementing the Dayton Accords, p. 71.

Herzegovina.¹⁶⁸ In this respect, Annex VII of the General Framework Agreement for Peace in Bosnia and Herzegovina guarantees the right of “all refugees and displaced persons freely to return to their homes of origin, as well as 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.”¹⁶⁹

To this end, Annex VII requires the authorities of Bosnia and Herzegovina to create “the political, economic and social conditions conducive to the voluntary return and harmonious reintegration of refugees and displaced persons, without preference for any particular group.”¹⁷⁰ This interprets that Dayton “obligated the signatories to create the conditions necessary for peaceful repatriation and reintegration, including a commitment to a range of confidence building measures.”¹⁷¹

Members of the international community have believed that attempts to conclude their commitments in Bosnia without endangering another conflict are reliant on effectively implementing the Dayton Peace Agreement and one key is refugee return.¹⁷² The other DPA provisions depend on refugee return. They were produced to support implementation of the refugee return process. Therefore, without the moderate stability provided by refugee return, the international community thought that they can not seriously contemplate reducing its presence in Bosnia.

6.2.1 Role of United Nations High Commissioner for Refugees (UNHCR) in BiH

Annex VII of the Dayton Peace Agreement restated the leading humanitarian role of the United Nations High Commissioner for Refugees (UNHCR), which has been entrusted by the Secretary-General of the United Nations to coordinate “among all

¹⁶⁸ ‘Dayton Implementation The Return of Refugees’, Special Report 26, The US Institute of Peace, p. 2.

¹⁶⁹ GFAP, Annex VII, Article I, Par.1. Cited in Elizabeth M. Cousens, Charles K.Cater, Towards Peace in Bosnia Implementing the Dayton Accords, pp. 71-72.

¹⁷⁰ GFAP, Annex VII: Agreement on Refugees and Displaced Persons, Chapter One: Protection, Article I, Par. (2) and (3).

¹⁷¹ Elizabeth M. Cousens, Charles K.Cater, Towards Peace in Bosnia Implementing the Dayton Accords, p. 72.

¹⁷² ‘Bosnia’s Refugee Logjam Breaks: Is International Community Ready?’, International Crisis Group, Report No. 95, Sarajevo/Washington/Brussels, 30 May 2000, <http://www.crisisweb.org>, p. 1.

agencies assisting with the repatriation and relief of refugees and displaced persons.”¹⁷³ The organization works closely with government agencies, international and national NGOs to implement its assistance program. In the course of action, the organization also undertook a broad series of activities, “such as providing temporary and permanent housing, tracing missing persons, providing medical assistance, and distributing food.”¹⁷⁴

Beside organization of the reconstruction assistance and other economic support to return, the UNHCR has been also advising the Government on how to solve main legal and political obstacles to return.¹⁷⁵ The supervision of “return-related conditionality have since 1997 been entrusted to the Return and Reconstruction Task Force (RRTF), co-chaired by the Office of the High Representative and the United Nations High Commissioner for Refugees, as defined in its inaugural meeting and at the Sintra Steering Board Meeting on 30 May 1997.”¹⁷⁶

The main objectives of the UNHCR’s Office in BiH have been to “support voluntary returns within and to the country, monitor the implementation of property legislation, and provide limited and flexible humanitarian assistance to the most needy returning refugees and displaced persons.”¹⁷⁷ It also advocates the “continuation of the activities by other agencies to ensure sustainability of returns gives legal assistance as well as the dissemination of information among returnees and internally displaced persons regarding their civil and legal rights.”¹⁷⁸

¹⁷³ GFAP, Annex VII: Agreement on Refugees and Displaced Persons, Article III: Cooperation with International Organizations and International Monitoring, Para 1.

¹⁷⁴ Elizabeth M. Cousens, Charles K.Cater, Towards Peace in Bosnia Implementing the Dayton Accords, p. 72.

¹⁷⁵ Ministry for Human Rights and Refugees, BiH/ OHR/ UNHCR (Ed.): ‘Annex VII (GFAP) Strategy’, a Strategy of BiH and the RRTF for the Implementation of Annex VII with Regard to the Return of Refugees and Displaced Persons and Building Capacity for a Transfer of Responsibilities to Domestic Institutions, Sarajevo, January 2003, Preface, p. 4.

¹⁷⁶ Ibid., p. 4.

¹⁷⁷ ‘UNHCR Global Appeal 2004’, <http://www.unhcr.ba>, p. 227. (Facilitating return also includes ensuring that returnees are safe, their children have access to education and that they do not face discrimination in terms of employment and access to other services).

¹⁷⁸ ‘UNHCR Global Appeal 2003’, <http://www.unhcr.ba>, p. 240.

Moreover, the organization works to identify ways and means to nationalize the existing network of Legal Aid and Information Centres. UNHCR's aims also includes to develop an effective asylum system in cooperation with other partners in the European Union structures and the Stability Pact (SP), support the voluntary repatriation of Croatian and Serb refugees and other refugee groups to their countries of origin in the region.¹⁷⁹

The UNHCR has two types of activities in BiH dealing with the post Dayton process, which are related to Bosnian refugees returning from third countries and Bosnian displaced persons within BiH. For these beneficiaries UNHCR is providing assistance in reconstruction through limited funds thus can assist to limited number of beneficiaries. This is called "quick support fund" and meant to be used for small but quick intervention for reconstruction of housing or infrastructure such as road repair that enable refugees to return.¹⁸⁰ The UNHCR developed this concept to create sustainable conditions for returnees, which has a positive impact on returns. The funds had been used for "community-based", and "small-scale projects."¹⁸¹ Involvements were limited to the situations where other performers were not capable to offer sufficient aid to the "most vulnerable of the returnees".¹⁸² A restricted supply of domestic equipment to vulnerable persons was provided in addition to transportation of their private possessions to the area of return.¹⁸³

Senior Public Information Assistant Bakir Jalovic from UNHCR's Representation in BiH clarified that "the organization is still in reconstruction phase but last five years having less and less funds for these activities. What also left from the previous years is that the organization still providing basic domestic items to the people like beds, blankets, mattresses and stoves. Once refugees return UNHCR supply domestic items for the sustainability of returns with quick support fund. The quick support fund is not only used for the reconstruction but also for the sustainability projects, such as provision of agricultural tools and equipment or small

¹⁷⁹ Ibid., p. 240.

¹⁸⁰ Interview with Bakir Jalovic, Senior Public Information Assistant, UNHCR, Representation in BiH, 16 July 2003.

¹⁸¹ 'UNHCR Global Appeal 2003', p. 242.

¹⁸² Ibid., p. 242.

¹⁸³ Ibid., p. 242.

scale grants for people to start small businesses. However, the fund subsidizes really small businesses such as in some rural areas provision of a cow means provision of a life stock and sustainability to the people.”¹⁸⁴

Refugee return in Bosnia is a regional issue that also affects Croatia and Serbia. Therefore, UNHCR developed a “harmonized regime of assistance to refugee returns and have been trying to pursue durable solutions for the group of refugees from Croatia and the Federal Republic of Yugoslavia (FRY)¹⁸⁵ who wish to return.”¹⁸⁶ The organization seeks to “finance projects offering durable solutions for persons accommodated in collective centers” as well.¹⁸⁷ Currently, the UNHCR is providing community based assistance because it is not able to provide assistance to individuals anymore.

Bakir Jalovcic explained the issue that “five years ago the agency could provide a lot of individual assistance to the returnees, reconstructing for example 20 houses at that time in one village. In the last couple of years providing community house for temporary accommodation of few families while other donors continue with reconstruction in their areas. Rather than accommodate returnees in tents or other temporary shelters the organization nowadays finds one house with the lowest level of damage in a village, which is big enough and trying to get most cost effective way to assist beneficiaries for a period of one year or even less because usually other donors provides assistance in the course of the same year.”¹⁸⁸

6.2.1.1 Network of Legal Aid Centers

Infrastructure, housing, sustainability projects, income generation or domestic items have been the basic help of the UNHCR for the refugees and displaced people. The other part is providing legal assistance to the refugees and displaced persons in Bosnia. The UNHCR Legal Aid and Information Centres (LAICs) were established in 1996 to provide legal assistance to refugees and displaced persons

¹⁸⁴ Interview with Bakir Jalovcic, Senior Public Information Assistant, UNHCR, Representation in BiH, 16 July 2003.

¹⁸⁵ Federal Republic of Yugoslavia renamed the State Union of Serbia and Montenegro in 2003.

¹⁸⁶ ‘UNHCR Global Appeal 2003’, p. 242.

¹⁸⁷ *Ibid.*, p. 242.

¹⁸⁸ Interview with Bakir Jalovcic, Senior Public Information Assistant, UNHCR, Representation in BiH, 16 July 2003.

seeking to return to their pre-war homes.¹⁸⁹ The first LAIC was established in order to assist UNHCR in fulfilling its mandate. In two years more than 70 LAICs opened throughout the country. Before the establishment of the LAICs, there was no mechanism to provide any information on return procedures to the displaced communities in Bosnia.

There were no structures to offer basic legal advice on fundamental issues such as processing of documents, property rights and social welfare entitlements. Despite all efforts, persons of concern to UNHCR remain in a vulnerable situation. The work of the LAICs Network remains often the only source of free legal aid therefore is vital to assist individuals in the return, relocation and reintegration process, and it is recognized as an important partner in carrying out UNHCR protection activities.¹⁹⁰

The Network provides a broad range of legal assistance to beneficiaries¹⁹¹ including legal advice and representation in courts and human rights institutions. Experts give recommendations to the beneficiaries and in many occasions “complementary legal assistance is necessary such as filing claims with the appropriate institutions, filing in forms, represent cases before administrative bodies, courts and human rights institutions.”¹⁹² They monitor evictions to check whether local authorities are fulfilling their legal duties and speak to school principals for returnee children to be enrolled in schools. The Network also works with “governmental and international bodies to promote policies and procedures for ensuring a safe and dignified return.”¹⁹³ It also provides general information on legal

¹⁸⁹ Since 1996 till the end of 2003, the Network has assisted over 270,000 beneficiaries in legal cases related to their sustainable return and reintegration. For more information see Legal Aid Network in 2004, <http://www.unhcr.ba>.

¹⁹⁰ ‘Legal Aid and Information Centers Network in Bosnia and Herzegovina’, UNHCR Representation in BiH, April 2003, p. 3.

¹⁹¹ ‘Beneficiaries include persons of concern to UNHCR, such as refugees, internally displaced persons, returnees and members of minority groups. To support further reintegration and reconciliation in the region, UNHCR beneficiaries include also vulnerable members of local populations, such as the elderly, destitute, orphaned, traumatized, mentally or physically handicapped, victims of violence and torture, and members of female-headed households.’ Cited in ‘Legal Aid and Information Centers Network in Bosnia and Herzegovina’, UNHCR Representation in BiH, April 2003, p. 5.

¹⁹² Legal Aid and Information Centers Network in Bosnia and Herzegovina, p. 7.

¹⁹³ *Ibid.*, p. 7.

issues concerning return and “publishes magazine and brochures that address specific questions.”¹⁹⁴

Bakir Jalovic described the function of the magazine: The network of legal aid centers started to produce a magazine in May 2003, which has a map of legal aid centers. Every centre has mobile teams who are visiting towns and traveling all over the country. The magazine is monthly and distributed through UNHCR’s legal network and it is produced by legal aid lawyers employed in the centre. Legal aid lawyers are writing all the stories and advise in the magazine, which is published in two languages. They are providing free legal advice and court representation.¹⁹⁵

In the year 2002, the Network helped 63,519 beneficiaries in a total number of 111,103 legal procedures.¹⁹⁶ A year later in 2003, the number of total beneficiaries assisted increased to 78,541.¹⁹⁷ Since the number of returns has increased and more people came to “LAICs for assistance with return-related legal problems, the importance of the work of LAICs and their long-term sustainability became more vital.”¹⁹⁸ The problems contained “discriminatory practices, obstruction against returnees and socially vulnerable citizens in employment, pensions, health care, education and public services.”¹⁹⁹ In addition, the LAICs are recognized not only as an important partner in assisting refugees and displaced persons. Its goals comprise raising awareness of the rule of law, access to justice, enabling individuals to realize their rights and to strengthen the development of the fragile civil society sector in BiH.²⁰⁰ Therefore, “the long-term sustainability of the Network attempts to be strengthened through co-

¹⁹⁴ Ibid., p. 7.

¹⁹⁵ Interview with Bakir Jalovic, Senior Public Information Assistant, UNHCR, Representation in BiH, 16 July 2003.

¹⁹⁶ ‘Legal Aid and Information Centers Network in Bosnia and Herzegovina’, p. 5.

¹⁹⁷ ‘Legal Aid Network in 2004, March 2004, Statistical Summary’, <http://www.unhcr.ba>, p. 10.

¹⁹⁸ ‘Legal Aid and Information Centers Network in Bosnia and Herzegovina’, p. 5.

¹⁹⁹ ‘Legal Aid Network in 2004’, March 2004, Legal Issues, p. 10.

²⁰⁰ Ibid., p. 2.

operation in management and the implementation of joint projects in publishing, information dissemination and advocacy.”²⁰¹

For this end the “main priority of the Network in 2003 was the creation of a local, independent, and sustainable non-governmental organization, which would operate throughout BiH and incorporate the goals, mandate and the work of the Network.”²⁰² Besides, proposed projects of the LAICs in 2004 involved continuation of provision of free legal aid in BiH, raising public awareness such as radio and TV programs in regard to the legal issues, capacity building including seminars and trainings on local and international instruments and protection of human rights.²⁰³

All those cover the post-Dayton activities of the UNHCR in BiH. However, it also had some separate reconstruction projects called durable solution for private centre residence implemented by Swiss Humanitarian Agency (SHA). The Agency mostly involved in reconstruction for most vulnerable people in collective centers. Bakir Jelavcic described that “the category of most vulnerable people derive from the reason that all those years after the war they are still in collective centers. They were cross border refuges or in general refugees form the region mostly from Serbia and Montenegro.”²⁰⁴

6.2.2 Assessment of the Refugee Repatriation and Return of Internally Displaced Persons

The presumption at Dayton that most of the displaced persons and refugees would return home was challenged by the fairly small amount of returns in the first post-war years. Franjo Tudjman and Slobodan Milosevic, two participants of Dayton negotiations vigorously resisted refugee returns, intending to consolidate power over

²⁰¹ ‘Legal Aid and Information Centers Network in Bosnia and Herzegovina’, p. 9.

²⁰² *Ibid.*, p. 9. (Since 2000, the UNHCR has been working for the creation of a country-wide LAICs Network with the goal of creating a single national NGO. Creation of a national NGO regarded to as an important contribution to the development of civil society in BiH.)

²⁰³ ‘Legal Aid Network in 2004’, March 2004, Public Awareness, pp. 11-12.

²⁰⁴ Interview with Bakir Jalovcic, Senior Public Information Assistant, UNHCR, Representation in BiH, 16 July 2003.

ethnically cleansed territories.²⁰⁵ Receiving instructions from their leaders, numerous municipal and cantonal officials from all ethnic groups fervently hindered returns.²⁰⁶ Besides the local obstruction, the NATO's first Implementation then Stabilization Force, initially "distanced itself playing an active role in providing security for minority refugee return."²⁰⁷

Refugee returns were regarded at Dayton as a matter of humanitarian concern. Nonetheless, efforts of the international community to build an atmosphere conducive to return have faced grave opposition from the local leaders and recurrent disobedience by the parties.²⁰⁸ The UNHCR and associated institutions could not break the resistance or handle successfully with "economic, social, legal and security related obstacles."²⁰⁹ The refugee issue initially has become highly political and delicate since violent displacement and ethnic cleansing were the military and political tools of war. In this manner, "refugee returns have regarded as the only way to reverse the gains of war, and making the issue inescapably political."²¹⁰

Thus, in the beginning the UNHCR and associated agencies in charge stressed repatriation to areas where the returning refugees could be safe. Since "IFOR's troop-contributing states were unwilling to see the force used to provide security for ethnic minorities", in the absence of a reliable substitute to assure security, UNHCR was in an extremely difficult position.²¹¹ In such a situation, the agency had to "give priority to repatriation in areas where refugees belonged to ethnic majority."²¹² The strategy to return majority areas continued throughout the

²⁰⁵ 'Bosnia's Refugee Logjam Breaks: Is International Community Ready?', International Crisis Group, Report No. 95, Sarajevo/Washington/Brussels, 30 May 2000, <http://www.crisisweb.org>, pp. 1-2.

²⁰⁶ *Ibid.*, p. 2.

²⁰⁷ *Ibid.*, p. 2.

²⁰⁸ 'Dayton Implementation The Return of Refugees', Special Report 26, The US Institute of Peace, p. 2.

²⁰⁹ *Ibid.*, p. 2.

²¹⁰ *Ibid.*, p. 2.

²¹¹ Elizabeth M. Cousens, Charles K.Cater, Towards Peace in Bosnia Implementing the Dayton Accords, p. 73.

²¹² *Ibid.*, p. 73.

first years of Dayton implementation, until the hostilities decreased, security environment improved and reintegration supported more widely.

Nevertheless, even majority return as an early priority did not bring about the expected results. UNHCR estimated among the 400,000 Bosnian refugees that returned only 88,039 refugees actually repatriated that year.²¹³ Following years also produced fairly small numbers: 120,280 refugees returned in 1997; 110,000 in 1998; and 31,650 in 1999; for a total of 349, 969 over four years.²¹⁴ In those early years, repatriation meant the return of refugees to areas where their ethnic group formed the ethnic majority.

On the contrary, internally displaced persons fled somewhere else inside Bosnia. Most of the internally displaced persons used to live in collective centers or occupied the houses of other Bosnians who had escaped earlier. Bosniaks and Croats who were pushed out of the RS occupied the Serbs' houses who already left the Federation. In response, Serbian refugees and displaced persons filled in the houses emptied by the Bosniaks and Croats in the RS.

As a result, displaced people ended up living in one another's housing around the country. Since internally displaced people have been dislocated during the war to cleanse minorities into majority areas and they were not welcomed back in many places provision of security has been vital for their return. In the absence of guarantees by IFOR or a broad strategy to create conditions in which Bosnia could be ethnically reintegrated, internal efforts in the first years of Dayton implementation did sound a rhetorical appeal for multi-ethnicity without a solid effort to realize it.²¹⁵

Thus, return of the displaced persons has been very modest throughout the first post war years. Considerable amount of refugees and displaced persons "repatriated to areas where they would be among an ethnic majority."²¹⁶ Instead of revoking "wartime demographic patterns of ethnic cleansing" such a practice was

²¹³ 'UNHCR Returns Summary', Available at <http://www.unhcr.ba>. Cited in Elizabeth M. Cousens, Charles K.Cater, Towards Peace in Bosnia Implementing the Dayton Accords, p. 73.

²¹⁴ UNHCR Returns Summary, Cited in Elizabeth M. Cousens, Charles K.Cater, Towards Peace in Bosnia Implementing the Dayton Accords, p. 73.

²¹⁵ Elizabeth M. Cousens, Charles K.Cater, Towards Peace in Bosnia Implementing the Dayton Accords, pp. 74-75.

²¹⁶ 'Country Report: Bosnia and Herzegovina', World Refugee Survey 1998, 'Country Report: Bosnia and Herzegovina', World Refugee Survey 1998. Cited in Elizabeth M. Cousens, Charles K.Cater, Towards Peace in Bosnia Implementing the Dayton Accords, p. 76.

criticized for having the consequence of “consolidating ethnic homogeneity.”²¹⁷ On the other hand, the report of the International Crises Group stated the reasons preventing minorities to return that the primary cause was “lack of political will on the part of authorities at all levels.”²¹⁸

Absence of political will displayed through a variety of ways, “from obstructionism in the passage and implementation of new property laws, to a failure to provide security for returnees and properly investigate crimes against minorities, to clear discrimination in the judicial and public administration systems.”²¹⁹ Moreover, shortage of equal chance to employment, limited resources and radicalization of education prevented minority return.

Although the first four years of peace saw the return of both refugees and internally displaced persons only to areas where their own ethnicity was the majority and nationalist environment kept minority returns to a minimum, by 2000 there had been a surprising reversal. During the first months of 2000, “the number of minority returnees returning to their pre-war homes has increased nearly four-fold over 1999 levels, to 12,579.”²²⁰ By the end of August 1999, minority returns all over Bosnia “numbered a mere 100,714 less than 5 per cent of all the refugees and displaced persons created by the war.”²²¹ Consequently, in September 1999 around “1,189,150 people, including 836,500 internally displaced persons, were still without permanent secure access to their pre-war homes four years after the cessation of hostilities.”²²²

Refugee return is evaluated on the success of minority return figures as minorities are least likely to return in areas where they form a minority. Minority return was defined as return to areas where a different ethnic group retains military

²¹⁷ Elizabeth M. Cousens, Charles K. Cater, Towards Peace in Bosnia Implementing the Dayton Accords, p. 76.

²¹⁸ ‘Preventing Minority Return in Bosnia and Herzegovina: The Anatomy of Hate and Fear’, International Crisis Group, Report No. 73, 2 August 1999, <http://www.crisisweb.org>, p. 1.

²¹⁹ Ibid., p. 1.

²²⁰ ‘Bosnia’s Refugee Logjam Breaks: Is International Community Ready?’, International Crisis Group, p. i.

²²¹ Ibid., p. 2.

²²² Update August, 1999, UNHCR Sarajevo Office of the Chief Mission, <http://www.unhcr.ba>. Cited in ‘Bosnia’s Refugee Logjam Breaks: Is International Community Ready?’, International Crisis Group, p. 2.

and political control as well as forms the majority of population. Minority returnees for more than four years after war “have not been allocated abandoned property by majority politicians, and were often subject to official and unofficial harassment, threats and attacks.”²²³

The positive trend and motivation behind the raise of returns have been “refugee impatience, a change in the psychology of the majority and minority populations, Bosnian government policies and increased willingness of the international community to use the powers given to the High Representative to remove obstructionist officials and implement property laws.”²²⁴ Many refugees did return through their own initiatives without the international community’s assistance or the approval of the local authorities. A number of refugees were evicted as part of the new policy to enforce property laws as well. The others who were annoyed with the international community’s tardiness decided to return themselves since they fed up waiting to reclaim their property.

This shows the change in the psychology and disposition of both majority and minority populations. Absence of warfare and an improved security condition brought by the international presence contributed to this change. In addition international community’s determination to enforce the right of pre-war occupants to their property, High Representative’s imposition of new property laws and Bosniak government officials active encouragement of the refugee groups to undertake spontaneous returns have been all effective.²²⁵

Bakir Jalovcic portrayed the situation that in the beginning of peace it was a big deal if someone was returning to an area that his/her ethnic group was in minority. Nowadays, the minority returns are happening almost everywhere in BiH. Actually, the term minority return is not used anymore since the changes in the Bosnian Constitution. Instead it is called the so called minority returns. This is a purely technical term referring to the persons who have returned to their pre-conflict

²²³ ‘Bosnia’s Refugee Logjam Breaks: Is International Community Ready?’, International Crisis Group, p. 2.

²²⁴ *Ibid.*, p. i.

²²⁵ *Ibid.*, p. 6.

municipalities, currently dominated by another constituent people of BiH.²²⁶ The term just expresses numbers for the reference.

There had been “410,676 so called minority returnees from the signing of Dayton Peace Agreement and about 953,000 returns altogether including refugees, displaced persons, minority and majority returnees until 2003.”²²⁷ In 2004, the total number of refugees and displaced persons who “returned to/within BiH reached 1,000,473 with the adding of 15,470 new returnees.”²²⁸ Annual distribution of the numbers concerning the minority returns has been in “1996 and 1997 45,523; in 1998 41,191; in 1999 41,007; in 2000 67,445; in 2001; 92,061 in 2002; 102,111 in 2003 44,868 and 10,589 more till July in 2004 reaching the grand total of 444,795.”²²⁹ In total, the UNHCR’s Sarajevo office claimed to approach the figure that what they have planned. Calculating in terms of how far return process has come, they refer the ethnic figures about the number of refugees and displaced persons at the end of the war that amounted up to 2, 2 million, which were around 1, 2 million displaced persons and 1 million refugees. In this respect, “the recorded returns and monthly statistics package on the refugees and displaced persons within and to BiH have been regarded very crucial for assessing the role of UNHCR in the country.”²³⁰

At the end of 2002, “a total number of 919,746 returns of refugees and displaced persons in Bosnia and Herzegovina were registered, of which 420,485 involved refugee return and 499,261 involved the return of displaced persons.”²³¹

²²⁶ Interview with Bakir Jalovic, Senior Public Information Assistant, UNHCR, Representation in BiH, 16 July 2003.

²²⁷ From the interview with Bakir Jalovic. He also told that number of refugees from BiH, refugees from Serbia and Montenegro, from Croatia we have numbers for each country in the region. But now the re-registration process is in course in Serbia and Montenegro and we expect that numbers to drop by a significant number because a lot of people already have citizenship they are employed they are not refugees anymore and they do not apply for refugee status.

²²⁸ ‘UNHCR Representation in Bosnia and Herzegovina, Statistical Summary’, 31 July 2004, <http://www.unhcr.ba>.

²²⁹ ‘UNHCR Representation in Bosnia and Herzegovina, Statistical Summary’, 31 July 2004, Minority Returns 2004, Table 5, <http://www.unhcr.ba>.

²³⁰ Interview with Bakir Jalovic, Senior Public Information Assistant, UNHCR, Representation in BiH, 16 July 2003.

²³¹ Ibid.

“682,365 persons, of 74% of the total returned within or to the territory of the Federation of Bosnia and Herzegovina, 278,717 persons, of 30% of the total, returned within or to the Republika Srpska, and 18,385 persons, of 2% returned within or to the Brcko District.”²³² However, the positive trend was already distinguished a year before. Subsequently, in May 2003, “the total number of refugees and displaced persons who have returned to their homes throughout Bosnia and Herzegovina since the signing of the Dayton Peace Agreement raised to 953,671.”²³³ Out of this total “592,002 are Bosniaks (62%), 229,762 (24%) are Serbs, 124,257 (13%) are Croats, and 7,650 (1 %) are others.”²³⁴ In 2004, the total number of returnees reached “1,000,473 among which 440,147 of them were refugees and 560, 326 were displaced persons from all ethnic groups.”²³⁵

From the perspective of so-called minority returns, 2001 was the most positive year since the signing of the Peace Agreement. Throughout the year 2002, the positive trend advanced that in the “first eleven months of 2002 a total of 96,967 returns were registered of which approximately 95 per cent that was equivalent to 91,969 were minority returns.”²³⁶

The returns realized from the beginning of the year to 30th of November 2002 were corresponding to 98 per cent of all returns realized in the previous year. This was higher than expected, especially with regard to the fact that neither the State and Entity budgets nor international community funds operating at full level aimed at return for that year.²³⁷

In short, the peak in minority return was reached in 2002 with a total number of 102, 111 but it was already significant that in 2001 there was a reduction in the difference between the number of returns within and to the Federation of BiH and the

²³² Ibid.

²³³ ‘UNHCR Press Release’, 3 July 2003, Sarajevo/BiH, <http://www.unhcr.ba>, p. 1

²³⁴ Ibid., p. 1.

²³⁵ ‘UNHCR Representation in Bosnia and Herzegovina, Statistical Summary’, 31 July 2004, For full UNHCR statistics package issued montly see <http://www.unhcr.ba>.

²³⁶ Ministry for Human Rights and Refugees, BiH/ OHR/ UNHCR (Ed.): ‘Annex VII (GFAP) Strategy’, a Strategy of BiH and the RRTF for the Implementation of Annex VII with Regard to the Return of Refugees and Displaced Persons and Building Capacity for a Transfer of Responsibilities to Domestic Institutions, Sarajevo, January 2003, p. 5.

²³⁷ Ibid., p. 5.

Republika Srpska, given the great disparity between the Entities in previous years. This was caused by “normalization and stabilization of the security situation throughout Bosnia and Herzegovina, as well as the improved cooperation between the respective ministries at the level of BiH and its Entities, particularly through the work of the State Commission for Refugees and Displaced Persons (SCR).”²³⁸ Collaboration of the State Ministry with agents of the international community and funders in BiH has also improved during this time.²³⁹ In the following year of 2003 the number of minority returns was 44,868 and even dropped to 10, 589 in 2004. Contrary to expectations, there has been a decline in the number of returns through 2003.²⁴⁰ With the progress of repossession process in 2003, it was expected that the returns of the displaced would continue throughout 2004. It should also be noted that although there had been an encouraging trend in minority returns, currently beneficiaries are “affected by the severely reduced availability of international resources to assist with their reintegration.”²⁴¹

²³⁸ Ibid., p. 5.

²³⁹ Ibid., p. 5.

²⁴⁰ ‘UNHCR Global Appeal 2004’, <http://www.unhcr.ba>, p. 227.

²⁴¹ Ibid., p. 227.

Table 9: Returns Summary to BiH from 01/01/1996 to 31/07/2004

FEDERATION OF BiH										
	REFUGEES					DPs				
	BOS	CRO	SER	OTH	TOTAL	BOS	CRO	SER	OTH	TOTAL
1996	76,385	3,144	552	33	80,114	101,266	447	1,179	21	102,813
1997	74,552	33,495	2,849	754	111,650	38,821	10,163	3,971	205	53,180
1998	77,310	22,930	4,307	1,453	106,000	9,041	4,040	6,059	300	19,440
1999	17,359	5,960	4,370	491	28,180	14,320	5,747	9,649	219	29,935
2000	4,815	3,498	5,164	569	14,048	9,638	6,660	13,811	172	30,281
2001	1,966	2,285	9,108	542	13,901	9,058	4,890	24,794	343	39,085
2002	3,341	2,080	18,079	290	23,790	6,791	4,632	21,108	624	33,155
2003	897	1,183	5,430	230	7,740	9,356	1,858	14,963	145	26,322
2004	112	189	777	53	1,131	4,422	498	2,403	35	7,358
TOTAL	256,737	74,764	50,636	4,415	386,552	202,713	38,935	97,937	2,064	341,469
REPUBLIKA SRPSKA										
	REFUGEES					DPs				
	BOS	CRO	SER	OTH	TOTAL	BOS	CRO	SER	OTH	TOTAL
1996			7,925		7,925	136	58	61,613	21	81,828
1997	204	73	8,287	66	8,630	626	28	4,481		5,135
1998	1,279	257	2,458	6	4,000	6,765	285	3,080		10,130
1999	1,081	339	1,962	88	3,470	10,587	1,013	1,666	184	13,450
2000	2,818	1,336	139	268	4,561	22,461	456	362	277	23,558
2001	2,676	1,959	47	110	4,792	34,952	471	611	93	38,127
2002	9,119	2,107	134	99	11,459	29,511	351	585	106	30,553
2003	4,343	1,609	50	191	6,193	11,803	123	440	7	12,373
2004	479	119			601	5,494	11	602		6,107
TOTAL	21,999	7,799	21,005	828	51,631	122,335	2,796	73,440	688	199,259
BRCKO DISTRICT										
	REFUGEES					DPs				
	BOS	CRO	SER	OTH	TOTAL	BOS	CRO	SER	OTH	TOTAL
2000						4,845	663	2		5,510
2001						4,032	599	329		4,980
2002	132	1,746	7		1,885	5,209	336	1,522		7,067
2003	17	60	2		79	702	286	620		1,608
2004						208				273
TOTAL	149	1,806	9		1,964	14,996	1,940	2,482		19,418
TOTAL BOSNIA AND HERZEGOVINA										
	REFUGEES					DPs				
	BOS	CRO	SER	OTH	TOTAL	BOS	CRO	SER	OTH	TOTAL
1996	76,385	3,144	8,477	33	88,039	101,402	505	62,792	42	184,741
1997	74,756	33,568	11,136	820	120,280	39,447	10,191	8,452	205	58,285
1998	78,589	23,187	6,765	1,459	110,000	15,806	4,325	9,139	300	29,570
1999	18,440	6,299	6,332	579	31,850	24,907	6,760	11,315	403	43,385
2000	7,633	4,834	5,303	837	18,607	36,944	7,779	14,175	449	59,347
2001	4,642	4,244	9,155	652	18,693	48,042	5,960	25,734	436	80,172
2002	12,592	5,933	18,220	389	37,134	41,511	5,319	23,215	730	70,775
2003	5,257	2,852	5,482	421	14,012	21,861	2,267	16,023	152	40,303
2004	591	308	780	53	1,732	10,124	565	3,014	35	13,738
TOTAL	278,885	84,369	71,650	5,243	440,147	340,044	43,671	173,859	2,752	560,326
3	1+2+3									

Source: UNHCR; IOM; Ministries for Refugees; Deportation movements; Municipal Authorities; OHR Brcko District; Displaced Persons (DPs) Associations and NGOs. UNHCR Sarajevo, 31 July 2004.

6.2.3 Obstacles to Return

The most important factors negatively influencing the decision of refugees to return includes security, employment prospects, bureaucratic inefficiency, and education for their children. Annex 7 made it clear that “the Bosnian authorities must create the political, social and economic conditions conducive to the voluntary return and harmonious reintegration of refugees and displaced persons, without preference for any particular group.”²⁴² Yet, this is still not achieved in many places around the country.

Shortly after the end of war there have been “house burnings, beatings, isolation, intimidation by local police, and attacks by paramilitary groups as primary means of violent resistance” against the return of refugees.²⁴³ “Although the security situation has improved considerably in the recent years, intimidation of minority returnees still occurs: Local police, prosecutors and courts often fail to bring those responsible for nationally motivated violence to charge.”²⁴⁴

In certain parts of the RS “a returnee is ten times more likely to be the victim of violent crime than is a local Serb.”²⁴⁵ An investigation of violent incidents completed by SFOR proved that “there are several trouble-spots for instance a Bosniak returnee to Bijeljina or Prejedor is ten times more likely to become a victim of violent crime (defined as bombing, rape, stoning, assault, arson or murder) than a local Serb.”²⁴⁶ Assaults on returnees also persisted in the Federation, despite both the rate of recurrence and seriousness of the troubles have been less than in the RS.²⁴⁷ Yet, attacks such as “the stoning in September 2002 of a bus containing 70 potential Serb returnees to the Gorazde” area were similarly planned to hinder return.²⁴⁸

²⁴²GFAP, Annex VII: Agreement on Refugees and Displaced Persons, Chapter One: Protection, Article I, Par. (2) and (3).

²⁴³Dayton Implementation The Return of Refugees’, Special Report 26, The US Institute of Peace, p. 3.

²⁴⁴ ‘The Continuing Challenge of Refugee Return in Bosnia and Herzegovina’, International Crisis Group, Balkan Report No. 137, 13 December 2002, <http://www.crisisweb.org>, p. ii.

²⁴⁵ *Ibid.*, p. ii.

²⁴⁶International Crisis Group interview with source in SFOR, 1 July 2002. Cited in ‘The Continuing Challenge of Refugee Return in Bosnia and Herzegovina’, International Crisis Group, p. 18.

²⁴⁷ *Ibid.*, p. 19.

²⁴⁸ *Ibid.*, p. 19.

There has been a hostile environment in some areas in BiH that also led incidents related to sport events or religious celebrations.²⁴⁹ For example, in 2002 at Christmas time a Bosniak man killed an entire Croat family, which turned out to be a big blow against the return process.²⁵⁰ Still verbal harassment, destroy of religious places, breaking the windows in churches or in mosques take place in some parts of the country. Besides, even in places where threat may be low, the continuing presence of war criminals is another factor that sends a negative message to potential returnees. However, while the presence of suspected war criminals in “local administrations, police forces, schools and informal municipal power structures continues to impede return throughout BiH, the removal of such people encourages return.”²⁵¹

Besides, local government officials initially have not enforced the decisions and declarations of the Bosnian government on the return of refugees and reclaiming their property. Even though the Dayton Accords established various institutions to protect individuals’ constitutional and human rights, such as the Property Commission, municipal officials consistently have disregarded orders issued by the relevant institutions or bodies.²⁵² For instance, “the Federation Ombudsperson’s Office might write a letter, citing all appropriate Bosnian legislation, to a mayor stating that a claimant may not be prevented from immediately returning to his or her home.”²⁵³ However, the town’s mayor could refuse to comply with the decision.

²⁴⁹ Interview with Bakir Jalovic, Senior Public Information Assistant, UNHCR, Representation in BiH, 16 July 2003.

²⁵⁰ Very soon the murderer was captured and sentenced to 35 years imprisonment. He was arrested in 24 hours but this incident damaged the course of return in the community, by killing three people also killed the mood of returning. That was the heaviest incident since the end of war. Two years ago there was a murder of 14 years old Bosniak returnee, however, that case was could not be solved. The offender is not known although SFOR, UN Police and local police involved. Usually such murders of returnees could not resolved before but this particular one, which is the heaviest case since the end of the war is resolved in 24 hours. This is something good because that never occurred before in such a short time mostly the previous cases were untouched....From the interview with Bakir Jalovic, Senior Public Information Assistant, UNHCR, Representation in BiH, 16 July 2003.

²⁵¹ ‘The Continuing Challenge of Refugee Return in Bosnia and Herzegovina’, International Crisis Group, p. 19.

²⁵² Julia Demichelis, ‘NGOs and Peacebuilding in Bosnia’s Ethnically Divided Cities’, United States Institute of Peace, Special Report 32, 1999, <http://www.usip.org>, p. 4.

²⁵³ *Ibid.*, p. 4.

Until the situation has changed recently by the implementation of the property law such attitudes impeded the return of refugees and displaced persons to the towns where the local authorities would have not protected them. Gradually, the whole system is established. If a person is occupying the house of a refugee or displaced person, it receives a decision of eviction with a 15 to 30 days notice to vacate the property, otherwise forced to vacate and move somewhere else arranged either by the local authorities or the UNHCR.²⁵⁴

In some cases bad economic conditions and unemployment is the main reason why many people opt not to return rather than the hostile environment. Lack of employment prospects has a daunting effect on the return of both minority and majority. Although international efforts helped to make it possible for the refugees return home, they have been less successful creating the conditions for a sustainable return. Availability of work especially in urban areas is almost non-existent considering the high unemployment rate in BiH which is officially stated as 40 per cent but argued to be 45 per cent in the Federation and 50 per cent in RS, which makes 70 per cent of the people living below the poverty limit.

Refugees and displaced people are unable to obtain re-employment in their pre-war state-owned firms. While competition for jobs in cities has been so fierce even for majority returns, “institutionalized discrimination” makes it much worse for the minority.²⁵⁵ Therefore, people return more easily to rural areas, where in addition to a house they have land or gardens for subsistence farming. Moreover, “micro-credit programs for small returnee businesses and donations of livestock” such as a cow or “agricultural equipments” have made a difference in terms of sustainability.²⁵⁶

In this case, the biggest obstacle returning to rural areas have been land mines. Large percentage of the territory of the BiH, especially the areas close to frontlines, which is part of the most fertile land was heavily mined. According to the International Committee of the Red Cross (ICRC) estimates “25 per cent of the

²⁵⁴ Interview with Bakir Jalovic, Senior Public Information Assistant, UNHCR, Representation in BiH, 16 July 2003.

²⁵⁵ ‘The Continuing Challenge of Refugee Return in Bosnia and Herzegovina’, International Crisis Group, p. 15.

²⁵⁶ *Ibid.*, 2.

country was mine infected, or that 1,3 million people in the country were affected by mines.”²⁵⁷ Thus there has been a persistent threat of mines, and several mine incidents happened since the end of war in which from 1996 to the mid-2004 1489 persons have recorded to be mine victims by ICRC:

Table 10: Number of Mine Victims By Year

	1996	1997	1998	1999	2000	2001	2002	2003	2004
Total	634	290	149	95	100	87	72	54	10

	Year								
	1996	1997	1998	1999	2000	2001	2002	2003	2004
Fatal	17.5%	30.2%	40.0%	39.6%	35.0%	36.8%	36.1%	42.6%	60%
Non fatal	82.5%	69.8%	60.0%	60.4%	65.0%	63.2%	63.9%	57.4%	40%

Source: International Committee of the Red Cross (ICRC) Annual Report 2003, and Relief Web, August 2004.

In addition, Bosnia’s education system with three separate and politically charged curricula, is another often cited reason by families with children not to return. Many years Bosniaks, Croats, and Serbs have preserved three diverse curricula, which robustly discouraged minority return.²⁵⁸ Primary and secondary schools in BiH instruct according to three separate curricula with three languages and generally utilize schoolbooks full of “terminology and interpretations that are offensive to returnee children and their parents.”²⁵⁹ The implication of the education system was that if a minority family would return to its original residence before war,

²⁵⁷ ‘Bosnia and Herzegovina’, Europe and North America, International Committee of the Red Cross (ICRC) Annual Report 2003, <http://www.icrc.org>, p. 208

²⁵⁸ Elizabeth M. Cousens, Charles K.Cater, Towards Peace in Bosnia Implementing the Dayton Accords, p. 81.

²⁵⁹ ‘The Continuing Challenge of Refugee Return in Bosnia and Herzegovina’, International Crisis Group, p. 19.

would “have to educate their children elsewhere” to avoid the propaganda material loaded into the minds of the children against their ethnicity in schools.²⁶⁰

Another obstacle to return is caused by a deficiency in the property law. The trouble with the property law is that destroyed property has not been included. The illustrated number of total claims submitted that shows the statistics about how many cases were resolved out of the submitted property claims does not include unclaimed property, which is the destroyed property.²⁶¹ The statistics used to indicate the success cover only the return of property which is claimed.

However, although the donors cut their funding for the reconstruction of the damaged or destroyed houses, the trend of refugees to return is not reversed by that fact. Additionally, despite the lack of entirely safe environment, employment perspectives, adequate education for the returnee children, discrimination in accessing utilities, health care and pensions, the tide of returnees that began to flow in the year 2000 has continued to rise until 2003.

6.2.4 Property Issue

The property issue and submission of claims on property was regulated in Dayton Agreement and a special agency was formed, which is called the Commission for Real Property Claims of Refugees and Displaced persons (CRPC) to deal with the state of affairs.²⁶² The Commission has been the key decision-making body on property rights for dispossessed people in Bosnia and Herzegovina until the end of 2003. It was established under Annex 7 of the Dayton Peace Agreement with a responsibility to determine claims from the hundreds of thousands of people who lost property during the war.²⁶³ Thus, the CRPC played a crucial role in the solution of “outstanding property issues, which was one of the key challenges to the development of BiH, as property rights should be restored and legally protected to

²⁶⁰ Elizabeth M. Cousens, Charles K.Cater, Towards Peace in Bosnia Implementing the Dayton Accords, p. 81.

²⁶¹ Interview with Dario Sikuljak, National Political Officer, OSCE Mission to Bosnia and Herzegovina, 15 July 2003.

²⁶² GFAP, Annex VII: Agreement on Refugees and Displaced Persons, Chapter Two: Commission for Displaced Persons and Refugees, Article VII: Establishment of the Commission.

²⁶³ For more information see GFAP, Annex VII: Agreement on Refugees and Displaced Persons, Chapter Two: Commission for Displaced Persons and Refugees, Article XI: Mandate.

ensure successful refugee return, reconstruction, economic development, political and social revitalization in the country.”²⁶⁴

The State of Bosnia and Herzegovina using its local authorities has been responsible for implementing CRPC decisions. “October 1999 Law on Enforcement of CRPC decisions in BiH clearly compelled the implementation of CRPC decisions and provided procedures for enforcement”, which had a positive impact on refugee return.²⁶⁵ Additionally, the Peace Implementation Council has invited the authorities to put CRPC decisions into practice, and the EU acknowledged whole implementation of CRPC decisions as a prerequisite for the Stabilization and Association Process in its Road-map.²⁶⁶

In July 2003 CRPC has gathered “claim applications for 319,013 properties throughout BiH.”²⁶⁷ With an average of one in four persons owning property in BiH, CRPC has almost fully met the demand for claims collection.²⁶⁸ The same month CRPC had issued 302,109 property decisions:²⁶⁹

These decisions provided incontestable proof of rights to property and required domestic authorities to discharge occupied houses that decision-holders could return. The CRPC provided dispossessed people legally binding decisions on their property entitlements so they could resume their lives with security.²⁷⁰

In the beginning CRPC authorities were issuing a piece of paper, which stated that an individual have a right to property. In case an individual could provide any kind of evidence to CRPC that had a property before the war, the agency would issue

²⁶⁴Commission for Real Property Claims of Refugees and Displaced persons (CRPC), <http://www.crpc.org.ba/new/en/main.htm>.

²⁶⁵Commission for Real Property Claims of Refugees and Displaced persons (CRPC), ‘Decisions Enforcement’, <http://www.crpc.org.ba/new/en/main.htm>.

²⁶⁶ Ibid.

²⁶⁷Commission for Real Property Claims of Refugees and Displaced persons (CRPC), ‘Property Laws Implementation Charts’, <http://www.crpc.org.ba/new/en/main.htm>.

²⁶⁸ Ibid. (A greater emphasis on mobile outreach is ensuring that even those in the most remote areas of BiH were able to file claims with the CRPC.)

²⁶⁹ Commission for Real Property Claims of Refugees and Displaced persons (CRPC), ‘Decisions’, <http://www.crpc.org.ba/new/en/main.htm>.

²⁷⁰ Ibid.

a certificate.²⁷¹ That was the initial stage but later the implementation of the property law has been done by local authorities through municipalities.²⁷² In fact, the CRPC's mandate was extended in 2002 for one more year to finish its mandate and hand over all data bases and the decisions to the local authorities.²⁷³ In 2004, "local authorities (property legislation implementation plan focal points) collected 215,845 total property claims and closed 199,907 out of the total claims."²⁷⁴

The mandate of the Commission for Real Property Claims (CRPC) practically ended in early 2004. As part of its transfer process, "the CRPC transferred all of its claim files (approximately 240,000) and records to the BiH National Archives, as well as its computer database to the BiH Ministry of Human Rights and Refugees."²⁷⁵ At the moment, there are efforts to establish a local commission with seven members comprising only the nationals of the BiH. The responsibility of the commission will be to revise the previous decisions in case of an application.

Similarly, the OHR-led Reconstruction and Return Task Force (RRTF)²⁷⁶ was established in 1997 in order to undertake return and reconstruction issues in an integrated manner:

Since the end of 2003 it brought together refugee return and human rights experts, donors, the EUPM and SFOR, whose role have been to provide security for returnees. The RRTF facilitated returns through initiatives aimed at providing returnees with housing, security and sustainable socio-economic conditions, such as non-discriminatory access to jobs, education, public

²⁷¹ Interview with Bakir Jalovcic, Senior Public Information Assistant, UNHCR, Representation in BiH, 16 July 2003.

²⁷² Ibid.

²⁷³ Ibid.

²⁷⁴ 'Implementation of the Property Laws in BiH, Statistics Summary', 31 July 2004, <http://ohr.int/plip>.

²⁷⁵ US Department of State, Bosnia and Herzegovina, Country Reports on Human Rights Practice, 2003, Released by the Bureau of Democracy, Human Rights and Labor, February 25, 2004.

²⁷⁶ The RRTF was an inter-agency body and comprised the OHR, the United Nations' High Commissioner for Refugees (UNHCR), the European Commission, the European Commission's Humanitarian Office (ECHO), the governments of Germany, the United States and the Netherlands, the World Bank, the European Union Police Mission (EUPM), the Organization for Security and Co-operation in Europe (OSCE), the United Nations Development Program (UNDP), the International Management Group (IMG), the International Organization for Migration (IOM), the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) and SFOR. 'RRTF Member Organizations', <http://www.ohr.int/ohr-dept/rrtf/mem-struct/orgnst.asp>.

utilities and health care and representation in governmental and judicial bodies.²⁷⁷

The overall coordination of return and reconstruction was ensured until 2003 through the Reconstruction and Return Task Force, which comprised humanitarian and human rights agencies, development actors, such as UNDP and the World Bank, and primary donors. The RRTF also “coordinated the reconstruction of housing, and oversaw the implementation of property legislation under which all refugees and displaced persons were entitled to repossess their pre-war homes.”²⁷⁸ Moreover, the property restitution process has been also implemented through an inter-agency framework, the Property Law Implementation Plan (PLIP), which includes the OSCE, the High Representative, and the Commission for Real Property Claims for Displaced Persons and Refugees. The PLIP cell in Sarajevo has been “coordinating and supervising the implementation process, setting the strategic goals, while the country-wide PLIP field network translates this into concrete action at the local level.”²⁷⁹

Since representatives of international community in BiH have claimed to move closer towards reaching a self-sustaining return they predicted that already by the end of 2003 the OHR would transfer its return facilitation activities to the domestic institutions. The OHR’s role would then be to monitor the returns process and stay in close contact with domestic and international actors engaged in overseeing return activities. In this direction, Bakir Jalovic argued that “in terms of numbers, totally 200,000 property claims are submitted to the authorities in 2003, and out of this number 186 cases were resolved, which is 8 per cent overall. However, there are different statistics for each region due to regional disparities that enables to compare how good implementation of the property law has been in certain areas. Some municipalities already have 100 per cent ratios and finished

²⁷⁷ ‘Return And Reconstruction Task Force’, <http://www.ohr.int/ohr-dept/rrtf/mem-struct/orgnst.asp>.

²⁷⁸ Ibid.

²⁷⁹ ‘Return And Reconstruction Task Force, Contacts’, <http://www.ohr.int/ohr-dept/rrtf/mem-struct/orgnst.asp>.

implementation of the property law because they had small number of claims. The other municipalities with huge claims hoped to finish their job as well.”²⁸⁰

Yet, the property issue was expected to be totally resolved by the end of 2003.²⁸¹ With the speed of the year’s progress it was anticipated to be achieved; since out of 220,000 cases the 180,000 was resolved and there was 40,000 claims of property issues left to be resolved.²⁸² Bakir Jalovic further confirmed that “every month the progress is 2 per cent more and there are 7 more months to go. Expecting this increase every month to continue, which is the usual, the completed cases can go up from 82 to up to 96 per cent. This means only few cases could be left for the year 2004.”²⁸³ Senior Public Information Assistant of UNHCR in Sarajevo Bakir Jalovic’s prediction in July 2003, proved to be rational but a bit optimistic since only 6 per cent of the total claims remained to be solved so far in 2004.

Table 11: Implementation of the Property Laws in BiH

	No. of Claims	No. of closed Cases	Implementation Ratio
Federation BiH (FBiH)	121,820	104,145	85%
Republika Srpska (RS)	98,136	75,863	77%
Brcko District	6,837	6,056	89%
Total BiH	226,793	186,064	82%

Source: UNHCR Representation in BiH, GIS Unit, 31 May 2003

	No. of Claims	No. of closed Cases	Implementation Ratio
Federation BiH (FBiH)	115,873	107,201	92,52%
Republika Srpska (RS)	92,983	85,989	92,48%
Brcko District	6,989	6,717	96,11%
Total BiH	215,845	199,907	92,62%

Source: UNHCR Representation in BiH, GIS Unit, 31 July 2004

²⁸⁰ Interview with Bakir Jalovic, Senior Public Information Assistant, UNHCR, Representation in BiH, 16 July 2003.

²⁸¹ ‘Property Law Implementation in Bosnia and Herzegovina Nears Completion’, OSCE Press Release, Sarajevo, 11 February 2004, <http://www.oscebih.org>.

²⁸² Interview with Bakir Jalovic.

²⁸³ Ibid.

The progress especially in the Republika Srpska and Brcko district has been impressive since the summer of 2003.²⁸⁴ Yet, the plan of the Peace Implementation Council and international community to conclude most of the property return in BiH by the end of 2003 was a very ambitious goal since some municipalities were far from fully implementing the return of the property. Nevertheless, compared to the implementation ratio of the total number of claims with four years ago, which at the end of year 2000 was just 13, 21 per cent and moved forward to 30,64 per cent in 2001, 61,84 per cent in 2002 and to 92,48 per cent at the end of 2003, international community managed to efficiently solve the property issue in BiH in a short period of time.²⁸⁵

On the other hand, Dario Sikuljak, National Political Officer of the OSCE Mission to Bosnia and Herzegovina claimed that “property return does not mean full implementation of Annex 7 because due to the consequences of war many houses were destroyed. Although people get a paper and a right to return that does not mean that they can actually return because of the need to repair the damaged property for physical return.”²⁸⁶ In many occasions people are selling their property and going to the areas where their people are majority.²⁸⁷ “Although according to the statistics over the previous years 60 to 70 per cent of the people repossessed their property, more than 80 per cent of the repossessed either sold or rent their property and left. That is the same with Bosniaks in Banya Luka or Croats in northern Bosnia where they were dominant before the war. Therefore, as far as implementation of Annex 7 is concerned, full property return does not mean full implementation of Annex 7.”²⁸⁸

Moreover, Dario Sikuljak illuminated why full implementation of Annex 7 is politically very important. After the implementation of Annex 7 the country is

²⁸⁴ PLP Statistics for May 2003, Press Release of OSCE, OHR, UNHCR and CRPC, 3 July 2003.

²⁸⁵ Implementation ratios since the year 2000 can be obtained from <http://www.ohr.int/plip>.

²⁸⁶ Interview with Dario Sikuljak, National Political Officer, OSCE Mission to Bosnia and Herzegovina, 15 July 2003.

²⁸⁷ For instance situation of Serbs in Sarajevo is given as a good example that before the war there were more than 100 000 Serbs in Sarajevo but now there are approximately 10,000. From the interview with Dario Sikuljak.

²⁸⁸ Interview with Dario Sikuljak.

obliged to organize a census that will dramatically change the country. Currently, the entire system is structured on the 1991 census. Besides the constitutional amendments and the parity of all three constituent peoples, the positions are distributed on the basis of the 1991 census. For example, government of the Federation has 16 ministers including the prime minister. Based on the 1991 census Bosniaks have eight positions, Croats have five and Serbs have three positions. It is similar in the RS but Serbs have eight, Bosniaks have five and Croats have three positions.

The 1991 census is incorporated in all aspects of the governance for the distribution of the positions, from municipal level up to the state level in order to de facto abolish the effects of the war. In view of the fact that if the structure of the government would be based on the current situation, in the RS there would be 90 per cent of the Serbs in key positions while in the Federation that would be approximately 60 to 70 per cent Bosniaks in all key positions. That explains why the next census is very important since it will end the practice of 1991 census as a basis of the system and therefore ultimately end the era of 1991.²⁸⁹ However, many believe that the new census anyhow will de facto confirm the results of the war since even with the full property return the situation in two entities will never be the same as in 1991.

6.2.5 Transfer of Responsibility to the Locals

Since the UNHCR in BiH approached the completion of its responsibilities under the General Framework Agreement for Peace, its focus has turned to strengthening the capacity of State institutions in refugee and asylum issues. Likewise, with “a million refugees back and around 95 per cent property claims processed, the OHR’s Return and Reconstruction Task Force (RRTF) closed down at the end of 2003 and handed over to the BiH authorities the responsibility of refugee return.”²⁹⁰

Return of refugees and displaced persons is considered a necessary precondition for both the establishment of sustainable peace and the restoration of a multi-ethnic society in BiH. Therefore, the UNHCR has been trying to ensure that

²⁸⁹ ibid.

²⁹⁰ ‘The Road to Europe –Next Steps’, Speech by Paddy Ashdown, EU Special Representative and High Representative for BiH at a Diplomatic Forum, OHR Press Office, 3 December 2003, <http://ohr.int/print>, p. 4.

activities towards the full implementation of Annex VII of the GFAP would continue after the RRTF's disengagement in December 2003. For this end a strategy was developed and put into a document through cooperation of the Office of the High Representative, the United Nations High Commissioner for Refugees, and the BiH Ministry for Human Rights and Refugees. The document was titled "Annex VII (GFAP) Strategy, a Strategy of BiH and the RRTF for the Implementation of Annex VII with Regard to the Return of Refugees and Displaced Persons and Building Capacity for a Transfer of Responsibilities to Domestic Institutions."

The document has been working to produce "a sustainable framework and guidelines for domestic leadership in management of the return process, as the result of a transfer of the RRTF's responsibilities to the competent domestic institutions, particularly to the BiH Ministry for Human Rights and Refugees."²⁹¹ The Ministry is "based on the Constitutional and legal solutions, tasked to undertake activities aimed at the realization and protection of human rights and rights of refugees and displaced persons and to coordinate work of all authorities in BiH dealing with this issue, representing thus a key factor of Annex VII (GFAP) implementation."²⁹²

The manuscript was composed of three chapters including the "BiH Strategy for the Implementation of Annex VII (GFAP), the Capacity Building and Transfer of Responsibilities, and lastly an Action Plan:"

All three chapters included the important aspects of the return facilitation process ahead based on the principle of 'local ownership' and they reflected the broad agreement among the principal stakeholders in line with the conclusions reached at the Humanitarian Issues Working Group (HIWG) meeting that took place on 27 June 2002 in Geneva, under the Chair of the United Nations High Commissioner for Refugees.²⁹³

Having the fear that "without support from both donor governments and the Peace Implementation Council the important progress on returns might be lost", the major institutions in this field sought the widest possible support for the strategic

²⁹¹ Ministry for Human Rights and Refugees, BiH/ OHR/ UNHCR (Ed.): 'Annex VII (GFAP) Strategy', a Strategy of BiH and the RRTF for the Implementation of Annex VII with Regard to the Return of Refugees and Displaced Persons and Building Capacity for a Transfer of Responsibilities to Domestic Institutions, Sarajevo, January 2003, p. 4.

²⁹² *Ibid.*, p. 4.

²⁹³ *Ibid.*, p. 4.

document, which was expected to establish “the preconditions for the successful and comprehensive implementation of Annex VII (GFAP), as one of the basic tenets for political stabilization of Bosnia and Herzegovina and the Region.”²⁹⁴

However, to ensure the full implementation of Annex VII necessitates securing the basic preconditions for sustainable return, which includes property and occupancy rights that is still affected by reconstruction of devastated housing.²⁹⁵ Contrary, resources provided by the international community for reconstruction are declining. Recently, “the disparity between the level of interest in return and the existing potential for reconstruction is at its highest since Dayton.”²⁹⁶ Inability of poor BiH state to subsidize reconstruction have negatively been affecting the return process since it can not ensure one of the basic preconditions for return. Besides, in the context of sustainable return and reintegration the state also fails to provide employment, access to pensions and health care, the harmonization of the school system and de-mining.²⁹⁷

Yet, international community transferred its core responsibilities to the Ministry for Human Rights and Refugees but with its ineffective structure the Ministry have difficulties meeting the demands of such a complex task. In addition, there has been an “ineffective vertical relationship between the respective institutions at the various levels of authorities in the State, Entities, and Cantons and municipalities, which paralyzes the terms of promoting and harmonizing the process of return and reintegration in BiH.”²⁹⁸

Local institutions in the FBiH in this sphere are the Federation Ministry for Social Affairs, and the Displaced Persons and Refugees which has 141 members. It has an Inspectorate, a Secretariat, five offices and 12 additional regional offices in the RS. In addition, all Cantons of the FBiH have ministries responsible for displaced

²⁹⁴ Ibid., p. 4.

²⁹⁵ Ibid., p. 6.

²⁹⁶ Ibid., p. 7.

²⁹⁷ For more information see ‘Dayton Implementation The Return of Refugees’, Special Report 26, The US Institute of Peace; ‘Preventing Minority Return in Bosnia and Herzegovina: The Anatomy of Hate and Fear’, International Crisis Group, ‘The Continuing Challenge of Refugee Return in Bosnia and Herzegovina’, International Crisis Group.

²⁹⁸ Ministry for Human Rights and Refugees, BiH/ OHR/ UNHCR (Ed.): ‘Annex VII (GFAP) Strategy’, p. 8.

persons, refugees and returnees. Nearly all 84 Municipalities in the Federation have separate departments concerning displaced persons and returnees. Institutions in the RS and Brcko District are the Ministry for Refugees and Displaced Persons of the Republika Srpska. Unlike the structure of FBiH it does not have regional offices. The Ministry has four Directorates, 52 Municipal departments and four regional offices in the Federation.²⁹⁹ In the Brcko District the Department for Refugees and the Department for Planning and Economic Development in the Government of the District has the responsibility on this issue.

Many institutions are engaged in the return of refugees and displaced persons and their reintegration in an unwieldy structure without clear distribution of competences and sufficient correlation. That's a serious obstacle to the efficient functioning of the system and the completion of the return process. Whereby the FBiH has established regional centers for return in the RS, and the RS has established offices for return in the FBiH, there is a perception that the institutions of each Entity are incapable to carry out constitutionally and legally required tasks. Thus the services of the counterpart Entity are installed to compensate for the shortcomings. This represents a multiplication of services, which results in further multiplication of costs.³⁰⁰

Therefore, international community concerned with the successful transfer of responsibility in this field to the locals as it was the eventual goal of the peace building, supporting the reorganization of administration and harmonization of regulations in the Entities. There is a broad consensus that after the implementation of military aspects of DPA, the return of refugees and settlement of the property issue is the second success of international community in Bosnia, most notably the so-called minority returns to areas across Bosnia, where such a development was inconceivable a few years ago. Gradual success of the international community in the return process could be jeopardized by the failure of domestic institutions.

Thus, "Annex VII Verification Unit" was appointed in the beginning of 2004 to facilitate and intervene when necessary in the Annex VII implementation under domestic authorities.³⁰¹ Taking into account the scale of return and the goal of the Ministry for Human Rights and Refugees to achieve considerable realization of

²⁹⁹ Official Gazette of BiH, no 23/29, December 1999. Cited in Ministry for Human Rights and Refugees, BiH/ OHR/ UNHCR (Ed.): 'Annex VII (GFAP) Strategy', p. 9.

³⁰⁰ Ministry for Human Rights and Refugees, BiH/ OHR/ UNHCR (Ed.): 'Annex VII (GFAP) Strategy', p. 10.

³⁰¹ 'OHR Mission Implementation Plan 2004', February 2004, <http://www.ohr.int>, p. 13.

Annex VII by 2006, “the Verification Unit tasked to monitor the performance of domestic institutions, confirm completion of the certification process, promote alternative financing means, and advise the High Representative on all Annex VII issues related to property law and the sustainability of return.”³⁰²

To sum up, in the first few years after the war particularly in 1996 and 1997 the refugees and displaced people have not return regardless of the encouragement, and the vast investment of international community and the UNHCR for reconstruction of the damaged and destroyed property. All preliminary efforts failed to achieve a real success. One of the main difficulties at the initial stage was to achieve the co-operation of the local authorities. After the reconstruction of the damaged property major concern throughout the first years was the security situation. There was a hostile environment and returnees were not accepted. A large number of displaced persons who were occupying the houses of potential returnees from another ethnic group made the return issue extremely complicated.

However, gradually the scale of return by both refugees and internally displaced persons only to the areas where their ethnic group was a majority has changed. Implementation of the property law and comparably fast advancement of implementation ratio, which is approaching to the completion of the total number of claims facilitated the process. Almost ten years after the war significant returns started to occur everywhere even altering the ethnic balance and political atmosphere in some municipalities. Since refugee return in BiH regarded to have the potential for moderating nationalist politics and “undo the worst effects of ethnic cleansing”, the new trend of voluntary return is seen as a step further for a stable and multinational Bosnian state.³⁰³ From the international community’s point of view, this is an opportunity to move on implementing the next phase of Dayton and pave the way for the long awaited pull out without a risk of renewed troubles.

Nevertheless, many people believe that historical and demographic patterns of rural and urban settlement in Bosnia will never be restored. Many people accommodated themselves either abroad or permanently relocated in Bosnia. Besides, refugee return should not simply mean return to the pre-war residence.

³⁰² *Ibid.*, p. 8.

³⁰³ ‘The Continuing Challenge of Refugee Return in Bosnia and Herzegovina’, International Crisis Group, p. 1.

Returnees should be assured the same rights as other citizens such as equality before the law, physical security and equal opportunities in education and employment. They should not be discriminated by the local authorities in accessing utilities, pensions and health care.

As long as domestic authorities can not create the conditions for the provision of those rights and the environment for reintegration, Annex 7 will not be successfully completed. Demonstration of the near closing in returning the re-claimed property as approaching the completion of Annex 7 can not be fully acceptable since property implementation and Annex 7 are not the same things. Annex 7 and sustainable return will be achieved when BiH becomes a normal country that its citizens are free to decide where to live without any fear of discrimination on the basis of their ethnicity. In short, although the refugee repatriation was at the hearth of the Dayton Agreement, refugee repatriation alone is not necessarily a sign towards peace and reconciliation. Thus, it is disputable as an obvious and solid instrument of peace building and rapid reconciliation.

6.3 Evaluation of International Community's Peace-building Efforts in Bosnia and Herzegovina

Before assessing the role of international community in BiH, it should be mentioned that the notion of international community is very crucial as it is the main source of legitimization for foreign involvement in the peace process of BiH. However, international community is not a single actor as the concept implies. Contrary, it is a manifold of power centers with multiple actors following their specific goals with a considerable autonomy.³⁰⁴ There are numerous international organizations in Bosnia “each with its own source of authority, whether from the Dayton Agreement and from established charters or mandates, or by delegation from the UN Security

³⁰⁴ ‘Reshaping International Priorities in Bosnia and Herzegovina Part Two’, European Stability Initiative Report, 30 March 2000, <http://www.esiweb.org>, p. 22.

Council.”³⁰⁵ Each is designed for different purposes with different hierarchy, chain of command, programming and funding acting autonomously from the State of BiH.³⁰⁶

Moving on the evaluation of international community’s peace building efforts in BiH apparently such an involvement is unprecedented. A whole scale multilateral restructuring mission was not organized in another country before. Hence, it initially encountered many difficulties as it has been in a growing up process. The mission in Bosnia compared with an experiment dealing with the early symptoms of an unknown illness; a process of learning by proceeding. After signing the Dayton Agreement, throughout 1995 till 1997 international community’s efforts were mainly concentrated on preserving peace since peace at that time was extremely fragile.

In the first years of the peace there was a lack of safe environment and absence of freedom of movement. Nobody could cross the inter-entity boundary line without the protection of SFOR or without being in international vehicles with signs “do not shoot carries international community.” Even that was not a guarantee since in many occasion international community’s members were threatened and attacked in various places.³⁰⁷ Therefore, the real efforts towards peace building could start more recently since the first years after Dayton were spent just to preserve peace in Bosnia. A major explanation for the delay has been the outspoken weakness of Dayton to stop the war but fail to end the persisting conflict among the three constituent peoples. As a result, the main premises of Dayton aiming to rebuild a functioning multiethnic state was built from the very beginning on very fragile foundations.

Yet, at the end of the war the first difficult task for the transformation of Bosnian state of affairs, which was “transition from war to peace” accomplished to a great extent in couple of years.³⁰⁸ However, after overcoming the security challenges and creating a safe environment in Bosnia and Herzegovina, international community then started to be criticized for its lack of organization and overlapping activities of

³⁰⁵ Ibid., p. 22.

³⁰⁶ Ibid., p. 22.

³⁰⁷ Interview with Dario Sikuljak, National Political Officer, OSCE Mission to Bosnia and Herzegovina, Sarajevo 15 July 2003.

³⁰⁸ Peter W. Singer, ‘Bosnia 2000 Phoenix or Flames’, World Policy Journal, vol.17, issue 1, Spring 2000, p. 36.

the various international institutions dealing with different annexes of Dayton and mandated for their implementation.

In general, international community's role has been heavily criticized in many internal conflicts since the end of Cold War. International involvement to various internal conflicts has often been regarded as inadequately planned, uncoordinated, and lacking necessary resources. There is a general conviction that the most important cause of the failures is:

The inability of the diffuse international community to organize itself to deal coherently with the humanitarian crises that follows in the wake of state breakdown and internal conflict. That there are many players, international and regional organizations such as the UN, OSCE and NATO; states, strong and weak, with differing political perspectives; regional neighbors with self-interest; and a host of non-governmental organizations (NGOs) that want to be first on the scene, each with its own agenda. They all have a contribution to make but they either work at cross-purposes or inefficiently in many occasions.³⁰⁹

Bosnia and Herzegovina is particularly considered among the cases to illustrate the planning failure of the international community. It is argued that the problems that plagued the reconstruction effort in Bosnia show many of the consequences of the absence of inter-organizational planning. Therefore, central argument of a successful international involvement lately focuses on cooperation and collaboration at all levels, before and after intervention, which is humanitarian intervention as a first step and peace building as a second.³¹⁰

The situation vis-à-vis overlapping activities of the international community were more apparent in the early years after the signing of Dayton Peace Agreement until very recently. Few years ago, under the leadership of the previous High Representative Wolfgang Petritsch, international community agreed on to set up a process of so called streamlining. The streamlining process was designed in a way to reorganize the efforts of the international community and make the work more efficient and operational.³¹¹

³⁰⁹ Antonia Handler Chayes, Abraham Chayes, Planning for Intervention International Cooperation in Conflict Management, The Hague: Kluwer Law Int., 1999.

³¹⁰ Ibid.

³¹¹ Interview with Dario Sikuljak, National Political Officer, OSCE Mission to Bosnia and Herzegovina, Sarajevo 15 July 2003.

International community divided its activities into several groups such as human rights, education, military, economic reforms and so forth. Afterwards, it initiated the formation of a de facto body or a commission on each issue. In every working group or commission one of the international community's agencies is taking the lead. On educational reforms for instance OSCE, OHR, Council of Europe are members of a particular body since these institutions are largely dealing with education in BiH. However, the OSCE has been given the lead and it is undertaking the main activities concerning education.³¹² Dario Sikuljak the National Political Officer of the OSCE Mission to BiH pointed out that "at the moment everybody knows who is the primary responsible agency on a particular issue."³¹³

Although, there is still overlapping activities due to the existence of more than one organizations concerning an issue, recently there is more order since people know which institution is taking the lead and which organization is responsible on what. International community intended by this way to be well-organized and all the efforts of various agencies are aimed in one point and filtered to one leading organization.³¹⁴ Until the year 2000 and 2001 BiH experienced considerable overlapping activities of various international organizations, however, there has been a gradual improvement. Yet, it is still hard to conclude that the efforts of international community at the moment are far more coordinated since some international agencies are taking steps sometimes without consulting the leading agency.³¹⁵

In spite of improvements and better coordination throughout the last years there is still multiplicity of actors controlling different facets in Bosnia and Herzegovina. Another issue worth to be mentioned is that although the objectives of various operating agencies do not always coincide their interaction is often

³¹² As another example on economic issues the OHR, EU, World Bank, Council of Europe are all members of a working group, however, OHR is taking the lead in this case.

³¹³ Interview with Dario Sikuljak, National Political Officer, OSCE Mission to Bosnia and Herzegovina, Sarajevo 15 July 2003.

³¹⁴ Ibid.

³¹⁵ Ibid.

contaminated by institutional pride as well.³¹⁶ For instance, the mandate of the two most fundamental institutions, the OSCE and OHR, had created “potential lines of conflict.”³¹⁷ While OSCE was supposed to represent “Paragraphs 7 and 8 of the 1990 Copenhagen Document regarding the elections and the serving of full time in office by elected officials, the OHR acquired in 1997 the powers to remove them.”³¹⁸ Therefore, some OSCE staff blames the OHR not to play with democratic principles, negotiate less and impose decisions on the local authorities.

Over all, the outstanding characteristic of the international community’s peace building mission in Bosnia is the “absence of any standard by which the performance of international agencies should be judged and evaluations carried out.”³¹⁹ With the acceptance of Dayton Peace Agreement the war was terminated in Bosnia and Herzegovina. However, Dayton as a straightforward document is not helpful.³²⁰

There are provisions of Dayton that have been totally disregarded, such as the creation of a fund to compensate Bosnians for the loss of their property.³²¹ Concurrently, there are number of internationally guided activities that go beyond Dayton, such as “re-starting the economy, reforming the judiciary, the educational system, and public administration.”³²² Additionally, international organizations often change their priorities. However, what criterion justifies and guides their existence remains as a big question mark. As a consequence of this mixture of peace-building activities international community is also criticized for lack of clear priorities in Bosnia.

To sum up, the main weaknesses of the international effort have been the “fragmented nature of the civilian implementation, poor coordination between the

³¹⁶ Victor D. Bojkov, ‘Democracy in Bosnia and Herzegovina: Post-1995 Political System and its Functioning’, Southeast European Politics, vol.4, no.1, May 2003, p. 46.

³¹⁷ Ibid., p. 46.

³¹⁸ Ibid., p. 46.

³¹⁹ Roberto Belloni, ‘Dubious Democracy by Fiat’, Transitions Online, 25/8/2003, p. 2.

³²⁰ Ibid., p. 2.

³²¹ GFAP, Annex VII: Agreement on Refugees and Displaced Persons, Article XIV: Refugees and Displaced Persons Property Fund, para. (1).

³²² Roberto Belloni, ‘Dubious Democracy by Fiat’, p. 2.

military and civilian elements and disparity among the civilian elements themselves.”³²³ Initial lack of coordination led to a conflict among competing international agencies and an indecisive leadership. Although there had been a gradual improvement over the coordination of the work of different agencies there is still lack of a coherent strategy. The indicated five major persisting problems are “lack of shared strategic vision; uncoordinated leadership; duplication and lack of communication; personality clashes and cross-cutting institutional interests.”³²⁴ Lastly, further flaw of international community’ involvement in Bosnia and Herzegovina is the absence of accountability and standards, which the performance of international community’s peace building can be measured.

³²³ James Dobbins, John McGinn, , America’s Role in Nation-Building from Germany to Iraq, Rand Publication, 2003, <http://rand.org>, p. 100.

³²⁴ For more information see ‘Bosnia: Reshaping International Machinery’, International Crisis Group, Balkans Report No.121, Sarajevo/ Brussels, 29 November 2001, <http://www.crisisweb.org>, pp. 1-29.

CHAPTER 7

LESSONS LEARNT AND NOT LEARNT FROM BOSNIA AND HERZEGOVINA?

7.1 Conflict in Kosovo

After the end of a long war in Bosnia and Herzegovina, the next acute crises in the region happened to be this time within the Serbian Republic in Kosovo. Historical roots of the clash lay in 1981 when after the death of Tito “Kosovo Albanian demonstrators openly demanded a ‘Kosovo Republika’ a republican status like Serbia, Croatia, Slovenia, Macedonia and Bosnia-Herzegovina inside the Socialist Federal Republic of Yugoslavia instead of their republic-like Socialist Autonomous Province of Kosovo according to the 1974 constitution.”¹ The following years survived an increasing inter-ethnic tension in Kosovo that Serbian authorities tried to solve the matter through police repression.²

When Slobodan Milosovic came to power in “September 1987 a new stage of escalation to the conflict” started.³ He initiated a series of acts such as banning the use of Albanian for official language, suspending and later abolishing the political and legal autonomy of the province. In parallel, “he replaced the established Kosovo Albanian Communist leaders with Kosovo Albanian politicians who appeared ready

¹ For more information about the 1981 conflict in Kosovo see Kjell Magnusson, ‘The Serbian Reaction: Kosovo and Ethnic Mobilization among the Serbs’, Nordic Journal of Soviet and East European Studies, vol. 4, no. 3, pp 3-30. Cited in Stefan Troebst, Conflict in Kosovo: Failure of Prevention? An Analytical Documentation, 1992-1998, European Center for Minority Issues Working Paper no.1, Flensburg: K&W Druck, May 1998, pp. 5-6.

² Stefan Troebst, Conflict in Kosovo: Failure of Prevention? An Analytical Documentation, 1992-1998, European Center for Minority Issues Working Paper no.1, Flensburg: K&W Druck, May 1998, p. 6.

³ Ibid., p. 6.

to co-operate with his policy of the unification of Kosovo with Serbs.”⁴ In objection to such actions and replacement of the Kosovo political elites, Kosovo Albanians arranged big and violent demonstrations in 1988-9 all over the province.⁵

Meanwhile, “the Kosovo Albanian political elite was searching for new forms of organization and resistance.”⁶ In December 1989, League of Democratic Kosovo (LDK) was established by the Chairman of the Writers’ Union of Kosovo Ibrahim Rugova.⁷ The Party soon gained large supporters. The first program of the party “called for a democratic, multi-party system and the rule of law, and accordingly restricted itself to legal and political means of achieving its national goals, rejecting violence and armed struggle against the Serbian rule.”⁸

Following the secessions of Slovenia and Croatia, LDK supporters claimed an outright independence for Kosovo from Yugoslavia.

In response to the draft of the new constitution of the Republic of Serbia in 1990, the Kosovo assembly first proclaimed the sovereignty of the Republic of Kosovo and its secession from Serbia but not from Yugoslavia. In 1991 declared independence and put it to a referendum. As a result of an overwhelming yes vote for the independence secretary of LDK Dr. Bujar Bukoshi appointed prime minister. Instead of a complete takeover of power, the Albanian political parties built parallel (shadow) government...along the territorial defense units and local government carried out by Milosevic government.⁹

After the disruption in 1989-91, there was a period of relatively calm environment in Kosovo. The Kosovo Albanians hold elections in May 1992, for the prohibited Kosovo Assembly and Ibrahim Rugova was elected as president of the Republic of Kosovo.¹⁰ Under the control of Rugova a parallel state was set up in

⁴Aleksandar Pavkovic, The Fragmentation of Yugoslavia Nationalism and War in the Balkans, London: MacMillan Press, (2nd edition), 2000, pp. 186-187.

⁵ Ibid., p. 187.

⁶Stefan Troebst, Conflict in Kosovo: Failure of Prevention?, p. 6.

⁷ Ibid., p. 6.

⁸ Aleksandar Pavkovic, The Fragmentation of Yugoslavia Nationalism and War in the Balkans, p. 187.

⁹ Ibid., pp. 187-188.

¹⁰ Richard Crampton, The Balkans since the Second World War, London: Pearson Education, 2002, p. 270.

1990 that operated with no trouble.¹¹ However, the Dayton Agreement ruined the “fragile calm in Kosovo” since Kosovo Albanians received nothing from the Agreement, but on their expense “Dayton confirmed that Kosovo was part of Yugoslavia.”¹²

This led to a rapid split up among the political forces in Kosovo. “From early 1996 on, influential intellectuals like the leading historian and outspoken nationalist Rexhep Qosja challenged Rugova’s tactics of non-violent resistance by opting for an *intifada* type of action¹³, whereas Adem Damachi known as Kosovo’s Nelson Mandela for spending long years in prison favored a solution within a confederated FRY.”¹⁴ The changes instigated by Dayton led to the development of three main political trends, “the pacifists, the activists and the militants” in Kosovo, which since April 1996 the Kosovo Liberation Army (KLA) started to assassinate Serbian police and army officers.¹⁵

The rising tensions went up in “October 1997, when Albanian students demonstrated in Prishtina to demand the implementation of a 1996 agreement on education.”¹⁶ The student demonstration was violently controlled by the police. Towards the end of 1997 suppression in Kosovo severely increased. In return, the importance of the KLA increased in the eyes of the Albanians.¹⁷ As the killing of the Albanian civilians intensified by the Serbian forces KLA became the only force fighting on behalf of the Kosovo Albanians and “in the spring of 1998 it transformed itself from a terrorist group into a mass guerilla force against Serbian rule.”¹⁸

¹¹ Ibid., p. 270.

¹² Ibid., p. 271.

¹³ Leo Tindemans, Unfinished Peace. Report of the International Commission on the Balkans, Washington: D.C Carnegie Endowment for International Peace, 1996, p. 116, Ismije Beshiri, ‘Kosovar Independence Lacks International Backing’, Transitions, vol. 2, no. 6, March 1996, p. 54. Cited in Stefan Troebst, Conflict in Kosovo: Failure of Prevention?, p. 9.

¹⁴ Stefan Troebst, Conflict in Kosovo: Failure of Prevention?, p. 9.

¹⁵ Ibid., p. 10.

¹⁶ Richard Crampton, The Balkans since the Second World War, p. 271.

¹⁷ Ibid., p. 271.

¹⁸ Aleksandar Pavkovic, The Fragmentation of Yugoslavia Nationalism and War in the Balkans, p. 191.

International concern over Kosovo has been growing due to its potential to destabilize the Balkan peninsula once again. Subsequently, diplomatic activities expanded to find a solution though unproductive. When it was very unlikely to reach a peaceful agreement NATO started to consider the Kosovo issue. In May 1998 it announced plans for putting troops along the Albanian-Kosovo border. In September the UN Security Council in its Resolution 1199 called for an immediate ceasefire in Kosovo, the withdrawal of the Yugoslav forces used for civilian repression, the return of refugees to their homes and start negotiations between the Serbs and Albanians to end the conflict.¹⁹

The UN SC also threatened to take other measures if the resolution was ignored. In spite of that it did not openly threaten the use of force, however, such a threat was implicit.

The threats were backed by NATO 'activation order' which meant that air strikes could be unleashed at short notice. Although in the beginning Milosevic was unwilling to comply after a further visit from Holbrooke, who left the Yugoslav leader in no doubt as to the imminence of NATO action, he agreed to limit his forces in Kosovo and to allow the OSCE to send 2,000 monitors to the area.²⁰

This short lived success celebrated as the victory of diplomacy backed by threat of force until the end of year when the tension exploded by the discovery of 45 civilian bodies in the Albanian village of Racak.²¹ In reply to the massacre the US and its NATO partners decided to send a NATO mission to Kosovo with extra threats of air attacks.²² The US-led Contact Group including Germany, Russia, Italy and Britain obliged the "Yugoslav government and the Kosovo Albanian political representatives to negotiations on 6 February 1999 at Rambouillet chateau near Paris."²³

¹⁹ Ibid., p. 191.

²⁰ Richard Crampton, The Balkans since the Second World War, p. 273.

²¹ Ibid., p. 273.

²² Aleksandar Pavkovic, The Fragmentation of Yugoslavia Nationalism and War in the Balkans, p. 193.

²³ Ibid., p. 193.

7.2 Rambouillet Accords and the Imposition of UNSCR 1244

Overall, the Kosovo crisis blew up following the abrogation of the autonomy status of Kosovo by Belgrade in 1989. Then, it escalated uncontrollably succeeding the “formal disintegration of former Yugoslavia and the refusal of the international community to address this problem in Dayton.”²⁴ The intensification of the dispute throughout 1998-99 finally forced the international community to intervene similar to Bosnia and Herzegovina. Yet, the draft Rambouillet Accord that founded on the motive of the Dayton Peace Accords was rejected by Serbia. When President Milosevic regarded NATO’s threats of bombardment as a bluff, NATO felt obliged to intervene in order to maintain its credibility.²⁵

The participants of the peace conference at Rambouillet consisted of a “Kosovo delegation, with representatives from the shadow government and the Kosovo Liberation Army, a Serbian delegation, with representatives from the central Serbian central government, members of the non-Serbian ethnic minority in Albania, representatives of Contact Group, EU and OSCE.”²⁶ The negotiations were hosted together with the French and British foreign ministers, and led by the US, Russia, and the European Union.²⁷

Similar to the Dayton negotiations on Bosnia, French and British foreign ministers submitted a draft of an agreement entitled the “Rambouillet Accords”, as Dayton that incorporated a “detailed constitution for Kosovo as well as a military implementation agreement.”²⁸ Taking the Dayton model, the head of international administration and the NATO commander according to Chapter eleven would have

²⁴ Alexandros Yannis, ‘The Creation and Politics of International Protectorates in Balkans: Bridges Over Troubled Waters’, Journal of International Relations and Development, 2002, vol. 5, no 3, p. 266.

²⁵ Ibid., p. 266.

²⁶ Paul R. Williams, Michael P. Scharf, Peace with Justice? War Crimes and Accountability in the Former Yugoslavia, New York: Rowman&Littlefield Publishers, 2002, p. 192.

²⁷ Ibid., p. 192.

²⁸ Aleksandar Pavkovic, The Fragmentation of Yugoslavia Nationalism and War in the Balkans, p. 193.

maintained total control over the civilian and military affairs of the province.²⁹ However, contrary to Dayton negotiations, the negotiators threatened only one side the Yugoslav government that it will face enforcement unless it signed the accords.³⁰

Nevertheless, at Rambouillet the Serbs were presented a proposal with series of demands among two of which were not easily possible to be accepted:

The first was that a referendum should be held in Kosovo after three years to determine the future of the province. The second, contained in the military annex of the Contact Group's plan that NATO should have 'free and unrestricted passage' throughout Yugoslavia; Belgrade had rejected an analogous demand from Austria-Hungary in 1914 and was unlikely to accept it now. Similarly, the Albanians rejected the clause requiring the KLA to disarm within three months.³¹

As these negotiations were unfruitful, a second round of negotiations were held three weeks later in Paris. However, in the meantime Serbian forces in Kosovo had been increased much beyond the limit put down in the "October 1998 agreement and a further 25,000 Kosovo Albanians had been driven from their homes."³² Following three days of fierce pressure in Paris "Albanians finally agreed to the terms drawn up by the co-chairmen of the discussions, the British and French ministers for foreign affairs" while the Serbs were not subservient to pressure.³³ Thus, on 19 March 1999 the talks were renounced.

Due to the collapse of the talks, and continuing atrocities against civilian Albanians, NATO started an air bombing against Serbian forces in Kosovo and in the FRY. The declared goals of the NATO's bombing operation were to "deter further attacks on civilians", to reduce Yugoslav's military might to engage in war, and penalize the Yugoslav government for declining to sign the Rambouillet accord.³⁴ The Rambouillet accord was a "detailed 83-page document presented to

²⁹ Ibid., p. 193.

³⁰ Ibid., p. 193.

³¹ Richard Crampton, The Balkans since the Second World War, p. 273.

³² Ibid., p. 273.

³³ Ibid., p. 273.

³⁴ 'The West versus Serbia', The Economist, 27 March 1999, p. 43. Cited in Aleksandar Pavkovic, The Fragmentation of Yugoslavia Nationalism and War in the Balkans, p. 194.

the KLA and the Yugoslav government, but it was never formally agreed to or signed” by the parties.³⁵

Aftermath, the escalation of the NATO bombardment and consequential ethnic cleansing against Kosovo Albanians by Serbian forces changed the “political dynamics on the ground” and ultimately called for the imposition of a solution by the international community.³⁶ As a result, in early June the Serbian forces had to withdraw from Kosovo, and the UN Security Council adopted Resolution 1244 that presented an interim administration of Kosovo by a combination of international institutions, comprising the UN, EU, OSCE and NATO.³⁷

7.3 Implementation of UNSCR 1244 and Peace-building in Kosovo

After the end of NATO bombardment the “UN Security Council Resolution 1244, adopted on 10 June, established a UN mandate to impose ‘substantial autonomy and meaningful self-administration of Kosovo’ while respecting the ‘sovereignty and integrity’ of the Federal Republic of Yugoslavia (FRY).”³⁸ This resolution only acknowledged “the ‘general principles on a political solution’ adopted by the G-8 summit of Foreign Ministers on 6 May 1999, and the Belgrade Agreement of 2 June, which both in turn took the Rambouillet accords into account.”³⁹

However, “Article 11 paragraph (e) of the UN Security Council Resolution 1244, specifying that the international civilian presence will be ‘facilitating a political process designed to determine Kosovo’s future status’⁴⁰ was not referred in the agreement Milosevic approved.”⁴¹ On the contrary, the agreement that

³⁵ David Chandler, Faking Democracy After Dayton, London: Pluto Press, Second Ed., 2000, p. 205.

³⁶ Alexandros Yannis, ‘The Creation and Politics of International Protectorates in Balkans: Bridges Over Troubled Waters’, p. 266.

³⁷ Paul R. Williams, Michael P. Scharf, Peace with Justice? War Crimes and Accountability in the Former Yugoslavia, p. 191.

³⁸ David Chandler, Faking Democracy After Dayton, pp. 205-206.

³⁹ Ibid., p. 206.

⁴⁰ UNSC Resolution 1244, 10 June 1999, <http://www.un.org/Docs/scres/1999/99sc1244.htm>.

⁴¹ Aleksandar Pavkovic, The Fragmentation of Yugoslavia Nationalism and War in the Balkans, p. 196.

Milosevic accepted “have not mentioned the future status or any political process which should determine it.”⁴² On 12 June the UN Secretary-General Kofi Annan presented a report to the Security Council “outlining the structure of the international administration under the ‘four pillar’ plan.”⁴³

Resting on a Special Representative, the civil administration would be given to the UN control and humanitarian assistance to the UNHCR. Democratization and institution-building would be assigned to the OSCE whereas economic reconstruction to the European Union. One month later on 12 July a supplementary report on the UN Mission was submitted by the Secretary-General to the Security Council.⁴⁴ The Secretary General’s 12 July report founded the authority and responsibilities of United Nations Mission in Kosovo (UNMIK), rather than the non-signed Rambouillet Agreement.⁴⁵

Table 12: Structure of the International Administration in Kosovo:

<i>Military implementation</i>	<i>Civilian implementation</i>
NATO	UN Security Council
KFOR Chief of Staff	UN High Representative
	Deputy High Representative Executive Committee:
	UN - Civilian Administration
	UNHCR - Humanitarian Assistance
	OSCE - Democratization
	European Union

⁴² *Ibid.*, p. 196. See also page 237 and footnote 38.

⁴³ Report of the Secretary General Pursuant Paragraph 10 of the Security Council Resolution 1244, <http://www.un.org/Docs/sc/reports/1999/s1999672.htm>. Cited in David Chandler, *Faking Democracy After Dayton*, p. 206.

⁴⁴ Report of the Secretary General on the UN Interim Administration Mission in Kosovo, 12 July 1999, <http://www.un.org/Docs/sc/reports/1999/s1999779.htm>.

⁴⁵ David Chandler, *Faking Democracy After Dayton*, p. 206.

Reconstruction UNMIK Administration:

<i>Five regional sectors</i>	<i>Five regional centers</i>
North – French	Mitrovica
West – Italian	Pec
South – German	Prizen
Central – British	Pristina
East – American	Gnjilane

Source: David Chandler, Faking Democracy After Dayton, p. 205.

The conditions for the UNMIK remained faithful to the Dayton Peace Agreement. Similar to Dayton, “the US policy-advisers instituted a division of powers between military implementation of the peace agreement under NATO authority and civilian implementation under a UN Chief Representative”, with election and democratization under the OSCE.⁴⁶ Dayton originally defined a one year transitional mandate for the High Representative and the OSCE. However, under the Rambouillet Agreement international organizations had a three year mandate before a final settlement, despite internationally monitored elections to be conducted within nine months.⁴⁷

Although, Rambouillet duplicated the Dayton’s structure it was brought up to date to incorporate the extra powers granted to the international organizations since 1995 under the flexible Dayton interpretations. Furthermore, international community undertook entire power over military and police forces as well as the ultimate authority in decision-making concerning every governmental issue.

Media and election rules, the courts and judicial system, economic policy and the constitutional division of powers were all to be regulated by international appointees. The UN High Representative was to be the de facto ruler of the province with the power to remove elected representatives, curtail institutions and close down media organizations, with no right of appeal.⁴⁸

⁴⁶Ibid., p. 204.

⁴⁷ ‘Interim Agreement for Peace and Self-Government in Kosovo’, <http://www.transnational.org>, 1999. Cited in David Chandler, Faking Democracy After Dayton, p. 204.

⁴⁸ David Chandler, Faking Democracy After Dayton, p. 204.

7.4 Instruments of Peace-building in Kosovo

Preparing the ground for political settlement and peace building in Kosovo from the outset was comparatively a difficult task. Resolution 1244 was neither the product of an agreement between Serbs and Kosovo Albanians containing a road map on how to implement a political settlement of the Kosovo conflict, “nor an agreement between exhausted opponents seeking a compromise and an end to their conflict.”⁴⁹ Besides, it neither foresaw any definitive political solution for Kosovo, nor determined its future status. It did not address the underlying causes of the conflict and left Kosovo in limbo.⁵⁰

Moreover, UN Mission in Kosovo was not prepared to fulfill such a broad mandate to undertake all administrative and security powers. It was also not capable to fully deploy its operation at the speed required rapid withdrawal of Yugoslav forces and authorities. This led to a power vacuum which filled by illicit local forces that created another challenge for UN to establish its authority when it eventually arrived in Kosovo.⁵¹ Configuration of UNMIK was another novelty for the organization. UNMIK mandate was separated into four pillars controlled by different international organizations under the supervision of the Special Representative of the Secretary General.

Regarding the scale of the tasks required by the Resolution 1244, they apparently had to be handled in an integrated manner with a clear chain of command.⁵² The preliminary model for the entire coordination of civilian presence was established by the Resolution and involving the 12 June 1999 report of the UN Secretary General.⁵³ Drawing on the experience of BiH, the Secretary

⁴⁹ Alexandros Yannis, ‘Kosovo Under International Administration’, *Survival*, vol. 43, no. 2, p. 36.

⁵⁰ Tim Judah, *Kosovo: War and Revenge*, New Haven and London: Yale University Press, pp. 311-2. Cited in Alexandros Yannis, ‘Kosovo Under International Administration’, p. 36.

⁵¹ James Kitfield, ‘Lessons from Kosovo’, *National Journal*, vol. 32, iss 52/53, 23/12/1999, pp. 14-15.

⁵² ‘Kosovo Report Card’, International Crisis Group, Balkans Report no. 100, Pristina/Brussels, 28 August 2000, <http://www.crisisweb.org>, p. 14.

⁵³ *Ibid.*, p. 14.

General sought to establish a clear chain of command to ensure that all activities of the international community in Kosovo were carried out in an integrated manner.⁵⁴

International Community's civil implementation suffered in BiH from "diffusion of responsibilities between implementing agencies", acting like competitors instead of partners.⁵⁵ Learning from BiH in Kosovo a single head with clear chains of authority tried to be created. Therefore, the Head of UNMIK was given overall authority to manage the Mission and co-ordinate the activities of all UN agencies and other international organizations operating as part of UNMIK. Besides, with the intention of improving "military and civilian co-operation, which was absent in the early stages of Dayton implementation, the Secretary General noted the 'imperative' that UNMIK and KFOR 'co-ordinate their activities closely.'"⁵⁶

However, the reality did not comply with the provisions. Dualism exists at the top of the international administration between UNMIK and KFOR. There is also substantial a split inside UNMIK. On the other hand, such a dualism in the chain of command is not a new problem. The Dayton Accords envisioned a comparable organization whereas the civilian implementation was led by OHR instead of UN. That twofold structure displays the reservations of key NATO members to put their armed forces under UN control. As a result, this approach "creates an accountability gap in the chain of command and limits the capacity of the civil administrators to implement decisions."⁵⁷

7.4.1 Governance Reform and Democratization

United Nations Security Council Resolution 1244 authorized the Secretary General to "establish in the war-ravaged province of Kosovo an interim civilian administration led by the United Nations under which its people could progressively enjoy substantial

⁵⁴ Ibid., p. 22.

⁵⁵ 'Kosovo: Let's Learn from Bosnia- Models and Methods of International Administration', International Crisis Group, Balkans Report no. 66, 17 May 1999, <http://www.crisisweb.org>, p. 1.

⁵⁶ 'Kosovo Report Card', International Crisis Group, pp. 22-23.

⁵⁷ Alexandros Yannis, 'Kosovo Under International Administration', p. 32.

autonomy.”⁵⁸ In particular, Resolution 1244 has called upon UNMIK “to perform basic civilian administrative functions; promote the establishment of substantial autonomy and self-government in Kosovo; facilitate a political process to determine Kosovo’s future status; coordinate humanitarian and disaster relief of all international agencies; support the reconstruction of key infrastructure; maintain civil law and order; promote human rights; and assure the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo.”⁵⁹ In fact, the UN Mission performs the whole spectrum of essential administrative functions and services in Kosovo. The head of UNMIK is the Special Representative of the Secretary General for Kosovo.

Regulation of 25 July 1999 recognized as “the mother of all regulations over Kosovo laid down that all ‘legislative and executive authority with respect to Kosovo, including the administration of judiciary is vested in UNMIK and exercised by the Special Representative of the Secretary General (SRSG).’”⁶⁰ The authority of the international administration derived from UN Resolution 1244 were far reaching and in practice “suspending Yugoslavia’s sovereignty over Kosovo.”⁶¹ Although it was not the first time the “UN assumed administrative functions inside a state”⁶², it happened the “first time that the UN had been entrusted with such a broad mandate to assume full responsibility for the administration of a territory.”⁶³

Powers of the Special Representative of the Secretary General who is the chief of the Civilian Implementation Mission are similar to High Representative in Bosnia. Yet, it was “updated to take account the evolution of the OHR” but based on still the same model.⁶⁴ The powers of international community in BiH have been

⁵⁸ The UN Security Council Resolution 1244, 10 June 1999, <http://www.unmikonline.org/intro.htm>.

⁵⁹ Ibid.

⁶⁰ UNMIK Regulation No.1999/1 of 25 July 1999, On the Administration of the Interim Administration in Kosovo, Section 1, Article 1. Cited in Alexandros Yanniss, ‘Kosovo Under International Administration’, p. 32.

⁶¹ Alexandros Yanniss, ‘Kosovo Under International Administration’, p. 32.

⁶² Few examples are Congo 1960-4, Namibia 1989-90, Cambodia 1992-93, El Salvador 1991-95, and Croatia-Eastern Slavonia 1996-98. Cited in Alexandros Yanniss, ‘Kosovo Under International Administration’, p. 46.

⁶³ Alexandros Yanniss, ‘Kosovo Under International Administration’, p. 32.

⁶⁴ ‘Kosovo: Let’s Learn from Bosnia- Models and Methods of International Administration’, pp. 5-6.

more limited especially in the beginning. A federal solution was imposed on the parties in Bosnia and OHR stepped in when local politicians used to fail in co-operation and passing the decisions. High Representative gradually acquired the executive and legislative powers after Bonn Meeting of the Contact Group.

However, the SCR 1244 gave these powers to UN's Special Representative of Secretary General (SRSG) already from the very beginning. SRSG was entrusted with the powers to "issue binding decisions and dismiss officers reflecting the present rather than the original mandate of OHR."⁶⁵ This is one outcome of the experience learnt in Bosnia. A simpler system envisaged for Kosovo with more responsibility concentrated in the hands of the Chief of the Civilian Administration with executive powers.

Nevertheless, UN took over the administration without a clear road map about the final status of Kosovo. Resolution 1244 suspended sovereignty of Yugoslavia and transferred it to UN without a clear strategy about the future status of Kosovo. UN justification in doing this was based on restoring autonomy for Kosovo, which was previously denied by Serbs.⁶⁶ Ironically, international community is preventing at the same time Kosovo Albanians to manage their domestic affairs ranging from stopping them having greater control over local government, media, services and so on.⁶⁷

Allowing autonomy meant establishing a vast bureaucratic machinery of regulation. UNMIK regulations have covered the appointment of judges, banking, licensing, the establishment of a central fiscal authority run by foreign appointees. It also issued death, birth, marriage certificates and licenses for small business and construction projects.⁶⁸

Such a practice cause frustration of Kosovo Albanians that international community is taking all important decisions without their involvement or consent and replacing Belgrade appointed officials with foreigners. However, in "August 2000 UNMIK passed a regulation that represented the first steps towards establishing a legal framework for substantial autonomy in Kosovo and transferring

⁶⁵ *Ibid.*, p. 6.

⁶⁶ David Chandler, *Faking Democracy After Dayton*, p. 207.

⁶⁷ *Ibid.*, pp. 207-208.

⁶⁸ *Ibid.*, p. 208.

administrative responsibilities to the local population.”⁶⁹ Later, there has been improvements in “establishing and overseeing the development of provisional, democratic self-government institutions as envisaged in UN Security Council Resolution (UNSCR) 1244, which established Kosovo’s present interim system” in 2001.⁷⁰

The Constitutional Framework signed on 15 May 2001 identified the responsibilities that would be transferred to the elected Assembly and the powers that would be reserved for the SRSB.⁷¹ Yet, after the elections for the Assembly on 17 November 2001, the transfer of power to the local authorities have been very slow due to the difficulties experienced by local political leaders in forming new self-government institutions. In order to address the discontent of locals about the transfer of responsibilities and resolve the ambiguous status, in the beginning of 2002, the head of UNMIK Michael Steiner submitted the “standards before status” principle which was accepted by the UN General Assembly in April 2002.⁷²

The principle required accomplishment of the “generally accepted democratic norms and balanced operation of the provisional institutions of self-government based on multi-ethnic representation.”⁷³ The negotiations on the characteristics of the procedure to determine Kosovo’s final status under Resolution 1244 was assumed to begin merely after the standards became eventually fixed.⁷⁴ Adhering to the policy of making the standards firm, the UN Security Council endorsed Standards for Kosovo

⁶⁹ ‘On Self-Government of Municipalities in Kosovo’, UNMIK Regulation No 2000/45, 11 August 2000, <http://www.unmik.org>. Cited in Alexandros Yannis, ‘Kosovo Under International Administration’, p. 40. For more information see Robert Curis, ‘Kosovo Civil Society Project, Kosovo Standing Technical Working Group, Tenth Meeting Justice, Human Rights, and Law and Order’, Pristina, 12 October 2002, European Center for Minority Issues (ECMI) Report, No. 39, Flensburg, December 2002, <http://www.ecmi.de>, pp. 1-28.

⁷⁰ ‘Kosovo RoadMap (I) Addressing the Final Status’, International Crisis Group, Balkans Report No. 124, Pristina/Brussels, 1 March 2002, <http://www.crisisweb.org>, p. 1.

⁷¹ UNMIK Regulation 2001/19, On the Executive Branch of the Provisional Institutions of Self-Government in Kosovo, 13 September 2001. Cited in ‘A Kosovo Roadmap (II) International Benchmarks’, International Crisis Group, Balkans Report No 125, Pristina/Brussels, 1 March 2002, <http://www.crisisweb.org>, p. 4.

⁷² Iakov Gerasimov, Andrei Temiashov, ‘Kosovo: Five Years Later’, International Affairs: A Russian Journal of World Politics Diplomacy and International Relations, vol.50, issue 3, 2004, p. 116.

⁷³ Ibid., p. 116.

⁷⁴ Ibid., p. 116.

plan in December 2003 conditioning the fulfillment of eight sets of standards.⁷⁵ These were containing functioning democratic institutions; the rule of law; freedom of movement and sustainable returns; the rights of communities; the economy; property rights; dialogue between the Provisional Institutions of Self Government (PISG) and Belgrade; and the building of the Kosovo Protection Corps (KPC) as a civilian emergency organization.⁷⁶

In May 2004, the PISG's performance to realize these standards decided to be assessed by UNMIK.

However, as the events of mid-March 2004 demonstrated, the PISG represents Kosovo Albanian society only to a limited extent. The modest governing competencies UNMIK has transferred to it and its own weaknesses made it to be perceived as an inadequate and corrupt institution. The lack of progress over final status and the absence of any indication how much longer UNMIK's mandate would last created an enormous frustration and an obsession with the recognition of independence.⁷⁷

Governance reform as one of the instruments of peace building encompasses democratization and support of the development of democratic structures. The OSCE, which is the institution-building pillar of the United Nations Mission in Kosovo, has been dealing with the "three main institutions of society the government, political life, and public life" to create a stable and democratic society.⁷⁸ After the "Kosovo Assembly election in November 2001, the OSCE focused its work on both capacity building and institutional interaction, which is crucial to improve the representation of peoples' needs in political processes and at all levels of governance."⁷⁹

The Mission's Department of Democratization aims to improve the ability and efficiency of the Provisional Institutions of Self-government (PISG) by means of "capacity building programs related to local and central governance; increasing citizen participation to enhance accountability, ethnic community participation,

⁷⁵ 'Collapse in Kosovo', International Crisis Group, Europe Report No. 155, Pristina/Belgrade/Brussels, 22 April 2004, <http://www.crisisweb.org>, p. 2.

⁷⁶ *Ibid.*, p. 2.

⁷⁷ *Ibid.*, p. 2.

⁷⁸ 'Building Democratic Society in Kosovo', <http://www.osce.org/kosovo/democratization/>, p. 1.

⁷⁹ 'Supporting Democracy in Kosovo', OSCE Mission in Kosovo, <http://www.osce.org/kosovo>, p. 1.

transparency at the municipal and central levels; and by supporting the emergence of free and accountable media institutions and outlets in Kosovo.”⁸⁰

International community through governance reform and democratization has been trying to establish the basis for long-lasting peace, stable and legitimate forms of governance in post-conflict societies. Therefore, the target has been democratic institution building that was taken as a major task by the OSCE in many post conflict societies such as Bosnia and Herzegovina, Croatia, Albania as well as Kosovo. However, this has been a quite controversial operation in Kosovo, which is under international administration with very limited powers transferred to the local authorities. Unresolved future status of the province further complicated the subject in the case of Kosovo.

7.4.2 Security Sector Reform: Military, Police and Judiciary

Delay in the deployment of the international administration in Kosovo led to the establishment of parallel administration and illegal local control. In the vacuum of legitimate authority, criminal activities institutionalized and it was difficult at the end for UNMIK to establish its authority and replace the self appointed ones with legitimate bodies.⁸¹ In short, late deployment of UNMIK damaged the political process since extremist Albanian and Serbs took advantage of the power vacuum. This has been “the most controversial aspect of the Kosovo operation”, which is pointed out “responsible for an atmosphere of lawlessness in Kosovo” that occurred from the beginning.⁸²

7.4.2.1 Military Reform

For restraining the renewal of armed struggle in Kosovo the UN Security Council decided on certain preventive measures. Resolution 1244 have determined that the “responsibilities of the international security presence deployed in Kosovo to include: ‘deterring renewed hostilities, maintaining and where necessary enforcing a ceasefire, and ensuring the withdrawal and prevent the return into Kosovo of the

⁸⁰ ‘OSCE Mission in Kosovo, Pillar III Programmic Priorities for 2004, 8 January 2004, <http://www.osce.org/kosovo/>, p. 2.

⁸¹ Simon Chesterman, ‘Justice Under International Administration: Kosovo, East Timor, Afghanistan’, International Peace Academy Report, September 2002, <http://www.ipacademy.org>, p. 6.

⁸² James Kitfield, ‘Lessons from Kosovo’, *National Journal*, vol. 32, issue 52/53, 23/12/1999, pp. 7-8.

Serb military and police forces.’”⁸³ Hence, Serb forces moved out of Kosovo compliant with the Military Technical Agreement endorsed by NATO’s Kosovo Force and the government of Serbia.

NATO forces known as Kosovo Force (KFOR) entered Kosovo behind departing Serb military and police forces and then deployed in a fashion to keep them out. Paragraph nine section (b) of the resolution stated demobilization of the Kosovo Liberation Army (KLA) and other armed Kosovo Albanian groups.⁸⁴ In contrast with the Bosnian Serb military in 1995, the Yugoslav forces left Kosovo due to a negotiated agreement instead of a military engagement with its adversaries. Therefore, the pacification of the Yugoslav armed forces in Kosovo did not pursue the Dayton agreement type demobilization.

The UNSCR 1244 required that all Yugoslav military and police forces withdraw from the region and that all the local forces be demilitarized. The agreement on the demilitarization of the KLA which NATO and KLA commanders reached in June 1999 envisaged an eventual transformation of the KLA into a civil defense force.⁸⁵

Thus, the second military task of KFOR’s mission in Kosovo had been negotiating the KLA’s commitment to dissolve itself and the agreement to deliver its weapons to the international mission, although compliance in this issue has not been an obvious success.⁸⁶ The process of demilitarizing the KLA embodied the formation of the Kosovo Protection Corps (KPC). UNMIK provisions created the KPC as a civilian emergency force to perform in disaster, search and rescue cases as well as to provide humanitarian assistance. The KPC was prohibited to play any role in defense or undertake any duty in maintaining law and order even so the KLA officials see the new force as the nucleus of the potential state army.⁸⁷ This is another ambiguous matter in Kosovo since the future role of KPC is not clear.

⁸³ Security Council Resolution 1244, para 9 (b), 10 June 1999, S/RES/1244 (1999).

⁸⁴ Ibid.

⁸⁵ Aleksandar Pavkovic, The Fragmentation of Yugoslavia Nationalism and War in the Balkans, p. 199. Referring S. L. Mayers. ‘NATO to Consider New Kosovo Army: Rebels, Agreeing to Disband, Win Concession with US Help’, International Herald Tribune, 22 June 1999.

⁸⁶ ‘Kosovo Report Card’, International Crisis Group, p. 10.

⁸⁷ Ibid., p. 10.

Another major responsibility of the international military presence in Kosovo has been to “establish a secure environment in which refugees and displaced persons can return home in safety, the international civil presence can operate, a transitional administration can be established, and humanitarian aid can be delivered.”⁸⁸ Yet, the biggest drawback of KFOR and the international operation in Kosovo has been the failure to protect Serbs and other minorities from the violence of revengeful Albanians.⁸⁹

There had been very little inter-ethnic violence in Bosnia when NATO entered after Dayton. Wrong assumptions and the failure to recognize the differences between Bosnia and Kosovo led to the wrong predictions. However, “the Dayton peace came at the end of a long and bloody war, which had left people on all sides exhausted and eager for an end to the violence even if there were not equally ready to begin reconciliation.”⁹⁰ In addition to ethnic violence there also had been incidents of violence against Albanian political activist especially during the election times.

In general, KFOR’s mandate reflects the decision of the international community to correct some of the mistakes of the Bosnian case, by allowing KFOR a more active role in assisting civilian implementation.⁹¹ The experience of Bosnia and Herzegovina demonstrates that if NATO takes a more forceful approach and move quickly to support civilian agencies in their tasks, it can accelerate the peace process in Kosovo.⁹² The initial inability of NATO in Bosnia “to help unarmed IPTF exert control over the locals led to the continuation of ethnic cleansing, avert the return of refugees and further partition of Bosnia.”⁹³

Under the Dayton Agreement the early mandate of NATO Implementation Force was not designed to support UN operations but in Kosovo NATO’s role is

⁸⁸ Security Council Resolution 1244, para 9 (c), 10 June 1999, S/RES/1244 (1999). Cited in ‘Kosovo Report Card’, International Crisis Group, p. 14.

⁸⁹ ‘Kosovo Report Card’, International Crisis Group, p. 14.

⁹⁰ *Ibid.*, p. 14.

⁹¹ *Ibid.*, p. 8.

⁹² ‘Kosovo: The Road to Peace -Critical Implementation Issues and A “Who’s Who” of Key Players’, International Crisis Group, Balkans Report No 59, Pristina/Washington, 12 March 1999, <http://www.crisisweb.org>, p. ii and p. 3.

⁹³ *Ibid.*, p. 3.

directly to support the UN mission. Better coordination of civil administration and NATO led to a premature conviction to advance Kosovo's reconstruction beyond BiH. In practice, the performance of KFOR in carrying out the three major military tasks is variable. While it was successful in monitoring the withdrawal of the Serb forces and deterring renewed Serb intervention, it was partly able negotiating an agreement on disbanding and disarming the KLA, and failed in its other major security related tasks especially protecting Serbs and other minorities against revenge attacks by returning Albanians.⁹⁴

Overall, it suffered from the initial problem of enforcing a clear chain of command particularly between the commander of KFOR and national contingents.⁹⁵ In short, KFOR could not neutralize KLA as effectively as SFOR neutralized the armed forces of the Bosnian parties.

7.4.2.2 Police Reform

The UNMIK police operation is significantly different from previous United Nations civilian police missions. Its major task is not monitoring like before. The UNMIK police is a law enforcement unit, and it is the only law enforcement unit in Kosovo. The Security Council Resolution 1244 of 10 June 1999 has tasked UNMIK with two strategic goals: "First is to provide temporary law enforcement, and the second is to establish and develop a professional, impartial and independent local police, called Kosovo Police Service (KPS)."⁹⁶ The mission for international police is expected to be considered completed when the local police is able to enforce law and order according to international standards.

To achieve the goals imposed by Security Council, UNMIK Police had to modify their function going over three distinct phases as mentioned in the 12 July 1999 Report of the Secretary General:

In the first phase, KFOR was to be responsible for ensuring public safety and order until the international civil presence could take responsibility for this task...In the second phase, once UNMIK has taken over responsibility for law and order from KFOR, UNMIK civilian police would carry out normal

⁹⁴ 'Kosovo Report Card', International Crisis Group, pp. 8-15.

⁹⁵ Alexandros Yannis, 'Kosovo Under International Administration', p. 32.

⁹⁶ 'Report of the Secretary General Pursuant to Paragraph 10 of Security Council Resolution 1244', 1999, III. Role and Responsibilities of the Components, Interim Civil Administration, Article 9 and 10, <http://www.unmik.org>, pp. 3-4.

police duties and would have executive law enforcement authority...In the third phase, once properly trained and selected local police in sufficient strength are available, UNMIK will transfer responsibilities to the Kosovo Police Service. In this case, UNMIK civilian and border police will revert to training, advising and monitoring functions.⁹⁷

As of April 2000, the UNMIK Police fulfilled the second phase tasks. Main activities of UNMIK are “patrolling and maintaining public order, investigation of crimes, field training for KPS, collection of criminal intelligence, border and immigration control including the traffic control.”⁹⁸

In Bosnia, the United Nations police forces, IPTF, only trained and monitored the local police forces during its mandate. However, in Kosovo international police was granted the enforcement authority including the powers to investigate crimes and arrest as well as to establish law and order from the very beginning.⁹⁹ The mandate and mission of the UN police have been created to mirror the experience gained in Bosnia.¹⁰⁰ The UN police formed the only authorized police force in Kosovo and have had to establish a completely new local force at the same time tried to set up their own police force from the scratch.¹⁰¹ This is in contrast to Bosnia, where IPTF had to co-operate with three existing ethnic police forces.

Nevertheless, the UN police could not cope with the persisting violence in Kosovo. It survived co-ordination and cooperation problems as well as lack of qualified staff and necessary equipment.¹⁰² A local police force, the Kosovo Police Service (KPS) is created that it will eventually replace UNMIK police in maintaining law and order in the future.

⁹⁷ ‘Report of the Secretary General on the United Nations Interim Administration Mission in Kosovo’, 12 July 1999, VI. Main Components of the Mission, A: Civil Administration Component, 2. Police, Articles 60-63, http://www.civpol.org/unmik/raport_july.htm, pp. 15-16.

⁹⁸ ‘UNMIK Police’ <http://www.civpol.org/unmik>, p. 1.

⁹⁹ John G., Cockell, ‘Civil-Military Responses to Security Challenges in Peace Operations: Ten Lessons from Kosovo’, *Global Governance*, vol. 8, issue 4, October-December 2002, p. 3.

¹⁰⁰ ‘Kosovo Report Card’, International Crisis Group, p. 42.

¹⁰¹ *Ibid.*, p. 43.

¹⁰² ‘Structurally, the UNMIK police operate under a commissioner and three deputy commissioners, directing departments of operations, administration, and planning and development. Each department has its own subordinate structure, but the operations department maintains five regions in the province. There are 45 operational police stations or substations.’ Cited in Kosovo Report Card, International Crisis Group, p. 43.

7.4.2.3 Judicial Reform

One of the biggest challenges in a post-conflict environment is to re-establish respect for the rule of law. Thus, the establishment of an independent and effective justice system is considered key to build a sustainable and stable Kosovo.¹⁰³ For breaking “the years of conflict and prevent continuing instability, the judiciary needs to have the capacity to investigate criminal offences and prosecute the perpetrators of these crimes in an effective, unbiased, and unimpeded manner.”¹⁰⁴

For that reason, ensuring a sustainable system of law and order is among the priorities of international community in Kosovo.¹⁰⁵ The OSCE Mission in Kosovo, through its institution building mandate is working on the re-establishment of a judicial system based on democratic principles and international human rights standards and aiming to develop a culture of respect for the rule of law.¹⁰⁶ However, when UNMIK arrived in Kosovo, it faced the difficult task of completely recreating a judicial structure.¹⁰⁷

The pre-existing system, including personnel, court equipment, files and records was largely withdrawn to Serbia. Most ethnic Albanians had been prevented from working in the civil administration during the Milosevic era and lacked experience, knowledge and expertise. A climate of revenge, general lawlessness and impunity added to the challenge of establishing a fair and independent judiciary. Moreover, the United Nations had never before had the responsibility for establishing a judicial system from scratch.¹⁰⁸

In addition, when the control of territory is under international administration there are extra questions such as what law should be enforced, by whom and how to solve the trouble of building sustainable local institutions and at the same time maintain respect for international standards of justice.¹⁰⁹ Kosovo’s experience of

¹⁰³ ‘Finding the Balance: The Scales of Justice in Kosovo’, International Crisis Group, Balkans Report No 134, Pristina/Brussels, 12 September 2002, <http://www.crisisweb.org>, p. 1.

¹⁰⁴ *Ibid.*, p. 1.

¹⁰⁵ *Ibid.*, p. 1.

¹⁰⁶ OSCE Mission in Kosovo, Kosovo Judicial Institute, <http://www.osce.org/kosovo/law/>, p. 1.

¹⁰⁷ ‘Finding the Balance: The Scales of Justice in Kosovo’, International Crisis Group, p. 1.

¹⁰⁸ *Ibid.*, p. 1, and pp. 5- 11.

¹⁰⁹ Simon Chesterman, ‘Justice Under International Administration: Kosovo, East Timor, Afghanistan’, International Peace Academy Report, September 2002, <http://www.ipacademy.org>, p. 3.

justice in this respect reflects the ambiguity of the UNSC Resolution 1244. The uncertainty of the final status of Kosovo has complicated post-conflict peace building in terms of what form of institutions should be build by the interim administration.¹¹⁰

Lack of a political resolution for the problem presented a serious barrier to the re-establishment of the rule of law in Kosovo.¹¹¹ Different aspects of this problem have been the choice of law to be applied in Kosovo; the appointment of local and later international judges; and the question of executive detention by UNMIK:

The first UNMIK regulation established that the law in force prior to NATO intervention in 1999 would apply, provided that this law was consistent with internationally recognized human rights standards and SC Resolution 1244. The Kosovo Albanian judiciary rejected that provincial laws that had been in effect in March 1989 had been illegally revoked by Belgrade. This dispute greatly undermined the UN's credibility especially when it finally reversed its earlier decision in December 1999 and passed a regulation declaring that the laws in effect on 22 March 1989.¹¹²

For the first time, the UN as an organization set up a program of judges and prosecutors working in a local system together with the existing jurists.¹¹³ This line was followed since local judges and prosecutors were not competent to run an adequate judicial system. Then again, the Judicial Assessment program in BiH was constrained to assist, watch and supervise without taking part within the local judicial system. There have been “no international judges or prosecutors ever appointed before to serve within a judicial system, alongside their existing counterparts, and operating under existing law and procedure.”¹¹⁴

In short, Kosovo case reveals certain problems and challenging elements of managing justice under international supervision.¹¹⁵ Some problems come from the

¹¹⁰ Simon Chesterman, ‘Kosovo in Limbo: State building and Substantial Autonomy’, International Peace Academy Report, August 2001, <http://www.ipacademy.org>, p. 3.

¹¹¹ *Ibid.*, p. 4.

¹¹² *Ibid.*, p. 5.

¹¹³ Michael E. Hartmann, ‘International Judges and Prosecutors in Kosovo, A New Model for Post-Conflict Peacekeeping’, United States Institute of Peace, Special Report 112, October 2003, <http://www.usip.org>, p. 8.

¹¹⁴ *Ibid.*, p. 8.

¹¹⁵ Simon Chesterman, ‘Justice Under International Administration: Kosovo, East Timor, Afghanistan’, International Peace Academy Report, p. 6.

“security environment on the ground; others from the high politics surrounded NATO’s intervention and the subsequent role of the United Nations.”¹¹⁶ All those reasons led to the rise of contradictory policies of the international administration, which is the institution responsible for introducing the values of human rights and the rule of law.¹¹⁷

Nevertheless, since 1999 UNMIK has made progress that investigations are undertaken, courts function and criminals are punished although much remains to reach an autonomous judiciary. The current system lacks the full capacity to investigate and prosecute crimes in an effective manner due to the structural weaknesses in the system.¹¹⁸ Besides, public confidence and respect for the law is not sufficient. Many people believe that judges and prosecutors are corrupt and take politicized and discriminatory decisions. While those obstacles negatively affect the credibility of the judicial system, it also has a serious impact on the peace process that as well as other crimes ethnically motivated violence remain largely unpunished.

7.4.3 Elections

In the year 2000, for the first time in its history, Kosovars had participated internationally supervised elections. International community decided to hold municipal elections first, in a strategy aimed at building democracy from the ground up. The idea was “starting with local institutions as a kind of laboratory and training ground for democratic elections and for the operation of democratic institutions deriving from them.”¹¹⁹ Through this way democracy hoped to be “introduced on a step-by-step basis, with elections to Kosovo wide institutions following the successful conduct of local elections and the establishment of local institutions.”¹²⁰

Hence, “on 28 October 2000, UNMIK under the operational responsibility of the OSCE conducted the first free municipal elections in Kosovo, in which 79% of

¹¹⁶ *Ibid.*, p. 6.

¹¹⁷ *Ibid.*, p. 6.

¹¹⁸ ‘Finding the Balance: The Scales of Justice in Kosovo’, International Crisis Group, p. 27.

¹¹⁹ ‘Elections in Kosovo: Moving Toward Democracy?’, International Crisis Group, Balkans Report No 97, Pristina/Washington/Brussels, 7 July 2000, <http://www.crisisweb.org>, p. 22.

¹²⁰ *Ibid.*, p. 22.

registered voters including some minorities, turned out to elect representatives to 30 Municipal Assemblies.”¹²¹ Local government elections handed over the major competencies to the municipal level. For instance, municipal assemblies appointed to undertake primary healthcare; public health; education; public services such as fire and emergency services; public utilities and infrastructure; social services and housing; and licensing of buildings, regulations; services and facilities.¹²² Municipal administrations were founded for the implementation of those tasks.

The SRSG authorized to set aside any decision of a municipality in conflict with UNSCR 1244 or applicable law, or denied the rights of minority communities. International municipal administrators, previously running the municipality, became advisors to the newly elected Municipal Assemblies, while retaining ultimate executive authority on behalf of the SRSG. In practice the transfer of responsibilities from the central to the local level, and from the international administrator to the elected municipal assembly was slow, while the role of international administrators were more than advisory due to the inexperience of local municipal officials.¹²³

The peaceful and democratic atmosphere of the elections and an overwhelming victory of the moderate Ibrahim Rugova’s party gave the impression at that time that stability in Kosovo was possible. Likewise 17 November 2001 elections for the parliament of Kosovo were peaceful. Before the elections there was a great worry that extremist or nationalist parties would win the elections as it was in Bosnia. Like in Bosnia ethnic groups expected to vote for parties with ethnic bases. Neither Serbs nor Albanians believed to vote for another party than the one represents their ethnic group and interest.¹²⁴

One major concern was that elections should not be held if there is no real atmosphere of security. BiH experience demonstrated that Kosovars if fell under threat would go to the polls and very likely elect extremist KLA candidates who were not sincere in peace process.¹²⁵ Contrary to the expectations and the experience

¹²¹ OSCE Mission in Kosovo, ‘Elections’, <http://www.osce.org/kosovo/elections/>.

¹²² ‘A Kosovo Roadmap (II) International Benchmarks’, International Crisis Group, Balkans Report No 125, Pristina/Brussels, 1 March 2002, <http://www.crisisweb.org>, p. 4.

¹²³ *Ibid.*, p. 5.

¹²⁴ ‘Kosovo: Let’s Learn from Bosnia’, International Crisis Group, p. 19.

¹²⁵ ‘Kosovo: The Road to Peace -Critical Implementation Issues and A “Who’s Who” of Key Players’, International Crisis Group, p. 6.

of Bosnia moderate forces have been successful both in the municipal and parliamentary elections in Kosovo.

A main problem has been the fact that “parliament that Kosovars were allowed to elect has only limited authority.”¹²⁶ In every important issue, even the budget, the actual authority was “in the hands of the UN and the SRSG”, which led to the argument that Kosovo is effectively under colonial rule.¹²⁷ As a slow start to the self government the Constitutional Framework signed on 15 May 2001, identified the responsibilities that would be transferred to the elected Assembly and the powers that would be reserved for the SRSG. The interim institutions have authority in health and education; economic and financial policy; domestic and foreign trade; agriculture; industry and investments; science and technology; culture; labor and social welfare; transport and communications; statistics; and control over local administration.¹²⁸

With oversight from the SRSG, the new institutions also exercise limited powers in such as judicial affairs and media regulation. The SRSG retains responsibility in such areas as the rights and interests of communities; dissolving the assembly; final authority over the budget; monetary policy; customs; law enforcement; final authority on the appointment and disciplining of judges and prosecutors; control over the Kosovo Protection Corps (KPC); and the administration and regulation of public and socially owned property and enterprises.¹²⁹

Following the 17 November 2001 Assembly elections handing over the power from the UN to the new institutions as anticipated in the Constitutional Framework was expected to happen.¹³⁰ The Constitutional Framework drew various chief positions as well. A seven-member presidency of the Assembly would have control over procedure, which includes two members from each of the top two parties, one from the third party, as well as one representative from the Kosovo Serb

¹²⁶ Richard J. Goldstone, ‘Wither Kosovo? Wither Democracy?’, Global Governance, vol.8, 2002, p. 145.

¹²⁷ Ibid., p. 145.

¹²⁸ ‘A Kosovo Roadmap (II) International Benchmarks’, International Crisis Group, p. 5.

¹²⁹ Ibid., p. 5.

¹³⁰ Ibid., p. 5.

and one from a non-Serb minority.¹³¹ The framework also provides for the appointment of a President of the Assembly, a Prime Minister and a President of Kosovo.

Overall, the 17 November election in Kosovo was a landmark in the post-conflict development of the province. The new institutions acquired only limited powers, and in particular had no authority on the issue of independence. Besides, the powers of UNMIK remain undiminished. Nevertheless, the establishment of an elected Assembly with a democratic mandate affected the political landscape in Kosovo.

In 2002, the OSCE Mission in Kosovo supervised the second municipal elections, which have been approved as free and fair by both local and international observers.¹³² Kosovars went to polls again on 23 October 2004 to elect a new Assembly. Therefore, the Elections Department of OSCE transferred responsibilities to local election management institutions.¹³³ In this direction, Kosovo's Central Election Commission established to organize and administer the proceeding elections. The commission also authorized to regulate electoral rules and procedures for the conduct of the general elections.¹³⁴

As in Bosnia and Herzegovina, international community attempts to gradually transfer responsibility to the local actors though in a different context in Kosovo. Yet, despite holding regular elections international community seems to continue its presence in Bosnia and Kosovo for a foreseeable future with a military and civilian authority.

7.4.4 Human Rights

One of the main reasons of the international involvement in Kosovo was to stop human rights violations. Thus, the UN mandate in Kosovo was supposed to improve human rights. However, the UN Security Council Resolution 1244 mentions “only

¹³¹ Simon Chesterman, 'Kosovo in Limbo: State building and Substantial Autonomy', p. 6.

¹³² OSCE Mission in Kosovo, 'Elections', <http://www.osce.org/kosovo/elections/>, p. 1.

¹³³ OSCE Mission in Kosovo, Media Advisory, 'Kosovo's Central Election Commission to be re-established tomorrow', <http://www.osce.org/kosovo>, p. 1.

¹³⁴ *Ibid.*, p. 2.

once the issue of human rights in a very abstract and general manner.”¹³⁵ In paragraph eleven the Resolution states the responsibilities of the international presence which contain “protecting and promotion of human rights in Kosovo.”¹³⁶ Yet, it did not specify how this objective should be pursued in practice.¹³⁷ In no other place the issue of human rights is raised while the “preservation of international peace and security and the territorial integrity and sovereignty of states” receives a primary position.¹³⁸

Following the UN’s control over the Kosovo administration, there has been a lack of adequate political and legislative commitments to human rights.

UNMIK has incorporated human rights in its mandate and structure as the Constitutional Framework for Provisional Self-Government includes a catalogue of human rights. Nonetheless, the human rights situation is far from satisfying, not least according to UNMIK’s and OSCE’s own assessments... Within the UNMIK pillar structure, it was the OSCE that took over the main responsibility for the monitoring, protection and promotion of human rights under its mandate of institution and democracy building.¹³⁹

International community could not provide respect for the human rights of all people in Kosovo over the past years. On the contrary, “ethnic violence and a climate of lawlessness persist.”¹⁴⁰ Besides, the “absence of clear procedural constraints that would bind the executive authority and the lack of effective access to courts and legal remedies affect the majority of the population and reinforce the climate of

¹³⁵ Enver Hasani, ‘Human Rights Legal Infrastructure in Kosovo: Current State and Its Perspective’, Unpublished paper from the Seventh International Seminar on Democracy and Human Rights in Multiethnic Societies, July 12-17, 2004, Konjic, Bosnia and Herzegovina, p. 13.

¹³⁶ UNSCR 1244, 10 June 1999, para 11 (j), <http://www.un.org/Docs/scres/1999/99sc1244.htm>. Cited in Enver Hasani, ‘Human Rights Legal Infrastructure in Kosovo: Current State and Its Perspective’, p. 13.

¹³⁷ Marcus G. Brand, ‘Institution Building and Human Rights Protection in Kosovo in the Light of UNMIK Legislation’, *Nordic Journal of International Law*, vol. 70, 2001, p. 465.

¹³⁸ The firsts paragraphs, paragraph 10 and in some other parts the UN Charter mentioned as a guiding point for Security Council and affirms the commitment of all Member States to sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other states in the region. Cited in Enver Hasani, ‘Human Rights Legal Infrastructure in Kosovo: Current State and Its Perspective’, p. 13.

¹³⁹ Marcus G. Brand, ‘Institution Building and Human Rights Protection in Kosovo in the Light of UNMIK Legislation’, pp. 462 and 467.

¹⁴⁰ *Ibid.*, p. 488.

lawlessness.”¹⁴¹ Moreover, UNMIK’s administration as both an executive and legislative body in civilian matters has shortcomings to provide effective protection of human rights in the absence of separation of powers and checks and balances.

In addition, there has been “no appropriate legal infrastructure regulating the institutional implementation of human rights and no complete list of guaranteed human rights and fundamental freedoms for Kosovars.”¹⁴² Although there exist “a list of international instruments directly applicable in Kosovo, no such a list exists when it comes to the human rights and fundamental freedoms, and the institutional mechanism for their implementation and protection.”¹⁴³

In case of BiH, there is a clear catalog of human rights incorporated into the Constitution, and a rich net of institutions and bodies in charge of protecting and promoting human rights and fundamental freedoms as well as their implementation according to internationally accepted standards. Although in practice the application of the human rights is problematic in Bosnia, even such a set up is not created in Kosovo. Furthermore, Kosovars are not allowed to apply European Court of Human Rights in Strasbourg regardless of the absence of free access to neutral courts.¹⁴⁴ The obstacle in human rights measures seems to be related with the status of Kosovo.

7.4.4.1 Bringing War Criminals to Justice

The problem of war crimes is a very sensitive issue since it situates at the center of the divisions between Serbs and Albanians. It also reflects the split inside the Albanian community. Although justice must be served, as in Bosnia punishment of war criminals have potentially “disruptive consequences for the process of reconciliation in Kosovo.”¹⁴⁵ Until now, the vast majority of war crimes against Kosovo Albanians during 1998 and 1999 have not been put on trial.¹⁴⁶ Similarly,

¹⁴¹ *Ibid.*, p. 488.

¹⁴² Enver Hasani, ‘Human Rights Legal Infrastructure in Kosovo: Current State and Its Perspective’, p. 19.

¹⁴³ *Ibid.*, p. 20.

¹⁴⁴ For more information see Marcus G. Brand, ‘Institution Building and Human Rights Protection in Kosovo in the Light of UNMIK Legislation’, pp. 475 476; Enver Hasani, ‘Human Rights Legal Infrastructure in Kosovo: Current State and Its Perspective’, p. 4.

¹⁴⁵ ‘Finding the Balance: The Scales of Justice in Kosovo’, International Crisis Group, p. 16.

¹⁴⁶ OSCE, ‘Kosovo: As Seen as Told, Part One -An Analysis of the Human Rights Findings of the OSCE Kosovo Verification Mission October 1998 to June 1999’, Part Two, ‘A Report on the Human

ethnic violence and crimes committed against the Serbian, Roma, Ashkaeli and other minority populations since the entrance of UNMIK and KFOR have remained without punishment.¹⁴⁷

Failure to punish war criminals in Bosnia discussed by Peggy Hicks to encourage brutal handling of the conflict and war crimes in Kosovo. Although the continuing presence of war crimes suspects especially Radovan Karadzic and General Ratko Mladic was damaging the efforts of international community, allowing war crimes suspects to remain at large called into question the international community's commitment to obtain justice for war crimes.¹⁴⁸ These mixed signals could played a considerable part in the Serbian leadership's approach to Kosovo.

Instead of searching for non-violent alternatives or initiating a dialog for restoration of autonomy when KLA took up arms against Serbia, "the Yugoslav army engaged in all-out offensive against the rebels that ignored basic tenets of international humanitarian law, including the prohibition on targeting the civilians."¹⁴⁹ Milosevic learnt the wrong lesson from the Bosnian conflict since he could escaped indictment because of his role as a guarantor of peace there:

He deduced that war crimes go unpunished when the political costs of indictment or the risks of making an arrest are believed to be too high. His confidence and courage in Kosovo would have been shaken if Karadzic and Mladic were arrested.¹⁵⁰

Since international community recognized in Bosnia that there is no reconciliation without justice they followed a different path in Kosovo. Milosevic's indictment by the tribunal for crimes against humanity shows the decision of international community to pursue a more active policy. NATO officials assumed a firmer stance in Kosovo than at the start was the case in Bosnia.¹⁵¹ NATO command

Rights Findings of the OSCE Mission in Kosovo June to October 1999'; and ICG Balkans Report, Reality Demands: Documenting Violations of International Humanitarian Law in Kosovo 1999, May 2000. Cited in 'Finding the Balance: The Scales of Justice in Kosovo', International Crisis Group, p. 16.

¹⁴⁷'Finding the Balance: The Scales of Justice in Kosovo', International Crisis Group, p. 17.

¹⁴⁸ Peggy Hicks, 'Painful Lesson on Peacekeeping', ABA Journal, vol. 85, issue 7, July 1999, p. 103.

¹⁴⁹ Ibid., p. 103.

¹⁵⁰ Ibid., p. 103.

¹⁵¹ James Kitfield, 'Lessons from Kosovo', p. 13.

was far more supportive in Kosovo than in Bosnia. KFOR operated along with war crimes “tribunal investigative teams, detained and arrested agitators.”¹⁵² Yet, indictment of Milosevic was not satisfactory for the Kosovo victims who lament that “there are many like Milosevic, he is not the only one to blame and complain that the others who fired on them are free.”¹⁵³

The judicial process to persecute the perpetrators of war crimes as well as war crimes against minorities in Kosovo has not been successful. However, durable peace can not be achieved for Kosovo till human rights for all citizens are guaranteed and severe human rights violations are penalized. The concern that the pursuit of justice will destabilize the region proved to be short-sighted in similar cases; “experience has shown that only when individual criminal responsibility for war crimes has been judiciously ascertained real stability, peace and reconciliation can begin to take root.”¹⁵⁴ Yet, while punishment of war criminals is a step for reconciliation it is also a very sensitive issue giving the feeling of victimization. Thus, it takes a long time work.

7.4.4.2 Educational Reforms

Internal struggles and wars among other troubles disturb education services as well. Thus, in war torn societies there is a necessity to “redevelop the education system to restore stability” beyond the fact that everybody has a right to education. Thus, “major part of the UNMIK’s civilian budget” in the first year after the end of the armed conflict was devoted to education.¹⁵⁵ There was an urgent need to “reconstruct buildings, provide infrastructure, and re-establish a professional body of teachers” after the conflict.¹⁵⁶

As in Bosnia, schools in Kosovo remain segregated by ethnicity and this is still a highly politicized issue, which needs to be transformed. The Expert Committee

¹⁵² Ibid., p. 13.

¹⁵³ Adriatik Kelmendi, ‘Kosovo split over Milosevic Trial’, IWPR Report, no. 317, 13 February 2002. Cited in ‘Finding the Balance: The Scales of Justice in Kosovo’, International Crisis Group, p. 26.

¹⁵⁴ ‘Kosovo: The Road to Peace -Critical Implementation Issues and A “Who’s Who” of Key Players’, International Crisis Group, p. 10.

¹⁵⁵ Brendan Bartlett, Des Power, Peter Blatch, ‘Education in a Recovering Nation: Renewing Special Education in Kosovo’, Exceptional Children, vol. 70, no. 4, 2004, p. 486.

¹⁵⁶ Ibid., p. 486.

on Education and Youth and UNMIK Department of Education prioritized a list of issue areas such as:

Unification of the education system; Provision of adequate teacher and administration training; Budgetary issues; De-politicization of textbooks; Teaching of Albanian as a second language to those whose mother tongue is not Albanian; The provision of adequate transportation; Establishment of evaluation methods for teachers; The role and provision of private schools; Fostering competition at all levels in the education system; The recognition of diplomas and qualifications in and outside Kosovo; The setting up of technical schools; Establishment of transparency at ministerial level; De-politicization of the Education Ministry and the entire reform process.¹⁵⁷

The objectives of the educational reforms include examination of the textbooks and curricula, unification of the Kosovo education system without Albanian domination that protects the rights of the minority children and de-politicization of the education issues.¹⁵⁸ In order to maintain a multi-ethnic community, international community is helping to build up Kosovo's education system that would tolerate, respect and recognize the diverse identities in Kosovo and their right to receive primary education in their language, while the majority language of Kosovo is going to be Albanian irrespective of the final status of Kosovo.¹⁵⁹ Educational reforms have a different focus in BiH, where the major goal is to integrate the divided education systems belonging to all three ethnic communities.

7.4.5 Return of Refugees and Displaced Persons

The return of internally displaced people (IDPs) and refugees to their homes in Kosovo was a top priority for the international community, and for the UN Mission in Kosovo. The fundamental purposes of the agreements that led to Resolution 1244 were: "First, to finish the NATO air campaign against the FRY, second, to reverse the effects of the

¹⁵⁷ Robert Curris, 'Kosovo Civil Society Project: Education', UN Headquarters, Pristina, 18 May 2002, European Center for Minority Issues (ECMI) Report, No. 31, Flensburg, July 2002, <http://www.ecmi.de>, p. 7.

¹⁵⁸ *Ibid.*, pp. 10-11.

¹⁵⁹ *Ibid.*, p. 15.

ethnic cleansing against Kosovo Albanians and bring an end to the humanitarian disaster in the region and, third, to prepare the ground for a political settlement.”¹⁶⁰

Resolution 1244 stopped the fighting between NATO and the FRY, and achieved its second primary objective to reverse the ethnic cleansing of Kosovo Albanians.¹⁶¹ The second goal was easily achieved by the unexpected return of Kosovo Albanians to Kosovo in a relatively short period of time, following the deployment of KFOR.¹⁶² However, although the entrance of the UNMIK and KFOR allowed most of the 850,000 Albanians displaced during 1998-9 to return their homes, it failed to avert a “second wave of displacement.”¹⁶³ Many Serbs and the other minorities left with the former FRY forces fearing revenge attacks and retaliation.

Therefore, return of refugees and displaced persons became a very politicized issue. For international community, the return of Serbs and other minorities perceived to “ensure that the 1999 NATO intervention and the subsequent international presence did not lead to the creation of mono-ethnic Kosovo.”¹⁶⁴ Besides, it would open up the way to start the debate on the final status of Kosovo. Moreover, Serbian government encourages and manipulates the Kosovo Serbs to return for its own political objectives in Kosovo, while Kosovo Albanians are not so keen on minority refugee returns for the opposite reasons.

While Serbian government has an interest on the return of Serbian minority to have a say in the future status of Kosovo, at least for the worst case scenario the partition or canonization of Kosovo, Kosovo Albanian leadership pay a lip service to the right of all refugees to return while they are reluctant to encourage Serbian refugees to return for their ethnic interest and concerns over the future of Kosovo.¹⁶⁵

¹⁶⁰ Alexandros Yannis, ‘The Creation and Politics of International Protectorates in Balkans, p. 266.

¹⁶¹ *Ibid.*, p. 266.

¹⁶² *Ibid.*, p. 266.

¹⁶³ ‘Return to Uncertainty Kosovo’s Internally Displaced and the Return Process’, International Crisis Group, Balkans Report No 139, Pristina/Washington, 13 December 2002, <http://www.crisisweb.org>, p. 1.

¹⁶⁴ *Ibid.*, p. i.

¹⁶⁵ Robert Curis, ‘Kosovo: Citizens’ Support Initiative, Integration and Returns, European Center for Minority Issues (ECMI) Report, No. 31, Flensburg, July 2003, <http://www.ecmi.de>, pp. 6-8; ‘Return to Uncertainty Kosovo’s Internally Displaced and the Return Process’, International Crisis Group, p. 4.

The UNSCR 1244 gave the responsibility directly on UNMIK, supported by UNHCR and KFOR, to guarantee safe return of all refugees and displaced persons to their homes in Kosovo.¹⁶⁶ Originally the UNHCR was responsible for the organization of return and provision of humanitarian assistance. In mid-2001, 'Police and Justice' substituted the Humanitarian Pillar and UNHCR left the UNMIK structure.¹⁶⁷ After that UNHCR is observing the return process through the regional offices. Consequently, UNMIK took responsibility for the return process acting as the operative, coordinating body for the furtherance of the process.

Yet, record of the international community on the return process has been mixed. Shortly after the end of war most of the Albanian refugees came back but the return process of the Kosovo Serbs and other minorities do not look promising. Kosovo still presents a very challenging environment for them to return. Lack of freedom of movement, discrimination to access housing and land, employment opportunities, availability of public services for minorities especially health and education and the hostile attitudes of the receiving communities are the fundamental barriers to return.¹⁶⁸

However, the experience of late success of the return process in Bosnia demonstrates that sometimes time should pass before a significant advance can be achieved. On the other hand, Kosovo refugees are different than Bosnians where incoming refugees occupied the houses of outgoing.¹⁶⁹ In Kosovo both houses and the productive capacity of the land have destroyed while reconstruction is still an important impediment for the return of refugees and displaced persons due to lack of sufficient funding and donors. In addition, Bosnian refugee experience showed that refugees can not return in large numbers if there exist hostile and opposing local authorities.

¹⁶⁶ UNSCR 1244, 10 June 1999, para 11 (k), <http://www.un.org/Docs/scres/1999/99sc1244.htm>.

¹⁶⁷ 'Return to Uncertainty Kosovo's Internally Displaced and the Return Process', International Crisis Group, p. 27.

¹⁶⁸ *Ibid.*, p. 6 and pp. 19-25.

¹⁶⁹ The original residents could not return because someone else has been occupying their houses. In Kosovo refugees could return unoccupied properties thus the Bosnian predicament was not the case.

7.4.5.1 Property Issue

The capability to utilize the right to property is very much related to return. However, determining property ownership is extremely difficult in Kosovo because of the level of destruction, both of physical property and of records¹⁷⁰, the years of discriminatory legislation¹⁷¹ and the mass population movements since 1989.¹⁷² After the end of war, many refugees and displaced Albanians returned but large number of people from other ethnic communities, especially Serbian have in turn escaped, leaving their property.¹⁷³ In many circumstances, the deserted property has been “destroyed or occupied.”¹⁷⁴ New houses build in the place of the destroyed making it almost impossible for real owners to reclaim their property.

UNMIK after its arrival recognized that domestic courts failed to offer neutrality to settle property issues. Consequently, a quasi-judicial body was found to handle major property cases:

The Housing and Property Directorate (HPD) established to provide an internationally supervised legal mechanism to resolve residential property disputes, and to protect the legal status of the owners of abandoned properties. The Housing and Property Claims Commission (HPCC) is the quasi-judicial body of HPD that rules on claims.¹⁷⁵

This joint international and local body was given complete jurisdiction to resolve the most critical residential property claims until Kosovo courts are capable to cope with them. Although it is very crucial to resolve the property issue for the process of return resolving the property claims have been very slow and HDP criticized to be “over bureaucratic and unresponsive.”¹⁷⁶ The creation of an

¹⁷⁰ The biggest trouble in case of property issue has been the confiscation of identity documents which inhibits to title deeds and property return. Cited in The OSCE and the Residential Property Rights, <http://www.osce.org/Kosovo>, p. 1.

¹⁷¹ In March 1989, the law barred sales of property to Albanians. In order to get around this, properties often changed hands without any official or legal trace. Cited in ‘A Kosovo Roadmap (II) International Benchmarks’, International Crisis Group, p. 19.

¹⁷² OSCE Mission in Kosovo, ‘The Impending Property Crisis in Kosovo’, Background Report, 25 September 2000, , <http://www.osce.org/Kosovo>, p. 1.

¹⁷³ ‘The OSCE and the Residential Property Rights’, <http://www.osce.org/Kosovo>, p. 1.

¹⁷⁴ *Ibid.*, p. 1.

¹⁷⁵ ‘A Kosovo Roadmap (II) International Benchmarks’, International Crisis Group, p. 20.

¹⁷⁶ *Ibid.*, p. 20.

international body for the resolution of property disputes is pursued the experience of Bosnia where international community eventually acknowledged “the key importance of property issue to speed up the return process.”¹⁷⁷ However, in addition to the persistent denial of property rights in Kosovo there have been limitations on ethnic minorities to get reconstruction assistance which together presents a great obstacle to the return process.

7.4.6 Empowering Civil Society

Civil society plays an important role in voicing the interest and concerns of citizens and influences the response of the political authorities. Therefore, it is considered as an important instrument of peace building in war torn societies. International community for this reason is helping to build up the capacity of NGOs and civic groups in Kosovo. Special interest is given to “how civil society can work effectively as critical and supportive partners to the institutions of government”, and promote democracy, respect for diversity and tolerance through a process of dialog and interaction.¹⁷⁸

Various international organizations have different programs such as the OSCE has worked with the “Kosovo Civil Society Foundation” to bring the NGOs together for identifying ways to enhance the role of civil society organizations.¹⁷⁹ UNDP Office in Kosovo as part of “Post-Conflict Recovery and Reconciliation project have been working to enhance sustainable networking, confidence building and the process of reconciliation among of all ethnic groups by strengthening their capacity and enabling their participation in the shaping of civil society and government.”¹⁸⁰ Throughout the post war period, for the first time in December 2001, they managed to bring youth from all communities together:

The follow up Youth Conference organized in September 2002 identified that despite the significant progress made it still remains for youth to become

¹⁷⁷ Ibid., p. 20.

¹⁷⁸ OSCE Mission in Kosovo, ‘Supporting Democracy in Kosovo’, Democratization Fact Sheet, <http://www.osce.org/Kosovo>, p. 2.

¹⁷⁹ Ibid., p. 2.

¹⁸⁰ UN Development Program, ‘Effective Youth Empowerment Strategy (2003-2004)’, Kosovo Office <http://www.undp.org/Kosovo>, p. 1.

actively integrated. Nevertheless, with the help of the international community progress has been made in re-establishing dialogue between Kosovo's ethnic communities since the end of conflict in 1999. However, the recent riots in March seemed to set back the results of these efforts, with nineteen people dead, hundreds injured and thousands of Serbs, Ashkali and Roma forced to flee their burning homes.¹⁸¹

In response to the violent event, the 'Civil Dialogue project'¹⁸² renewed its efforts to convince people talking again. To sum up, the success of civil society dialog is dependent on the participation of NGOs and civil society organizations. Nevertheless, it also needs the participation and collaboration of large number of individuals and relevant institutions, which is not the case in Kosovo, to promote the process of tolerance and respect for diversity. The civil society in Kosovo is urban, international donor-driven, thus, not able to make a genuine grassroots impact.

7.5 What Went Wrong in Kosovo?

Ethnic violence in 17-19 March 2004 have signaled the failure of international policy in Kosovo. Protests against the alleged killing of three Kosovo Albanian children by Kosovo Serbs escalated into violent clashes between Kosovo Albanians and Serbs, and clashes with the UN Police and the NATO-led Kosovo Force (KFOR). The incident "left over 28 civilians and one KFOR soldier dead, five hundreds wounded, 3,600 Serbs displaced, 30 Serbian churches and 200 Serbian houses destroyed."¹⁸³ The recent events demonstrated that current policies of the international and local

¹⁸¹. UN Development Program, 'Effective Youth Empowerment Strategy (2003-2004)', p. 1.

¹⁸². The Mother Teresa Society in Prishtinë/Priština and the Centre for Regionalism in Novi Sad formed the Civil Dialogue Council under the auspices of the OSCE. The council aims at decreasing tensions and creating bridges of understanding through the exchange of ideas. In the last two years, more than 200 non-governmental organizations (NGOs) have come together under the council to discuss common interests and concerns.' Cited in UN Development Program, 'Effective Youth Empowerment Strategy (2003-2004)', p. 1. For more information see 'Why Civil Society Dialog?', <http://www.igman-initiative.org>.

¹⁸³ Harald Schenker, 'Violence in Kosovo and the Way Ahead', European Center for Minority Issues (ECMI) Brief, No. 10, Flensburg, March 2004, <http://www.ecmi.de>, p. 3.

authorities needs to be re-examined and revised that a lot of work remains to be done in Kosovo for sustainable peace and development.¹⁸⁴

The responsibility of the last clash between Kosovo Albanians and Serbs entrusted to the international community namely UNMIK and NATO-led Kosovo Force, which have exercised decisive authority over Kosovo's administration and security.¹⁸⁵ Despite the massive international efforts of peace building the situation remained tense in Kosovo. Strong ethnic division and antagonism could not be bridged and ethnic tolerance is still not flourishing. There has been no expectation for "a quick reconciliation of the two communities" after long years of Serbian aggression and the grave conflict of 1990s.¹⁸⁶ However, it was hoped that international community would restore the order and provide a "positive perspective for the future political settlement acceptable to both sides", and revoke the limbo created by the SC Resolution 1244, which "stipulates that Kosovo is part of Serbia but under the aegis of the UN until all sides agree upon the province's final status."¹⁸⁷

Contrary, unclear status of Kosovo worsened the already broken economy since nobody wanted to invest there. As a consequence, both communities have thousands of unemployed young with no money or prospects that their frustration have reached the climax. Deteriorating socio-economic situation has created a negative environment for implementing a post-conflict strategy.¹⁸⁸ "The lack of jobs and future prospects marginalized considerable sections of the population and made radical nationalist ideas ever more popular among the masses of people."¹⁸⁹ As in BiH, Kosovo's economy depends on foreign aid that is declining every year.

While unresolved status of Kosovo deters investors, it also denies everything open to nation states such as membership to "bank transfer system, ownership of a

¹⁸⁴ Ibid., p. 3.

¹⁸⁵ Misha Glenny, 'The UN and NATO are failing Kosovo', International Herald Tribune, 22 March 2004.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

¹⁸⁸ Iakov Gerasimov, Andrei Temiashov, 'Kosovo: Five Years Later', p. 115.

¹⁸⁹ Ibid., p. 115.

telephone code, car insurance scheme, and recognized passport.”¹⁹⁰ Therefore, in addition to the frustration over UNMIK’s inability to restore Kosovo’s economic life, Kosovo Albanians successively lost their confidence to its structure and mandate that it can prepare Kosovo “for the transition from war to peace, from socialism to market economy and from political limbo to final status.”¹⁹¹

The UNMIK is not regarded a legitimate institution since “90 per cent of Kosovo’s population will not accept no final outcome other than independence.”¹⁹² From this angle, the fact that whole authority under international law lie within the UNMIK is unacceptable. In spite of the growing discontent about UNMIK’s presence, SRSG Harri Holkeri to clarify the contradictory interpretation of the “Standards Before Status” notified in February 2004 that “there was no automaticity to the beginning of a process to determine final status in mid-2005 if adequate process on standards was not made.”¹⁹³ This statement increased the frictions between Kosovo Albanians and international community.

Moreover, the suspension of Kosovo’s final status and tension over the future of Kosovo among the two communities has preserved the political dominance of the nationalist parties who draw their authority from nationalist ideas and independence rhetoric. Hence, political scenery in Kosovo is very much divided and ethnicity remains the main attribute in forming political parties and public organizations.¹⁹⁴ Recent violence in this respect showed the continuation of the extremist and anti-Serb attitude as well as lack of ethnic tolerance.

On the other hand, the politically motivated violence has not been appropriately responded by UNMIK police forces and KFOR.¹⁹⁵ The police response to the riots revealed serious weaknesses both within the UNMIK police force and the capability of KPS that started to gradually take over responsibility in the security

¹⁹⁰ ‘Collapse in Kosovo’, International Crisi Group, Europe Report No. 155, Pristina/Belgrade/Brussels, 22 April 2004, <http://www.crisisweb.org>, p. 3.

¹⁹¹ *Ibid.*, p. i.

¹⁹² *Ibid.*, p. 2.

¹⁹³ *Ibid.*, p. 5.

¹⁹⁴ Iakov Gerasimov, Andrei Temiashov, ‘Kosovo: Five Years Later’, p. 116.

¹⁹⁵ Harald Schenker, ‘Violence in Kosovo and the Way Ahead’, p. 5.

field.¹⁹⁶ The wider implications of the March 2004 riots also put questions about NATO's ability to provide security with its low levels of troop strength in Kosovo and BiH. It also demonstrated that UNMIK is no longer a stabilizing factor in Kosovo, contrary attracting anger.

Thus, the UN SGSR Harri Holkeri announced on 31 March 2004 the Kosovo Standards Implementation Plan, which is a "detailed document comprising a schedule for the implementation of standards, estimations of the negative impact of violence and the list of priorities for bringing peace and stability to Kosovo."¹⁹⁷ Although maintain vague formulas it has a procedure to determine the final status of Kosovo scheduled for the middle of 2005.¹⁹⁸

The Standards Implementation Plan outlined a sequence of steps, which the local authorities must implement before Kosovo's future political status can be considered.¹⁹⁹ It embodied "the creation of functioning democratic institutions, and guarantee of the rights of minorities and the return of some 200, 000 Serbs who fled Kosovo after the NATO intervention."²⁰⁰ While Kosovo's Prime Minister pronounced their commitment to achieve the plan's goals, dubious Serbia's government soon prepared another plan for decentralizing Kosovo, which was approved on 29 April 2004, and presented to UN Security Council on 11 May.²⁰¹

Serbia's decentralization plan for Kosovo calls for two levels of autonomy for the Kosovo Serbs:

First, formation of five Serb areas where the Serbs are the majority, and second cultural autonomy for the Serbs living outside of the Serb majority areas. It was argued that March violence unveiled the failure of UN mandate to protect the Serb and other non-Albanians that necessitates the change of constitutional conditions for a peaceful and safe life. The suggested change was autonomy-within-autonomy; the five Serbian areas would form a region called Serb entity with one chamber assembly that would be in charge of

¹⁹⁶ Ibid., p. 5.

¹⁹⁷ Iakov Gerasimov, Andrei Temiashov, 'Kosovo: Five Years Later', p. 117.

¹⁹⁸ Ibid., p. 117.

¹⁹⁹ Tim Potier, 'Achieving a Lasting Peace in Kosovo', Unpublished Conference Paper, Roundtable on Kosovo-Metohija, Frederic Research Center, Nicosia, 11 May 2004, pp. 6-7

²⁰⁰ Ibid., p. 7.

²⁰¹ Sasha Grubanovic, 'Daytonizing Kosovo', Transitions Online, 17/5/2004, p. 1.

police, justice, health, education, social policy, culture, media and privatization.²⁰²

Not surprisingly, Kosovo Albanians strongly rejected the idea of decentralization, which is threatening the territorial integrity of Kosovo and might result in the partition of the province.²⁰³ Although Kosovo Albanians insist on independence, international community is still not committed to determine the future status of Kosovo. Despite recent violence demonstrated that status quo is not sustainable as people are more anxious about the delay of the ultimate status, it also enabled international community to come up with the argument that Kosovo is not ready for its final status due to the lack of order and secure environment for the minorities in the province.

7.6 Final Remarks

International community's involvement in Kosovo was the product of a similar strategy to Bosnia and Herzegovina. The critical motive of the approach was to "reconcile the values and interests of the international community to preserve even nominally the unity and territorial integrity of the FRY with the realities on the ground that required granting effective control of the territory to the Kosovo Albanians, who form the overwhelming majority of its population."²⁰⁴ In addition, both Kosovo and BiH suffer from being governed by imposed peace agreements that were aimed at stopping the fighting rather than consolidating peace.

On the other hand, the main distinction in Kosovo is the scale of power employed by the international administration.²⁰⁵ The function of the international administration carried out by UNMIK was to "replace the authority of the FRY and assume full interim administrative responsibility, including executive and legislative powers, which is the most far-reaching engagement of this type for the international

²⁰² *Ibid.*, p. 1.

²⁰³ *Ibid.*, p. 2.

²⁰⁴ Alexandros Yannis, 'The Creation and Politics of International Protectorates in Balkans', p. 265.

²⁰⁵ *Ibid.*, p. 265.

community and the UN ever.”²⁰⁶ Yet, there are significant similarities alongside differences among the case of BiH and Kosovo. Albeit in theory the mandates are different, in practice international community have been adopting a parallel method in Kosovo, either arbitrarily repeating the faults or putting on the experience gathered in Bosnia.

For instance, the same civilian and military implementation task division of Bosnia and Herzegovina is adopted in Kosovo. Additionally, civilian implementation as in BiH divided among various international institutions that have different management structures and work ethos, and which are accountable to different bureaucratic chain of command and constituencies rather than the people they deal with.²⁰⁷ This led to the mismanagement due to the multiple levels of command among various institutions with different policy priorities. Yet, the drafters of Kosovo pattern seems to hope that experience alone would cure the imperfections encountered in Bosnia.²⁰⁸ In spite of multiple organizations’ initial difficulty to work together, which undermined international efforts in achieving complicated tasks in Bosnia, the same mistake has been repeated in Kosovo.

Nonetheless, lessons learnt from BiH’s experience employed to advance the efficiency of particular peace building instruments in Kosovo. Gradually entrusted executive and legislative powers of the High Representative to overcome the reluctance of the locals implementing the necessary reforms in BiH was already from the very beginning given to the chief administrator, the Special Representative of the Secretary General in Kosovo. Likewise, built on the discouraging experience of IPTF to supervise the uncooperative three ethnically divided police forces in BiH, UNMIK Police was assigned executive law enforcement authority as well as the task to establish a police force from the scratch. Moreover, KFOR’s mandate established to

²⁰⁶ Alexandros Yannis, ‘Kosovo Under International Administration’, *Survival*, vol.43, no.2, pp. 31-48. Cited in Alexandros Yannis, ‘The Creation and Politics of International Protectorates in Balkans’, p. 265.

²⁰⁷ For more information see ‘Bosnia: Reshaping the International Machinery’, International Crisis Group, Balkans Report No. 121, Sarajevo/ Brussels, 29 November 2001, <http://www.crisisweb.org>, pp. 1-29.

²⁰⁸ Kosovo: Let’s Learn from Bosnia’, International Crisis Group, p. 11.

assist also in the civilian administration illustrates the decision of international community to ease the shortcomings survived in BiH.²⁰⁹

On the other hand, obstacles experienced in (re)-establishing rule of law, building democratic institutions through elections, protecting and promoting human rights, punishing war criminals and developing civil society in BiH, survived in Kosovo as well. Although, the return of the Albanian refugees and IDPs happened comparatively faster, return of Kosovo Serbs and other non-Albanians was an impasse. Last but not least, international community's peace building discourse has been applying the lessons of experience, identifying both achievements and mistakes, thus, learning as you progress.²¹⁰ However, the experience earned in Bosnia and Herzegovina has not guaranteed the success of peace building mission in Kosovo. Obviously, there is a need to have a novel approach.

²⁰⁹ 'In Bosnia, NATO concern with Mission Creep -that the military is drawn into unforeseen tasks-contributed to an overly sharp division between civil and military roles. This caused Implementation Forces to be reluctant in assisting civil authorities, which led to a security gap. This experience has contributed to a different approach taken by KFOR in Kosovo. While KFOR is outside the UNMIK structure, it has been proactive in providing assistance to civil authorities.' Cited in John G., Cockell, 'Civil-Military Responses to Security Challenges in Peace Operations: Ten Lessons from Kosovo', Global Governance, vol.8, issue 4, October-December 2002, p. 3.

²¹⁰ 'Seven Principles for Building Peace', Speech delivered by the UN Special Representative of the Secretary General in Kosovo, Michael Steiner, London School of Economics and Political Science, 27 January 2003, <http://www.lse.ac.uk/Depts/global/Kosovodebate.htm>

CHAPTER 8

CONCLUSION

Peace building succeeding humanitarian intervention has been the focus of this study. Humanitarian intervention was an issue that has been attracting growing attention in the international relations discipline, with the increasing number of international interventions on humanitarian grounds in the post-Cold War era. The international community has intervened to stop human suffering in Haiti, Cambodia, Somalia, Bosnia, Rwanda, Kosovo and East Timor, where a new practice has replaced the strict Cold War principle of non-interference into the internal affairs of sovereign states in response to utter violations of human rights.

However, after humanitarian intervention has gradually earned a general legitimacy in case of supreme humanitarian emergency, the crux of the question shifted to whether the aim of humanitarian intervention should be the immediate end to human suffering or include a more fundamental reshaping of the underlying causes, which is called peace building. Growing number of peace building missions led to a wide-spread debate on international peace operations, particularly on how to maintain peace, how to make peace settlements work and how to build self-sustainable peace and stability. A number of policy oriented discussion, research and academic work contributed to widening the substance of the field. Nevertheless, there is a shortage of academic analysis on the concept of peace building and its underlying assumptions. Within this context, the study aims to conceptualize peace building.

Throughout this dissertation, the question whether peace building following a humanitarian intervention is attainable and what should be the strategy of international community in peace building have been addressed on the background of the most advanced case of peace building, Bosnia and Herzegovina. In this regard, the concept of peace building, objectives and its instruments such as governance

reform, post-conflict elections, security sector reform, respect to human rights, return of refugees and displaced persons, and deepening of civil society have been analyzed. Since internal conflicts are defined as “complex political emergencies”, where conflict leads to the breakdown of governing institutions, “reforming governmental structures in war-torn countries that are severely damaged or non-existing after destructive civil wars” is considered essential.¹ As such, functioning security sector provides the cornerstone for a stable and safe post-conflict situation. Security sector involves military and police forces, judicial structures and mechanisms for civilian oversight of these institutions. The success in security sector reforms depend on gaining local acceptance and the extent of local involvement in creating solutions.

Post-Conflict elections have been designed in many peace accords as a mechanism to end the transitional period after peace agreements to halt civil wars. However, they are generally “organized under difficult circumstances of societal disorder, general insecurity, fear, distrust, and institutional breakdown.”² The human rights component of a peace-building mission is regarded critical to effective peace-building especially among the UN circles. Most peace-building missions have thus included a human rights component to monitor post-conflict human rights violations and the response of local authorities to those violations.

Likewise, the return of refugees and displaced persons in war torn societies have become one of the key aims for the international community. That was the outcome of the increasing number of intra-state conflicts in the post-Cols war era, which comprised dislocation of many people both within and across states. As peace-building through the development of conflict managing institutions is regarded not sufficient for the resolution of ethnic conflicts, civil society development was supplemented to the list. In short, in the literature of peace studies all those referred instruments are acknowledged having potential to contribute peace-building in war torn societies.

¹ Jeroen de Zeeuw, Building Peace in War-Torn Societies: From Concept to Strategy, Research Project on Rehabilitation, Sustainable Peace and Development, Netherlands Institute of International Relations ‘Cliengendael Conflict Research Unit, August 2001, p. 20.

² Terrence Lyons, Postconflict Elections: War Termination, Democratization, and Demilitarizing Politic, Working Paper No. 20, Institute for Conflict Analysis and Resolution, George Mason University, February 2002, p. 6.

At this point, the peace building process and international community's current approach to build peace in war-torn societies have been analyzed, and the probability of success and the viability of the instruments of peace building tested on the case of Bosnia and Herzegovina. Peace-building in Bosnia and Herzegovina followed the approval of the Dayton Peace Accord, which gives comprehensive powers and immunities to the international community that covers almost all facets of the new Bosnian state. These powers cover a broad range of government functions and a framework for re-building Bosnia. As a result, the new Bosnian state turned to be highly dependent on international community's presence and supervision.

In addition, powers given to international community have gradually increased over the years and transfer of authority to the locals has been kept postponed. The High Representative's powers further extended; the mandates of leading international organizations such as SFOR have been either regularly extended or redefined after a period of extension as it was the case with the OSCE's mission that was later shifted from holding and supervising the elections to organizing the educational reforms. Moreover, institutions or their mandates have been replaced by another such as European Police Mission (EUPM), which took over International Police Task Force (IPTF) and the UN Mission in Bosnia and Herzegovina (UNMBiH) transferred its responsibilities to UN Development Program (UNDP) after its mandate was over. As a consequence, Bosnia and Herzegovina has become since 1995 the most advanced and long standing international experiment of peace building.

An assessment of the instruments of peace building in BiH brought the following results: Governance reform and reconstructing the multi-ethnic Bosnian state has been a central facet of international community's peace building strategy since Dayton. At the hearth of this multi-ethnic policy was "decentralization of political power and the provisions of security to all ethnic groups" in order to protect their vital interests within a unified Bosnia.³ Thus, the Dayton Peace Agreement established the new Bosnian state on a very decentralized administrative structure.

Bosnia and Herzegovina is now made up of two entities: The Republika Srpska (RS) comprises 61 municipalities and the Federation of BiH, which has an

³ David Chandler, Bosnia: Faking Democracy After Dayton, London: Pluto Press, Second Ed., 2000; p. 66.

additional intermediary level of government, has 10 cantons and 81 municipalities. A separate district of Brcko was created as well under international supervision. The BiH State Government consists of a parliamentary assembly, which is divided into a House of Representatives and a House of Peoples; a rotating tripartite presidency (representing each of the three constituent peoples, Bosniak, Croat and Serb); and a Council of Ministers, comprising a Chairman and nine ministers. Besides, the country has thirteen different constitutions, one for the Federal State, one for the RS, one for the FBiH and one for each canton.

The RS is a unitary state with a Presidency, National Assembly and Municipal Councils. On the other hand, the FBiH is extremely decentralized. The Presidency, Vice-Presidency and the office of the Prime minister rotate between the two ethnic groups Bosniaks and Croats. A bicameral system consists of a directly elected House of Representatives and a House of Peoples representing the ten cantonal assemblies. Both entities are responsible for all governmental functions.

Moreover, the main ingredient of the system is power sharing between the different ethnic groups in BiH. In the post-war environment, protection of the rights of the three different ethnic communities through institutional safeguards was vital. Thus, the defense of the vital interests of the ethnic groups provided in the system with high degree of autonomy for the constituent peoples, veto powers and proportional representation according to an ethnic criterion. The system also encompasses diffusion of power from center to the local level, which result in the weakness of the common institutions and their limited powers.⁴ This leads to one of the fundamental problems of BiH that while the FBiH, especially Bosniaks, prefer to strengthen the central government, the RS has a tendency towards a loose federation.

This complex and multiple layers of governance, which was designed to provide maximum protection to all ethnic groups after the end of war, throughout the thesis was argued that neither functioning nor appropriate for building up peace and restructuring the country. The large degree of autonomy given to the ethnic groups had been abused especially by nationalist politicians who managed to remain in power since 1995, and have shown no interest to strengthen the State

⁴ Jens Woelk, 'Federalism and Consociationalism as tools for state (re)-construction? Experience from Bosnia and Herzegovina', Unpublished Paper, EURAC European Academy of Bolzano, 2003, p. 6.

institutions as well as implement the necessary reforms agreed at Dayton in order to integrate the two Entities further.

When it comes to democratization, since international community considers democratization as an important cure for the solution of ethnic tensions in the post-conflict environment the OSCE was given the authority to lay the foundation for representative government and democracy. Democracy aimed to be “inserted through implementing certain institutions and mechanisms” in Bosnia.⁵ However, this external democracy promotion has not resulted in strong institutions safeguarding democracy in BiH. The democratic institutional framework provided by the international community and the mechanisms of democracy are not familiar enough to Bosnian people to ensure their smooth and peaceful functioning. Nevertheless, since governance reform and democratization have increasingly been regarded as the most effective instruments of securing a basis for lasting peace in post-conflict societies, international community aims to contribute to more stable, effective and legitimate forms of governance.

Yet, the stability of the political scene in BiH remains fragile. There is a significant discontent and increasing difficulties between the government and political parties in the coalition to work together.⁶ This has been the unchanging case since the signing of the Dayton Agreement. That is why reluctance of the local representatives to implement the Agreement was resolved by the international community through the direct intervention of High Representative, who gradually acquired the executive and legislative powers as well as the most criticized authority to dismiss any public official including the elected representatives.

Dismissal of the democratically elected politicians by appointed international bureaucrats who are not accountable to the Bosnian people produced tension. The use of the High Representative’s powers have an extremely harmful effect on the democratization process in BiH, since it causes “feelings of injustice and undermines the credibility of democratic institutions.”⁷ Rather than using undemocratic ways to

⁵ Victor D. Bojkov, ‘Democracy in Bosnia and Herzegovina: Post-1995 Political System and its Functioning’, *Southeast European Politics*, vol.4, no.1, May 2003, p. 48.

⁶ ‘Country Report Bosnia and Herzegovina’, *The Economist Intelligence Unit*, London: Patersons Dartford, July 2004, p. 10.

⁷ Roberto Belloni, ‘Bosnia: The Limits of Neocolonial Rule’, *Foreign Policy in Focus*, August 5, 2004, p. 2. (Available on <http://www.fpif.org>).

impose democracy, this study suggests that the alternative should be giving the elected government full sovereignty, the choice to realize how to compromise and bridge the different preferences of the ethnic groups, thus, enable the emergence of self-sustaining democratic institutions for a lasting peace and stability in BiH.

In terms of security sector reform, it was emphasized that the primary task of Dayton implementation lay in the field of security. Soon after the parties signed the Dayton Agreement, NATO launched a big military operation in BiH to realize the military aspects of the Peace Agreement. Unlike governance reform, implementation of the military aspect of the accords is among the most successful of the DPA. Currently, there is a secure atmosphere in Bosnia and irregular troops have been long ago dispatched. Since implementation of the military aspects of the agreement was successful the debate has moved on new areas, such as closer cooperation and the eventual integration of the divided armies though state presidency assumed central command of the armed forces in 2003. Nonetheless, as a result of the poor cooperation of RS with the ICTY throughout 2004, “NATO refused to invite BiH into the Partnership for Peace Program (PfP) at its late June summit in Istanbul.”⁸ Since membership in this program would be the first step toward eventual acceptance to NATO and afterwards European Union it was a big disappointment for the Bosnians.

Another aspect of the security sector reform involves reform of police forces and judicial structures. International Police Task Force (IPTF) was mandated by UN Security Council authorization in 1995 to monitor, advice and train the three ethnically based Bosnian police forces, which were not interested in protecting minorities or encouraging refugee return. Initially IPTF had not executive authority to investigate, arrest or perform other police functions, however, soon managed to influence the local police forces and achieved some success in transforming the Bosnian police, training thousands of police officers to operate in accordance with internationally recognized standards.

⁸ Peter Lippman, ‘Big Changes in Bosnia or Just another Drama?’ Washington Report on Middle East Affairs, vol. 23, Issue 7, September 2004, p. 1.

Nevertheless, the local police could not be counted upon to enforce the law and the “EU decided in February 2002 to provide a follow on mission”⁹ when IPTF withdrew Bosnia. The EUPM was charged with picking up where the IPTF left off, expected to safeguard and build on the work of IPTF’s programs and enhance the capacity and sustainability of state level forces. Moreover, there is a recent effort of the OHR to form a state-level Interior Ministry and reconstruct the country’s separate entity police forces under “a special Police Restructuring Commission headed by former Belgian prime minister Wilfried Marten.”¹⁰ Creation of a single state level police force was not a condition of the Dayton Peace Agreement. This constitutes another step beyond Dayton, another institution with a new mandate, and an obvious example of postponing the transfer of sole responsibility to the local authorities.

The last component of the security sector reform is the rule of law. Without respect for rule of law BiH can not enter into the European structures. However, as it has been shown throughout this study rule of law remains weak in Bosnia and Herzegovina. Instead there is inefficient application of law, corrupt and inadequate courts, divided judicial space and denied reforms which makes respect for law weak in the country.¹¹ That’s why among the list of key reforms envisaged by the international community strengthening the legal system is one of the priorities.

The organization of post-conflict elections has become an integral element of international community’s peace building approach in war torn societies in the last decades. Hence, according to the Dayton Peace Agreement the OSCE had to supervise the preparations and conduct of the elections. While the Dayton Peace Accords stated that elections were to be held by the OSCE on one occasion it orchestrated both general and municipal elections from 1996 until 2000. Yet, only the last elections in 2002 was organized by the local authorities and regarded to “mark important progress toward the consolidation of democracy under domestic

⁹ ‘Policing the Police in Bosnia: A Further Reform Agenda’, International Crisis Group, Balkans Report No. 130, Sarajevo/ Brussels, 10 May 2002, <http://www.crisisweb.org>, p. i.

¹⁰ Bakir Rahmanovic, ‘Bosnia to have state Interior Ministry by year’s end’, *Security Watch*, 6 July 2004, p.1.

¹¹ ‘Courting Disaster: The Misrule of Law in Bosnia and Herzegovina’, International Crisis Group, Balkans Report No. 127, Sarajevo/ Brussels, 25 March 2002, <http://www.crisisweb.org>, p. 1.

control.”¹² Another significance of the last elections was that they were the first in which all state and entity offices were elected for a four years term rather than two.

On the one hand, although the conduct of free and fair elections is guaranteed by the presence of international community, in all electoral rounds the same three nationalist parties won the elections. Hence, the thesis found out that conduct of free and fair elections do not assume that nationalists will not be in power. As a crucial part of a peace building process, post-conflict elections aim to terminate civil wars and contribute sustainable peace building, however, there is a danger that post-conflict elections may entrench and provide legitimacy to authoritarian parties.¹³

As it has been the case in BiH they often contribute to keep nationalist politicians in power who do not have any interest in peace building since their source of power is the status quo. Throughout the years from 1996 international community’s efforts have not been successful in reducing the electoral support of the nationalist political parties or overcoming ethnic fears. Therefore, it is questionable whether a multi-ethnic state might be forged by elections and if such a peace building mechanisms is the right cure.

Human rights protection as an instrument of peace building aims to improve human rights conditions in BiH since massive violation of human rights has been one of the main reasons to intervene. Annex Six of the Dayton Peace Accord called for a “detailed system of human rights protection” in the new state of Bosnia, “including the catalogue of rights to be protected and the machinery to guarantee this protection.”¹⁴ However, the findings of this research are indicating that the human rights situation on the ground remained problematic. At first, there has been violence against minority returnees and the question of war crimes was addressed very slowly and rather insufficiently. Enumeration of human rights provisions in Dayton could not do much in the absence of institutions and actors willing and able to implement them. Therefore, the dissertation supports the idea that though “international

¹² International Observation Mission, International Observation Mission (OSCE, ODIHR, Council of Europe, European Parliament), ‘2002 General Elections Bosnia and Herzegovina, Statement of Preliminary Findings and Conclusions’, Sarajevo, 6 October 2002, p. 1.

¹³ Stephen John Stedman, Donald Rothchild, Elisabeth M. Cousens, Ending Civil Wars The Implementation of Peace Agreements, London: Lynne Rienner Publishers, 2002, pp. 216-217.

¹⁴ Viktor Masenko Mavi, ‘The Dayton Peace Agreement and Human Rights in Bosnia and Herzegovina’, Acta Juridica Hungarica, vol. 42, no. 1-2, 2001, p. 59.

instruments provide standards for the protection of human rights, they alone can not provide promotion and protection of those standards.¹⁵ There is a need for functioning local institutions but “in societies emerging from civil wars such institutions are normally weak or nonexistent.”¹⁶

Besides, punishment of war criminals was identified as one of the areas given priority in human rights concerns. Considering the huge crimes committed against humanity in Bosnia, persecution of war criminals from all sides believed to be essential for reconciliation. That is because conviction of responsible individuals will prevent the whole society particularly Serbian to be blamed for alleged war crimes.¹⁷ However, despite people want to see justice for their victims’ punishment of war criminals has been a very sensitive issue. In all ethnic groups, many publicly indicted persons are seen either heroes, if he/she is from their ethnicity or criminals if he/she is a member of another ethnicity. Yet, having war criminals amongst the people has a destabilizing effect as well, since it leads to accusation of hovering war criminals. Thus, although it could create resentment in the society punishment of war crimes is one of the prerequisites for peace-building and reconciliation. In spite of this, there is a failure of BiH, especially of the Serb entity, to cooperate with the International Criminal Tribunal for the former Yugoslavia (ICTY) in pursuit of persons indicted for war crimes even though Croat and Muslim leaders have reluctantly handed over indictees from their ranks.

The return of refugees and displaced persons has been a subsequent instrument of peace building in BiH although it is not indicated in all sources as an instrument of peace building. Bosnia and Herzegovina is a unique case in this aspect. Towards the end of war approximately half of the Bosnian population, was either forced from their homes or fled to avoid violence and save their lives. Therefore, return of these refugees to their homes has been one of the central promises of the

¹⁵ Tonya L. Putnam, ‘Human Rights and Sustainable Peace’, in Stephen John Stedman, Donald Rothchild, Elisabeth M. Cousens, Ending Civil Wars The Implementation of Peace Agreements, p. 248.

¹⁶ Ibid., p. 248.

¹⁷ Paul R. Williams, Michael P. Scharf, Peace with Justice? War Crimes and Accountability in the Former Yugoslavia, New York: Rowman&Littlefield Publishers, 2002, pp. 12-18.

Dayton Agreement.¹⁸ Its implementation aimed to “reverse the effects of the deliberate mass displacement”, which was the primary tactic of ethnic cleansing.¹⁹

Although the return of refugees was a central premise of Dayton, and many annexes of the Agreement “either depend on refugee return or were created to assist in implementing refugee return”²⁰, the success of the repatriation and return of refugees has been initially very limited. The dissertation underlined that the most important factors negatively influencing the decision of refugees to return include security, employment prospects, bureaucratic inefficiency, and education for their children. In the first few years after the war refugees and displaced people have not returned regardless of the vast investment for reconstruction of the damaged and destroyed property. There was a hostile environment and returnees were not well received. A large number of displaced persons who were occupying the houses of potential returnees from another ethnic group further complicated the return issue.

However, gradually the scale of return by both refugees and internally displaced persons only to the areas where their ethnic group constitutes the majority has changed. Changing psychology of the people both majority and minority, increasing security, and the implementation of the property law since 2001 facilitated the process. Almost ten years after the war significant returns started to occur everywhere even altering the ethnic balance and political atmosphere in some municipalities. The new trend of voluntary return can be a step further for a stable and multinational Bosnian state despite the fact that historical and demographic patterns of settlement in Bosnia will never be restored.²¹ Additionally, it is disputable if refugee repatriation alone is a sign towards peace and reconciliation. This

¹⁸ ‘Dayton Implementation The Return of Refugees’, Special Report 26, The US Institute of Peace, 1997, http://www.usip.org/pubs/specialreports/early/dayton_imp/refugees.html, p. 1.

¹⁹ Elizabeth M. Cousens, Charles K. Cater, Towards Peace in Bosnia Implementing the Dayton Accords, Colorado: Lynne Rienner Publishers, 2001, p. 71.

²⁰ ‘Bosnia’s Refugee Logjam Breaks: Is International Community Ready?’, International Crisis Group, Report No. 95, Sarajevo/Washington/Brussels, 30 May 2000, <http://www.crisisweb.org>, p. 1.

²¹ Dzemal Sokolovic, ‘Final Remarks’, Seventh International Seminar on Democracy and Human Rights in Multiethnic Societies, Konjic, Bosnia and Herzegovina, 16 July 2004. The same point was also raised in ‘The Continuing Challenge of Refugee Return in Bosnia and Herzegovina’, International Crisis Group, Balkan Report No. 137, 13 December 2002, <http://www.crisisweb.org>, p. 1.

dissertation found out that returnees live detached in many places. The statistics about the return of property are also misleading since many refugees and displaced persons, who have claimed their property back, have not physically returned to their original residence. Summing up, though the increasing number of returnees and resolution of the property issue looks promising on the surface the inside story is not that positive.

The last instrument of peace building, civil society development was employed by the international community to contribute toleration, respect and accommodation of diversity in BiH. In this manner, civil society was expected to shape the indigenous initiatives to peace building and complement international efforts. The thesis argued that regardless of all international efforts, provision of financial assistance, support and encouragement for the development of civil society and establishment of local NGOs, civil society in Bosnia remains weak. Moreover, international community's funding of local NGOs does not ensure broad participation. Since many ordinary people do not see the gains of civil society it has a narrow urban base in Bosnia and Herzegovina without any real grassroots impact.

This dissertation attempts to conceptualize peace building through addressing the questions whether peace building is attainable, what are the flaws of the international strategy in peace building and reconciliation after an ethnic struggle, and whether it is possible to adopt the Bosnian experience in war torn societies. Peace building is attainable when international community has clear objectives and standards, utilizes the various instruments of peace building more efficiently by keeping in mind the merits and limitations of each instrument, co-ordinates the military and fragmented civilians tasks under a clear chain of command, and avoids duplication and cross-cutting institutional interests.

Taking into consideration international community's various instruments of peace building in BiH as it was demonstrated throughout the study all have their shortcomings. Furthermore, it was highlighted that beyond shortcomings, particular instruments of peace building in BiH have been controversial, counter-productive and utterly ineffective. Instead of creating self-sustaining institutions the governance reform have created an awkward structure dependent on international community's existence and supervision. International community's role in the post-conflict elections has been rather counter-productive since the outspoken support of the

moderate parties created suspicion among the electorate. Comparatively, so far the most ineffective instrument of peace building in Bosnia and Herzegovina has been civil society development.

The international strategy in peace building needs to be formulated very prudently, especially when scheduling the mandates of the main international institutions of the post conflict peace building mission. It has been shown that the international community's peace building strategy which is based on postponing the transfer of sole responsibility to the local authorities by either regularly extending and re-defining the mandates of the leading international organizations or creating new mandates beyond the Dayton agreement is not fruitful in obtaining the basic objectives of the peace building that is the creation of working structures and institutions in the post-conflict environment. Judging from the many challenges peace building efforts face in post-Dayton BiH, it is obvious that traditional conceptions of peace building have to be reconsidered.

Finally, the assumption of the major international actors such as UN, OSCE and NATO towards peace building that it is a learning process that proceeds with applying the former experience into new cases was addressed. This study unveils that international community's involvement in Kosovo is the product of a similar strategy to BiH, which in practice either repeated the same fruitless methods or tried to build on the experience obtained in Bosnia but failed to heal up the troubles and challenges faced in Kosovo. Although lessons learnt from BiH employed to advance the efficiency of particular peace building instruments, international community in fact adopted the same mechanism and arbitrarily repeated the same faults.

The provisions of UNMIK followed the Dayton Agreement and adopted the same division of powers within military and civilian implementation but with longer mandates and clearer chain of command. Nevertheless, "dualism at the top of the international administration between UN Mission in Kosovo (UNMIK) and NATO's Kosovo Force (KFOR), and significant divisions within UNMIK"²² could not be overcome, which led to mismanagement due to the multiple levels of command among various institutions with different policy priorities.

²² Alexandros Yannis, 'Kosovo Under International Administration', *Survival*, vol. 43, no. 2, p. 32.

Moreover, the same instruments of peace building in BiH are employed in Kosovo regardless of considering their shortcomings. Besides, gradually entrusted executive and legislative powers of the High Representative was given from the very beginning to the Special Representative in Kosovo. Building on the discouraging experience of the IPTF in supervising ethnically divided police forces in Bosnia, UNMIK police force was assigned executive law enforcement authority and the task to establish a police force from the scratch. On the other hand, utilization of the peace building instruments were even more constrained due to the unclear status of Kosovo. Hitherto, obstacles experienced in Bosnia in re-establishing rule of law, building democratic institutions via elections, protection of human rights, punishment of war criminals and strengthening civil society survived in Kosovo.

Thus, this dissertation reveals the need for a novel approach to peace building, and an inventive strategy that can utilize the instruments of peace building in a constructive and efficient manner tailored according to the specificity of each case. A novel approach should take into account deficiency of the international community resulting basically from the division of military and civilian implementations, lack of coordination and communication among various civilian implementation agencies with cross-cutting interests. It should also bear in mind the dangers of extending, redefining or re-creating mandates, thus, prolonging international presence and postponing the transfer of sole authority to the locals. In the light of the shortcomings of various instruments of peace building it should develop a new process not to waste resources but promote efficiency.

Beyond the limitations of the international strategy and instruments of peace building, incentive of the ethnic groups to reconcile and implement the peace building mechanisms should carefully be considered since in lingering ethnic conflicts outsiders have limited influence. While this is easier said than done, this is the challenge peace building operations face in societies torn by ethnic conflicts.

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APPENDICIES

APPENDIX A

DAYTON PEACE AGREEMENT

Table of Contents

1. General Framework Agreement for Peace

2. Annexes

<u>Annex 1A:</u>	Military Aspects of the Peace Settlement & <u>Appendices</u> to Annex 1A
<u>Annex 1B:</u>	Regional Stabilization
<u>Annex 2:</u>	Inter-Entity Boundary Line and Related Issues
<u>Annex 3:</u>	Elections
<u>Annex 4:</u>	Constitution
<u>Annex 5:</u>	Arbitration
<u>Annex 6:</u>	Human Rights
<u>Annex 7:</u>	Refugees and Displaced Persons
<u>Annex 8:</u>	Commission To Preserve National Monument
<u>Annex 9:</u>	Establishment of Bosnia and Herzegovina Public Corporations
<u>Annex 10:</u>	Civilian Implementation of Peace Settlement
<u>Annex 11:</u>	International Police Task Force

1. The General Framework Agreement for Peace in Bosnia and Herzegovina

The Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (the "Parties"),

Recognizing the need for a comprehensive settlement to bring an end to the tragic conflict in the region,

Desiring to contribute toward that end and to promote an enduring peace and stability,

Affirming their commitment to the Agreed Basic Principles issued on September 8, 1995, the Further Agreed Basic Principles issued on September 26, 1995, and the cease-fire agreements of September 14 and October 5, 1995,

Noting the agreement of August 29, 1995, which authorized the delegation of the Federal Republic of Yugoslavia to sign, on behalf of the Republika Srpska, the parts of the peace plan concerning it, with the obligation to implement the agreement that is reached strictly and consequently,

Have agreed as follows:

Article I

The Parties shall conduct their relations in accordance with the principles set forth in the United Nations Charter, as well as the Helsinki Final Act and other documents of the Organization for Security and Cooperation in Europe. In particular, the Parties shall fully respect the sovereign equality of one another, shall settle disputes by peaceful means, and shall refrain from any action, by threat or use of force or otherwise, against the territorial integrity or political independence of Bosnia and Herzegovina or any other State.

Article II

The Parties welcome and endorse the arrangements that have been made concerning the military aspects of the peace settlement and aspects of regional stabilization, as set forth in the Agreements at Annex 1-A and Annex 1-B. The Parties shall fully respect and promote fulfillment of the commitments made in Annex 1-A, and shall comply fully with their commitments as set forth in Annex 1-B.

Article III

The Parties welcome and endorse the arrangements that have been made concerning the boundary demarcation between the two Entities, the Federation of Bosnia and Herzegovina and Republika Srpska, as set forth in the Agreement at Annex 2. The Parties shall fully respect and promote fulfillment of the commitments made therein.

Article IV

The Parties welcome and endorse the elections program for Bosnia and Herzegovina as set forth in Annex 3. The Parties shall fully respect and promote fulfillment of that program.

Article V

The Parties welcome and endorse the arrangements that have been made concerning the Constitution of Bosnia and Herzegovina, as set forth in Annex 4. The Parties shall fully respect and promote fulfillment of the commitments made therein.

Article VI

The Parties welcome and endorse the arrangements that have been made concerning the establishment of an arbitration tribunal, a Commission on Human Rights, a Commission on Refugees and Displaced Persons, a Commission to Preserve National Monuments, and Bosnia and Herzegovina Public Corporations, as set forth in the Agreements at Annexes 5-9. The Parties shall fully respect and promote fulfillment of the commitments made therein.

Article VII

Recognizing that the observance of human rights and the protection of refugees and displaced persons are of vital importance in achieving a lasting peace, the Parties agree to and shall comply fully with the provisions concerning human rights set forth in Chapter One of the Agreement at Annex 6, as well as the provisions concerning refugees and displaced persons set forth in Chapter One of the Agreement at Annex 7.

Article VIII

The Parties welcome and endorse the arrangements that have been made concerning the implementation of this peace settlement, including in particular those pertaining to the civilian (non-military) implementation, as set forth in the Agreement at Annex 10, and the international police task force, as set forth in the Agreement at Annex 11. The Parties shall fully respect and promote fulfillment of the commitments made therein.

Article IX

The Parties shall cooperate fully with all entities involved in implementation of this peace settlement, as described in the Annexes to this Agreement, or which are otherwise authorized by the United Nations Security Council, pursuant to the obligation of all Parties to cooperate in the investigation and prosecution of war crimes and other violations of international humanitarian law.

Article X

The Federal Republic of Yugoslavia and the Republic of Bosnia and Herzegovina recognize each other as sovereign independent States within their international borders. Further aspects of their mutual recognition will be subject to subsequent discussions.

Article XI

This Agreement shall enter into force upon signature.
DONE at Paris, this 14 day of December, 1995, in the Bosnian, Croatian, English and Serbian languages, each text being equally authentic.
For the Republic of Bosnia and Herzegovina
For the Republic of Croatia
For the Federal Republic of Yugoslavia

Witnessed by:
European Union Special Negotiator
For the French Republic
For the Federal Republic of Germany
For the Russian Federation
For the United Kingdom of Great Britain and Northern Ireland
For the United States of America

2. Annexes

Annex 1-A: Agreement on Military Aspects of the Peace Settlement

The Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republika Srpska (hereinafter the "Parties") have agreed as follows:

Article I: General Obligations

1. The Parties undertake to recreate as quickly as possible normal conditions of life in Bosnia and Herzegovina. They understand that this requires a major contribution on their part in which they will make strenuous efforts to cooperate with each other and with the international organizations and agencies which are assisting them on the ground. They welcome the willingness of the international community to send to the region, for a period of approximately one year, a force to assist in implementation of the territorial and other militarily related provisions of the agreement as described herein.
 - a. The United Nations Security Council is invited to adopt a resolution by which it will authorize Member States or regional organizations and arrangements to establish a multinational military Implementation Force (hereinafter "IFOR"). The Parties understand and agree that this Implementation Force may be composed of ground, air and maritime units from NATO and non-NATO nations, deployed to Bosnia and Herzegovina to help ensure compliance with the provisions of this Agreement (hereinafter "Annex"). The Parties understand and agree that the IFOR will begin the implementation of the military aspects of this Annex upon the transfer of authority from the UNPROFOR Commander to the IFOR Commander (hereinafter "Transfer of Authority"), and that until the Transfer of Authority, UNPROFOR will continue to exercise its mandate.
 - b. It is understood and agreed that NATO may establish such a force, which will operate under the authority and subject to the direction and political control of the North Atlantic Council ("NAC") through the NATO chain of command. They undertake to facilitate its operations. The Parties, therefore, hereby agree and freely undertake to fully comply with all obligations set forth in this Annex.
 - c. It is understood and agreed that other States may assist in implementing the military aspects of this Annex. The Parties understand and agree that the modalities of those States' participation will be the subject of agreement between such participating States and NATO.
2. The purposes of these obligations are as follows:

- a. to establish a durable cessation of hostilities. Neither Entity shall threaten or use force against the other Entity, and under no circumstances shall any armed forces of either Entity enter into or stay within the territory of the other Entity without the consent of the government of the latter and of the Presidency of Bosnia and Herzegovina. All armed forces in Bosnia and Herzegovina shall operate consistently with the sovereignty and territorial integrity of Bosnia and Herzegovina;
 - b. to provide for the support and authorization of the IFOR and in particular to authorize the IFOR to take such actions as required, including the use of necessary force, to ensure compliance with this Annex, and to ensure its own protection; and
 - c. to establish lasting security and arms control measures as outlined in Annex 1-B to the General Framework Agreement, which aim to promote a permanent reconciliation between all Parties and to facilitate the achievement of all political arrangements agreed to in the General Framework Agreement.
3. The Parties understand and agree that within Bosnia and Herzegovina the obligations undertaken in this Annex shall be applied equally within both Entities. Both Entities shall be held equally responsible for compliance herewith, and both shall be equally subject to such enforcement action by the IFOR as may be necessary to ensure implementation of this Annex and the protection of the IFOR.

Article II: Cessation of Hostilities

1. The Parties shall comply with the cessation of hostilities begun with the agreement of October 5, 1995 and shall continue to refrain from all offensive operations of any type against each other. An offensive operation in this case is an action that includes projecting forces or fire forward of a Party's own lines. Each Party shall ensure that all personnel and organizations with military capability under its control or within territory under its control, including armed civilian groups, national guards, army reserves, military police, and the Ministry of Internal Affairs Special Police (MUP) (hereinafter "Forces") comply with this Annex. The term "Forces" does not include UNPROFOR, the International Police Task Force referred to in the General Framework Agreement, the IFOR or other elements referred to in Article I, paragraph 1 (c).
2. In carrying out the obligations set forth in paragraph 1, the Parties undertake, in particular, to cease the firing of all weapons and explosive devices except as authorized by this Annex. The Parties shall not place any additional minefields, barriers, or protective obstacles. They shall not engage in patrolling, ground or air reconnaissance forward of their own force positions, or into the Zones of Separation as provided for in Article IV below, without IFOR approval.
3. The Parties shall provide a safe and secure environment for all persons in their respective jurisdictions, by maintaining civilian law enforcement agencies operating in accordance with internationally recognized standards and with respect for internationally recognized human rights and fundamental freedoms, and by taking such other measures as appropriate. The Parties also commit themselves to disarm and disband all armed civilian groups, except for authorized police forces, within 30 days after the Transfer of Authority.
4. The Parties shall cooperate fully with any international personnel including investigators, advisors, monitors, observers, or other personnel in Bosnia and Herzegovina pursuant to the General Framework Agreement, including facilitating free and unimpeded access and movement and by providing such status as is necessary for the effective conduct of their tasks.
5. The Parties shall strictly avoid committing any reprisals, counter-attacks, or any unilateral actions in response to violations of this Annex by another Party. The

Parties shall respond to alleged violations of the provisions of this Annex through the procedures provided in Article VIII.

Article III: Withdrawal of Foreign Forces

1. All Forces in Bosnia and Herzegovina as of the date this Annex enters into force which are not of local origin, whether or not they are legally and militarily subordinated to the Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, or Republika Srpska, shall be withdrawn together with their equipment from the territory of Bosnia and Herzegovina within thirty (30) days. Furthermore, all Forces that remain on the territory of Bosnia and Herzegovina must act consistently with the territorial integrity, sovereignty, and political independence of Bosnia and Herzegovina. In accordance with Article II, paragraph 1, this paragraph does not apply to UNPROFOR, the International Police Task Force referred to in the General Framework Agreement, the IFOR or other elements referred to in Article I, paragraph 1 (c).
2. In particular, all foreign Forces, including individual advisors, freedom fighters, trainers, volunteers, and personnel from neighboring and other States, shall be withdrawn from the territory of Bosnia and Herzegovina in accordance with Article III, paragraph 1.

Article IV: Redeployment of Forces

1. The Republic of Bosnia and Herzegovina and the Entities shall redeploy their Forces in three phases:
2. Phase I
 - a. The Parties immediately after this Annex enters into force shall begin promptly and proceed steadily to withdraw all Forces behind a Zone of Separation which shall be established on either side of the Agreed Cease-Fire Line that represents a clear and distinct demarcation between any and all opposing Forces. This withdrawal shall be completed within thirty (30) days after the Transfer of Authority. The precise Agreed Cease-Fire Line and Agreed Cease-Fire Zone of Separation are indicated on the maps at Appendix A of this Annex.
 - b. The Agreed Cease-Fire Zone of Separation shall extend for a distance of approximately two (2) kilometers on either side of the Agreed Cease-Fire Line. No weapons other than those of the IFOR are permitted in this Agreed Cease-Fire Zone of Separation except as provided herein. No individual may retain or possess any military weapons or explosives within this four kilometer Zone without specific approval of the IFOR. Violators of this provision shall be subject to military action by the IFOR, including the use of necessary force to ensure compliance.
 - c. In addition to the other provisions of this Annex, the following specific provisions shall also apply to Sarajevo and Gorazde:
Sarajevo
 1. Within seven (7) days after the Transfer of Authority, the Parties shall transfer and vacate selected positions along the Agreed Cease-Fire Line according to instructions to be issued by the IFOR Commander.
 2. The Parties shall complete withdrawal from the Agreed Cease-Fire Zone of Separation in Sarajevo within thirty (30) days after the Transfer of Authority, in accordance with Article IV, paragraph 2. The width of this Zone of Separation will be approximately one (1) kilometer on either side of the Agreed Cease-Fire Line. However, this Zone of Separation may be adjusted by the IFOR Commander either to narrow the Zone of Separation to take account of the urban area of Sarajevo or to widen the Zone of Separation up to two (2)

kilometers on either side of the Agreed Cease-Fire Line to take account of more open terrain.

3. Within the Agreed Cease-Fire Zone of Separation, no individual may retain or possess any weapons or explosives, other than a member of the IFOR or the local police exercising official duties as authorized by the IFOR in accordance with Article IV, paragraph 2(b).
4. The Parties understand and agree that violators of subparagraphs (1), (2) and (3) above shall be subject to military action by the IFOR, including the use of necessary force to ensure compliance.

Gorazde

5. The Parties understand and agree that a two lane all-weather road will be constructed in the Gorazde Corridor. Until such road construction is complete, the two interim routes will be used by both Entities.

The Grid coordinates for these alternate routes are (Map References: Defense Mapping Agency 1:50,000 Topographic Line Maps, Series M709, Sheets 2782-1, 2782-2, 2782-3, 2782-4, 2881-4, 2882-1, 2882-2, 2882-3, and 2882-4; Military Grid Reference System grid coordinates referenced to World Geodetic System 84 (Horizontal Datum):

Interim Route 1: From Gorazde (34TCP361365), proceed northeast following Highway 5 along the Drina River to the Ustipraca area (34TCP456395). At that point, proceed north on Highway 19-3 through Rogatica (34TCP393515) continuing northwest past Stienice (34TCP294565) to the road intersection at Podromanija (34TCP208652). From this point, proceed west following Highway 19 to where it enters the outskirts of Sarajevo (34TBP950601).

Interim Route 2: From Gorazde (34TCP361365), proceed south following Highway 20. Follow Highway 20 through Ustinkolina (34TCP218281). Continue south following Highway 20 passing Foca along the west bank of the Drina River (34TCP203195) to a point (34TCP175178) where the route turns west following Highway 18. From this point, follow Highway 18 south of Miljevina (34TCP097204) continuing through Trnovo (34TBP942380) north to the outskirts of Sarajevo where it enters the town at Vaskovici (34TBP868533).

There shall be complete freedom of movement along these routes for civilian traffic. The Parties shall only utilize these interim routes for military forces and equipment as authorized by and under the control and direction of the IFOR. In this regard, and in order to reduce the risk to civilian traffic, the IFOR shall have the right to manage movement of military and civilian traffic from both Entities along these routes.

6. The Parties understand and agree that violators of subparagraph (1) shall be subject to military action by the IFOR, including the use of necessary force to ensure compliance.
7. The Parties pledge as a confidence building measure that they shall not locate any Forces or heavy weapons as defined in paragraph 5 of this Article within two (2) kilometers of the designated interim routes. Where those routes run in or through the designated Zones of Separation, the provisions relating to Zones of Separation in this Annex shall also apply.

- d. The Parties immediately after this Annex enters into force shall begin promptly and proceed steadily to complete the following activities within thirty (30) days after the Transfer of Authority or as determined by the IFOR Commander: (1) remove, dismantle or destroy all mines, unexploded ordnance, explosive devices, demolitions, and barbed or razor wire from the Agreed Cease-Fire Zone of Separation or other areas from which their Forces are withdrawn; (2) mark all known mine emplacements, unexploded ordnance, explosive devices and demolitions within Bosnia and Herzegovina; and (3) remove, dismantle or destroy all mines, unexploded ordnance, explosive devices and demolitions as required by the IFOR Commander.
- e. The IFOR is authorized to direct that any military personnel, active or reserve, who reside within the Agreed Cease-Fire Zone of Separation register with the appropriate IFOR Command Post referred to in Article VI which is closest to their residence.

3. PHASE II (AS REQUIRED IN SPECIFIC LOCATIONS)

This phase applies to those locations where the Inter-Entity Boundary Line does not follow the Agreed Cease-Fire Line.

- a. In those locations in which, pursuant to the General Framework Agreement, areas occupied by one Entity are to be transferred to another Entity, all Forces of the withdrawing Entity shall have forty-five (45) days after the Transfer of Authority to completely vacate and clear this area. This shall include the removal of all Forces as well as the removal, dismantling or destruction of equipment, mines, obstacles, unexploded ordnance, explosive devices, demolitions, and weapons. In those areas being transferred to a different Entity, in order to provide an orderly period of transition, the Entity to which an area is transferred shall not put Forces in this area for ninety (90) days after the Transfer of Authority or as determined by the IFOR Commander. The Parties understand and agree that the IFOR shall have the right to provide the military security for these transferred areas from thirty (30) days after the Transfer of Authority until ninety-one (91) days after the Transfer of Authority, or as soon as possible as determined by the IFOR Commander, when these areas may be occupied by the Forces of the Entity to which they are transferred. Upon occupation by the Entity to which the area is transferred, a new Zone of Separation along the Inter-Entity Boundary Line as indicated on the map at Appendix A shall be established by the IFOR, and the Parties shall observe the same limitations on the presence of Forces and weapons in this Zone as apply to the Agreed Cease-Fire Zone of Separation.
- b. The IFOR is authorized to direct that any military personnel, active or reserve, who reside within the Inter-Entity Zone of Separation register with the appropriate IFOR Command Post referred to in Article VI which is closest to their residence.

4. GENERAL. The following provisions apply to Phases I and II:

- a. In order to provide visible indication, the IFOR shall supervise the selective marking of the Agreed Cease-Fire Line and its Zone of Separation, and the Inter-Entity Boundary Line and its Zone of Separation. Final authority for placement of such markers shall rest with the IFOR. All Parties understand and agree that the Agreed Cease-Fire Line and its Zone of Separation and the Inter-Entity Boundary Line and its Zone of Separation are defined by the maps and documents agreed to as part of the General Framework Agreement and not the physical location of markers.

- b. All Parties understand and agree that they shall be subject to military action by the IFOR, including the use of necessary force to ensure compliance, for:
 1. failure to remove all their Forces and unauthorized weapons from the four (4) kilometer Agreed Cease-Fire Zone of Separation within thirty (30) days after the Transfer of Authority, as provided in Article IV, paragraph 2(a) and (b) above;
 2. failure to vacate and clear areas being transferred to another Entity within forty-five (45) days after the Transfer of Authority, as provided in Article IV, paragraph 3(a) above;
 3. deploying Forces within areas transferred from another Entity earlier than ninety (90) days after the Transfer of Authority or as determined by the IFOR Commander, as provided in Article IV, paragraph 3(a) above;
 4. failure to keep all Forces and unauthorized weapons outside the Inter-Entity Zone of Separation after this Zone is declared in effect by the IFOR, as provided in Article IV, paragraph 3(a) above; or
 5. violation of the cessation of hostilities as agreed to by the Parties in Article II.

5. PHASE III

The Parties pledge as confidence building measures that they shall:

- a. within 120 days after the Transfer of Authority withdraw all heavy weapons and Forces to cantonment/barracks areas or other locations as designated by the IFOR Commander. "Heavy weapons" refers to all tanks and armored vehicles, all artillery 75 mm and above, all mortars 81 mm and above, and all anti-aircraft weapons 20 mm and above. This movement of these Forces to cantonment/barracks areas is intended to enhance mutual confidence by the Parties in the success of this Annex and help the overall cause of peace in Bosnia and Herzegovina.
 - b. within 120 days after the Transfer of Authority demobilize Forces which cannot be accommodated in cantonment/barracks areas as provided in subparagraph (a) above. Demobilization shall consist of removing from the possession of these personnel all weapons, including individual weapons, explosive devices, communications equipment, vehicles, and all other military equipment. All personnel belonging to these Forces shall be released from service and shall not engage in any further training or other military activities.
6. Notwithstanding any other provision of this Annex, the Parties understand and agree that the IFOR has the right and is authorized to compel the removal, withdrawal, or relocation of specific Forces and weapons from, and to order the cessation of any activities in, any location in Bosnia and Herzegovina whenever the IFOR determines such Forces, weapons or activities to constitute a threat or potential threat to either the IFOR or its mission, or to another Party. Forces failing to redeploy, withdraw, relocate, or to cease threatening or potentially threatening activities following such a demand by the IFOR shall be subject to military action by the IFOR, including the use of necessary force to ensure compliance, consistent with the terms set forth in Article I, paragraph 3.

Article V: Notifications

1. Immediately upon establishment of the Joint Military Commission provided for in Article VIII, each Party shall furnish to the Joint Military Commission information regarding the positions and descriptions of all known unexploded ordnance, explosive devices, demolitions, minefields, booby traps, wire entanglements, and all other physical or military hazards to the safe movement of any personnel within Bosnia and Herzegovina, as well as the location of lanes through the Agreed Cease-

Fire Zone of Separation which are free of all such hazards. The Parties shall keep the Joint Military Commission updated on changes in this information.

2. Within thirty (30) days after the Transfer of Authority, each Party sFOR, including, if necessary, the emergency withdrawal of UNCRO Forces.

The Parties understand and agree that the IFOR shall have the right to fulfill its supporting tasks, within the limits of its assigned principal tasks and available resources, and on request, which include the following:

Within 120 days after the Transfer of Authority, the Parties shall furnish to the Joint Military Commission the following specific information regarding the status of their Forces in Bosnia and Herzegovina and shall keep the Joint Military Commission updated on changes in this information:

- location, type, strengths of personnel and weaponry of all Forces;
- maps depicting the information in sub-paragraph (a) above;
- positions and descriptions of fortifications, minefields, unexploded ordnance, explosive devices, demolitions, barriers, and other man-made obstacles, ammunition dumps, command headquarters, and communications networks;
- and
- any further information of a military nature as requested by the IFOFOR, including, if necessary, the emergency withdrawal of UNCRO Forces.

The Parties understand and agree that the IFOR shall have the right to fulfill its supporting tasks, within the limits of its assigned principal tasks and available resources, and on request, which include the following:

Article VI: Deployment of the Implementation Force

1. Recognizing the need to provide for the effective implementation of the provisions of this Annex, and to ensure compliance, the United Nations Security Council is invited to authorize Member States or regional organizations and arrangements to establish the IFOR acting under Chapter VII of the United Nations Charter. The Parties understand and agree that this Implementation Force may be composed of ground, air and maritime units from NATO and non-NATO nations, deployed to BoFOR, including, if necessary, the emergency withdrawal of UNCRO Forces.

The Parties understand and agree that the IFOR shall have the right to fulfill its supporting tasks, within the limits of its assigned principal tasks and available resources, and on request, which include the following:

Bosnia and Herzegovina to help ensure compliance with the provisions of this Annex. The Parties understand and agree that the IFOR shall have the right to deploy on either side of the Inter-Entity Boundary Line and throughout Bosnia and Herzegovina.

- a. The Parties understand and agree that the IFOR shall have the right:
 - a. to monitor and help ensure compliance by all Parties with this Annex (including, in particular, withdrawal and redeployment of Forces within agreedFOR, including, if necessary, the emergency withdrawal of UNCRO Forces.
 - b. The Parties understand and agree that the IFOR shall have the right to fulfill its supporting tasks, within the limits of its assigned principal tasks and available resources, and on request, which include the following:
 - periods, and the establishment of Zones of Separation);
 - a. to authorize and supervise the selective marking of the Agreed Cease-Fire Line and its Zone of Separation and the Inter-Entity Boundary Line and its Zone of Separation as established by the General Framework Agreement;
 - b. to establish liaison arrangements with local civilian and military authorities and other international organizations as necessary for the accomplishment of its mission; and

- c. to assist in the withdrawal of UN Peace Forces not transferred to the IFOR, including, if necessary, the emergency withdrawal of UNCRO Forces.
- c. The Parties understand and agree that the IFOR shall have the right to fulfill its supporting tasks, within the limits of its assigned principal tasks and available resources, and on request, which include the following:
 - a. to help create secure conditions for the conduct by others of other tasks associated with the peace settlement, including free and fair elections;
 - b. to assist the movement of organizations in the accomplishment of humanitarian missions;
 - c. to assist the UNHCR and other international organizations in their humanitarian missions;
 - d. to observe and prevent interference with the movement of civilian populations, refugees, and displaced persons, and to respond appropriately to deliberate violence to life and person; and,
 - e. to monitor the clearing of minefields and obstacles.
- d. The Parties understand and agree that further directives from the NAC may establish additional duties and responsibilities for the IFOR in implementing this Annex.
- e. The Parties understand and agree that the IFOR Commander shall have the authority
- f. to monitor the clearing of minefields and obstacles.

The Parties understand and agree that further directives from the NAC may establish additional duties and responsibilities for the IFOR in implementing this Annex.

The Parties understand and agree that the IFOR Commander shall have the authority, without interference or permission of any Party, to do all that the Commander judges necessary and proper, including the use of military force, to protect the IFOR and to carry out the responsibilities listed above in paragraphs 2, 3 and 4, and they shall comply in all respects with the IFOR requirements.

The Parties understand and agree that in carrying out its responsibilities, the IFOR shall have the unimpeded right to observe, monitor, and inspect any Forces, facility or activity in Bosnia and Herzegovina that the IFOR believes may have military capability. The Army of the Republic of Bosnia and Herzegovina, the Croat Defense Council Forces, and the Army of Republika Srpska shall establish Command Posts at IFOR brigade, battalion, or other levels which shall be co-located with specific IFOR command Vocations, as determined by the IFOR Commander. These Command Posts shall exercise command and control over all Forces of their respective sides which are located within ten (10) kilometers of the Agreed Cease-Fire Line or Inter-Entity Boundary Line, as specified by the IFOR. The Command Posts shall provide, at the request of the IFOR, timely status reports on organizations and troop levels in their areas.

In addition to co-located Command Posts, the Army of the Republic of Bosnia and Herzegovina, the Croat Defense Council Forces, and the Army of Republika Srpska shall maintain liaison teams to be co-located with the IFOR Command, as determined by the IFOR Commander, for the purpose of fostering communication, and preserving the overall cessation of hostilities.

Air and surface movements in Bosnia and Herzegovina shall be governed by the following provisions

- a. The IFOR shall have complete and unimpeded freedom of movement by ground, air, and water throughout Bosnia and Herzegovina. It shall have the right to bivouac, maneuver, billet, and utilize any areas or facilities to carry out its responsibilities as required for its support, training, and operations, with such advance notice as may be practicable. The IFOR and its personnel shall not be liable for any damages to civilian or government property caused by combat or combat related activities. Roadblocks, checkpoints or other impediments to IFOR freedom of movement shall constitute a breach of this Annex and the violating Party shall be subject to military action by the IFOR, including the use of necessary force to ensure compliance with this Annex.

- b. The IFOR Commander shall have sole authority to establish rules and procedures governing command and control of airspace over Bosnia and Herzegovina to enable civilian air traffic and non-combat air activities by the military or civilian authorities in Bosnia and Herzegovina, or if necessary to terminate civilian air traffic and non-combat air activities.
 1. The Parties understand and agree there shall be no military air traffic, or non-military aircraft performing military missions, including reconnaissance or logistics, without the express permission of the IFOR Commander. The only military aircraft that may be authorized to fly in Bosnia and Herzegovina are those being flown in support of the IFOR, except with the express permission of the IFOR. Any flight activities by military fixed-wing or helicopter aircraft within Bosnia and Herzegovina without the express permission of the IFOR Commander are subject to military action by the IFOR, including the use of necessary force to ensure compliance.
 2. All air early warning, air defense, or fire control radars shall be shut down within 72 hours after this Annex enters into force, and shall remain inactive unless authorized by the IFOR Commander. Any use of air traffic, air early warning, air defense or fire control radars not authorized by the IFOR Commander shall constitute a breach of this Annex and the violating Party shall be subject to military action by the IFOR, including the use of necessary force to ensure compliance.
 3. The Parties understand and agree that the IFOR Commander will implement the transfer to civilian control of air space over Bosnia and Herzegovina to the appropriate institutions of Bosnia and Herzegovina in a gradual fashion consistent with the objective of the IFOR to ensure smooth and safe operation of an air traffic system upon IFOR departure.
- c. The IFOR Commander is authorized to promulgate appropriate rules for the control and regulation of surface military traffic throughout Bosnia and Herzegovina, including the movement of the Forces of the Parties. The Joint Military Commission referred to in Article VIII may assist in the development and promulgation of rules related to military movement.

The IFOR shall have the right to utilize such means and services as required to ensure its full ability to communicate and shall have the right to the unrestricted use of all of the electromagnetic spectrum for this purpose. In implementing this right, the IFOR shall make every reasonable effort to coordinate with and take into account the needs and requirements of the appropriate authorities.

All Parties shall accord the IFOR and its personnel the assistance, privileges, and immunities set forth at Appendix B of this Annex, including the unimpeded transit through, to, over and on the territory of all Parties.

All Parties shall accord any military elements as referred to in Article I, paragraph 1(c) and their personnel the assistance, privileges and immunities referred to in Article VI, paragraph 11.

Article VII: Withdrawal of UNPROFOR

It is noted that as a consequence of the forthcoming introduction of the IFOR into the Republic of Bosnia and Herzegovina, the conditions for the withdrawal of the UNPROFOR established by United Nations Security Council Resolution 743 have been met. It is requested that the United Nations, in consultation with NATO, take all necessary steps to withdraw the UNPROFOR from Bosnia and Herzegovina, except those parts incorporated into the IFOR.

Article VIII: Establishment of a Joint Military Commission

1. A Joint Military Commission (the "Commission") shall be established with the deployment of the IFOR to Bosnia and Herzegovina.
2. The Commission shall:

- a. Serve as the central body for all Parties to this Annex to bring any military complaints, questions, or problems that require resolution by the IFOR Commander, such as allegations of cease-fire violations or other noncompliance with this Annex.
 - b. Receive reports and agree on specific actions to ensure compliance with the provisions of this Annex by the Parties.
 - c. Assist the IFOR Commander in determining and implementing a series of local transparency measures between the Parties.
3. The Commission shall be chaired by the IFOR Commander or his or her representative and consist of the following members:
 - a. the senior military commander of the forces of each Party within Bosnia and Herzegovina;
 - b. other persons as the Chairman may determine;
 - c. each Party to this Annex may also select two civilians who shall advise the Commission in carrying out its duties;
 - d. the High Representative referred to in the General Framework Agreement or his or her nominated representative shall attend Commission meetings, and offer advice particularly on matters of a political-military nature.
4. The Commission shall not include any persons who are now or who come under indictment by the International Tribunal for the Former Yugoslavia.
5. The Commission shall function as a consultative body for the IFOR Commander. To the extent possible, problems shall be solved promptly by mutual agreement. However, all final decisions concerning its military matters shall be made by the IFOR Commander.
6. The Commission shall meet at the call of the IFOR Commander. The High Representative may when necessary request a meeting of the Commission. The Parties may also request a meeting of the Commission.
7. The IFOR Commander shall have the right to decide on military matters, in a timely fashion, when there are overriding considerations relating to the safety of the IFOR or the Parties' compliance with the provisions of this Annex.
8. The Commission shall establish subordinate military commissions for the purpose of providing assistance in carrying out the functions described above. Such commissions shall be at the brigade and battalion level or at other echelons as the local IFOR Commander shall direct and be composed of commanders from each of the Parties and the IFOR. The representative of the High Representative shall attend and offer advice particularly on matters of a political-military nature. The local IFOR Commander shall invite local civilian authorities when appropriate.
9. Appropriate liaison arrangements will be established between the IFOR Commander and the High Representative to facilitate the discharge of their respective responsibilities.

Article IX: Prisoner Exchanges

1. The Parties shall release and transfer without delay all combatants and civilians held in relation to the conflict (hereinafter "prisoners"), in conformity with international humanitarian law and the provisions of this Article.
 - a. The Parties shall be bound by and implement such plan for release and transfer of all prisoners as may be developed by the ICRC, after consultation with the Parties.
 - b. The Parties shall cooperate fully with the ICRC and facilitate its work in implementing and monitoring the plan for release and transfer of prisoners.
 - c. No later than thirty (30) days after the Transfer of Authority, the Parties shall release and transfer all prisoners held by them.
 - d. In order to expedite this process, no later than twenty-one (21) days after this Annex enters into force, the Parties shall draw up comprehensive lists of prisoners and shall provide such lists to the ICRC, to the other Parties, and

- to the Joint Military Commission and the High Representative. These lists shall identify prisoners by nationality, name, rank (if any) and any internment or military serial number, to the extent applicable.
- e. The Parties shall ensure that the ICRC enjoys full and unimpeded access to all places where prisoners are kept and to all prisoners. The Parties shall permit the ICRC to privately interview each prisoner at least forty-eight (48) hours prior to his or her release for the purpose of implementing and monitoring the plan, including determination of the onward destination of each prisoner.
 - f. The Parties shall take no reprisals against any prisoner or his/her family in the event that a prisoner refuses to be transferred.
 - g. Notwithstanding the above provisions, each Party shall comply with any order or request of the International Tribunal for the Former Yugoslavia for the arrest, detention, surrender of or access to persons who would otherwise be released and transferred under this Article, but who are accused of violations within the jurisdiction of the Tribunal. Each Party must detain persons reasonably suspected of such violations for a period of time sufficient to permit appropriate consultation with Tribunal authorities.
2. In those cases where places of burial, whether individual or mass, are known as a matter of record, and graves are actually found to exist, each Party shall permit graves registration personnel of the other Parties to enter, within a mutually agreed period of time, for the limited purpose of proceeding to such graves, to recover and evacuate the bodies of deceased military and civilian personnel of that side, including deceased prisoners.

Article X: Cooperation

The Parties shall cooperate fully with all entities involved in implementation of this peace settlement, as described in the General Framework Agreement, or which are otherwise authorized by the United Nations Security Council, including the International Tribunal for the Former Yugoslavia.

Article XI: Notification to Military Commands

Each Party shall ensure that the terms of this Annex, and written orders requiring compliance, are immediately communicated to all of its Forces.

Article XII: Final Authority to Interpret

In accordance with Article I, the IFOR Commander is the final authority in theatre regarding interpretation of this agreement on the military aspects of the peace settlement, of which the Appendices constitute an integral part.

Article XIII: Entry into Force

This Annex shall enter into force upon signature.

For the Republic of Bosnia and Herzegovina

For the Federation of Bosnia and Herzegovina

For the Republika Srpska

Endorsed:

For the Republic of Croatia

Endorsed:

For the Federal Republic of Yugoslavia

Appendices to Annex 1A

Agreement on the Military Aspects of the Peace Settlement

Appendix A to Annex 1-A consists of this document together with (a) a 1:600,000 scale UNPROFOR road map consisting of one map sheet, attached hereto; and (b) a 1:50,000 scale Topographic Line Map, to be provided as described below.

On the basis of the attached 1:600,000 scale map, the Parties request that the United States Department of Defense provide a 1:50,000 scale Topographic Line Map, consisting of as

many map sheets as necessary, in order to provide a more precise delineation of the lines and zones indicated. Such map shall be incorporated as an integral part of this Appendix, and the Parties agree to accept such map as controlling and definitive for all purposes.

For the Republic of Bosnia and Herzegovina

For the Federation of Bosnia and Herzegovina

For the Republika Srpska

Endorsed:

For the Republic of Croatia

Endorsed:

For the Federal Republic of Yugoslavia

Appendix B to Annex 1A

Agreement Between the Republic of Bosnia and Herzegovina and the North Atlantic Treaty Organisation (NATO) Concerning the Status of NATO and its Personnel

The Republic of Bosnia and Herzegovina and the North Atlantic Treaty Organisation have agreed as follows:

1. For the purposes of the present agreement, the following expressions shall have the meanings hereunder assigned to them:
 - "the Operation" means the support, implementation, preparation and participation by NATO and NATO personnel in a peace plan in Bosnia and Herzegovina or a possible withdrawal of U.N. Forces from former Yugoslavia;
 - "NATO personnel" means the civilian and military personnel of the North Atlantic Treaty Organisation with the exception of personnel locally hired;
 - "NATO" means the North Atlantic Treaty Organisation, its subsidiary bodies, its military Headquarters and all its constituent national elements/units acting in support of, preparing and participating in the Operation;
 - "Facilities" mean all premises and land required for conducting the operational, training and administrative activities by NATO for the Operation as well as for accommodations of NATO personnel.
2. The provisions of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 concerning experts on mission shall apply mutatis mutandis to NATO personnel involved in the Operation, except as otherwise provided for in the present agreement. Moreover NATO, its property and assets shall enjoy the privileges and immunities specified in that convention and as stated in the present agreement.
3. All personnel enjoying privileges and immunities under this Agreement shall respect the laws of the Republic of Bosnia and Herzegovina insofar as it is compatible with the entrusted tasks/mandate and shall refrain from activities not compatible with the nature of the Operation.
4. The Government of the Republic of Bosnia and Herzegovina recognizes the need for expeditious departure and entry procedures for NATO personnel. They shall be exempt from passport and visa regulations and the registration requirements applicable to aliens. NATO personnel shall carry identification which they may be requested to produce for the authorities of the Republic of Bosnia and Herzegovina but operations, training and movement shall not be allowed to be impeded or delayed by such requests.
5. NATO military personnel shall normally wear uniforms, and NATO personnel may possess and carry arms if authorized to do so by their orders. The authorities of the Republic of Bosnia and Herzegovina shall accept as valid, without tax or fee, drivers' licenses and permits issued to NATO personnel by their respective national authorities.
6. NATO shall be permitted to display the NATO flag and/or national flags of its constituent national elements/units on any NATO uniform, means of transport or facility.

7. NATO military personnel under all circumstances and at all times shall be subject to the exclusive jurisdiction of their respective national elements in respect of any criminal or disciplinary offenses which may be committed by them in the Republic of Bosnia and Herzegovina. NATO and the authorities of the Republic of Bosnia and Herzegovina shall assist each other in the exercise of their respective jurisdictions.
8. As experts on mission, NATO personnel shall be immune from personal arrest or detention. NATO personnel mistakenly arrested or detained shall immediately be turned over to NATO authorities.
9. NATO personnel shall enjoy, together with their vehicles, vessels, aircraft and equipment, free and unrestricted passage and unimpeded access throughout the Republic of Bosnia and Herzegovina including airspace and territorial waters of the Republic of Bosnia and Herzegovina. This shall include, but not be limited to, the right of bivouac, maneuver, billet, and utilization of any areas or facilities as required for support, training, and operations. NATO shall be exempt from providing inventories or other routine customs documentation on personnel, vehicles, vessels, aircraft, equipment, supplies, and provisions entering, exiting, or transiting the territory of the Republic of Bosnia and Herzegovina in support of the Operation. The authorities of the Republic of Bosnia and Herzegovina shall facilitate with all appropriate means all movements of personnel, vehicles, vessels, aircraft, equipment or supplies, through ports, airports or roads used. Vehicles, vessels and aircraft used in support of the Operation shall not be subject to licensing or registration requirements, nor commercial insurance. NATO will use airports, roads and ports without payment of duties, dues, tolls or charges. However, NATO shall not claim exemption from reasonable charges for services requested and received, but operations/movement and access shall not be allowed to be impeded pending payment for such services.
10. NATO personnel shall be exempt from taxation by the Republic of Bosnia and Herzegovina on the salaries and emoluments received from NATO and on any income received from outside the Republic of Bosnia and Herzegovina.
11. NATO personnel and their tangible movable property imported into or acquired in the Republic of Bosnia and Herzegovina shall also be exempt from all identifiable taxes by the Republic of Bosnia and Herzegovina, except municipal rates for services enjoyed, and from all registration fees and related charges.
12. NATO shall be allowed to import and to export free of duty or other restriction equipment, provisions, and supplies, necessary for the Operation, provided such goods are for the official use of NATO or for sale via commissaries or canteens provided for NATO personnel. Goods sold shall be solely for the use of NATO personnel and not transferable to other parties.
13. It is recognized by the Government of the Republic of Bosnia and Herzegovina that the use of communications channels shall be necessary for the Operation. NATO shall be allowed to operate its own internal mail and telecommunications services, including broadcast services. This shall include the right to utilize such means and services as required to assure full ability to communicate, and the right to use all of the electro-magnetic spectrum for this purpose, free of cost. In implementing this right, NATO shall make every reasonable effort to coordinate with and take into account the needs and requirements of appropriate authorities of the Republic of Bosnia and Herzegovina.
14. The Government of the Republic of Bosnia and Herzegovina shall provide, free of cost, such facilities NATO needs for the preparation for and execution of the Operation. The Government of the Republic of Bosnia and Herzegovina shall assist NATO in obtaining, at the lowest rate, the necessary utilities such as electricity, water and other resources necessary for the Operation.
15. Claims for damage or injury to Government personnel or property, or to private personnel or property of the Republic of Bosnia and Herzegovina shall be submitted

through governmental authorities of the Republic of Bosnia and Herzegovina to the designated NATO Representatives.

16. NATO shall be allowed to contract direct with suppliers for services and supplies in the Republic of Bosnia and Herzegovina without payment of tax or duties. Such services and supplies shall not be subject to sales and other taxes. NATO may hire local personnel who shall remain subject to local laws and regulations. However, local personnel hired by NATO shall:
 - a. be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
 - b. be immune from national services and/or national military service obligations;
 - c. be exempt from taxation on the salaries and emoluments paid to them by NATO.
17. NATO may in the conduct of the Operation, have need to make improvements or modifications to certain infrastructure of the Republic of Bosnia and Herzegovina such as roads, utility systems, bridges, tunnels, buildings, etc. Any such improvements or modifications of a non-temporary nature shall become part of and in the same ownership as that infrastructure. Temporary improvements or modifications may be removed at the discretion of the NATO Commander, and the facility returned to as near its original condition as possible.
18. Failing any prior settlement, disputes with regard to the interpretation or application of the present agreement shall be settled between the Republic of Bosnia and Herzegovina and NATO Representatives by diplomatic means.
19. The provisions of this agreement shall also apply to the civilian and military personnel, property and assets of national elements/units of NATO states, acting in connection to the Operation or the relief for the civilian population which however remain under national command and control.
20. Supplemental arrangements may be concluded to work out details for the Operation also taking into account its further development.
21. The Government of the Republic of Bosnia and Herzegovina shall accord non-NATO states and their personnel participating in the Operation the same privileges and immunities as those accorded under this agreement to NATO states and personnel.
22. The provisions of this agreement shall remain in force until completion of the Operation or as the Parties otherwise agree.
23. This Agreement shall enter into force upon signature.

Done at Wright-Patterson Air Force Base, Ohio on November 21, 1995 and in Paris on December 14, 1995.

For the Republic of Bosnia and Herzegovina:

For the North Atlantic Treaty Organisation:

Annex 1-B: Agreement on Regional Stabilization

The Republic of Bosnia and Herzegovina, the Republic of Croatia, the Federal Republic of Yugoslavia, the Federation of Bosnia and Herzegovina, and the Republika Srpska (hereinafter the "Parties") have agreed as follows:

Article I: General Obligations

The Parties agree that establishment of progressive measures for regional stability and arms control is essential to creating a stable peace in the region. To this end, they agree on the importance of devising new forms of cooperation in the field of security aimed at building transparency and confidence and achieving balanced and stable defense force levels at the lowest numbers consistent with the Parties' respective security and the need to avoid an arms race in the region. They have approved the following elements for a regional structure for stability.

Article II: Confidence- and Security-Building Measures in Bosnia and Herzegovina

Within seven days after this Agreement (hereinafter "Annex") enters into force, the Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republika Srpska shall at an appropriately high political level commence negotiations under the auspices of the Organization for Security and Cooperation in Europe (hereinafter "OSCE") to agree upon a series of measures to enhance mutual confidence and reduce the risk of conflict, drawing fully upon the 1994 Vienna Document of the Negotiations on Confidence- and Security-Building Measures of the OSCE. The objective of these negotiations is to agree upon an initial set of measures within forty-five (45) days after this Annex enters into force including, but not necessarily limited to, the following:

- a. restrictions on military deployments and exercises in certain geographical areas;
- b. restraints on the reintroduction of foreign Forces in light of Article III of Annex 1-A to the General Framework Agreement;
- c. restrictions on locations of heavy weapons;
- d. withdrawal of Forces and heavy weapons to cantonment/barracks areas or other designated locations as provided in Article IV of Annex 1-A;
- e. notification of disbandment of special operations and armed civilian groups;
- f. notification of certain planned military activities, including international military assistance and training programs;
- g. identification of and monitoring of weapons manufacturing capabilities;
- h. immediate exchange of data on the holdings of the five Treaty on Conventional Armed Forces in Europe (hereinafter "CFE") weapons categories as defined in the CFE Treaty, with the additional understanding that artillery pieces will be defined as those of 75mm calibre and above; and
- i. immediate establishment of military liaison missions between the Chiefs of the Armed Forces of the Federation of Bosnia and Herzegovina and the Republika Srpska;

Article III: Regional Confidence- and Security-Building Measures

To supplement the measures in Article II above on a wider basis, the Parties agree to initiate steps toward a regional agreement on confidence- and security-building measures. The Parties agree:

- a. not to import any arms for ninety (90) days after this Annex enters into force;
- b. not to import for 180 days after this Annex enters into force or until the arms control agreement referred to in Article IV below takes effect, whichever is the earlier, heavy weapons or heavy weapons ammunition, mines, military aircraft, and helicopters. Heavy weapons refers to all tanks and armored vehicles, all artillery 75 mm and above, all mortars 81 mm and above, and all anti-aircraft weapons 20 mm and above.

Article IV: Measures for Sub-Regional Arms Control

1. Recognizing the importance of achieving balanced and stable defense force levels at the lowest numbers consistent with their respective security, and understanding that the establishment of a stable military balance based on the lowest level of armaments will be an essential element in preventing the recurrence of conflict, the Parties within thirty (30) days after this Annex enters into force shall commence negotiations under the auspices of the OSCE to reach early agreement on levels of armaments consistent with this goal. Within thirty (30) days after this Annex enters into force, the Parties shall also commence negotiations on an agreement establishing voluntary limits on military manpower.
2. The Parties agree that the armaments agreement should be based at a minimum on the following criteria: population size, current military armament holdings, defense needs, and relative force levels in the region.
 - a.
 - b. The agreement shall establish numerical limits on holdings of tanks, artillery, armored combat vehicles, combat aircraft, and attack helicopters,

as defined in the relevant sections of the CFE Treaty, with the additional understanding that artillery pieces will be defined as those of 75 mm calibre and above.

- c. In order to establish a baseline, the Parties agree to report within thirty (30) days after this Annex enters into force their holdings as defined in subparagraph (a) above, according to the format prescribed in the 1992 Vienna Document of the OSCE.
 - d. This notification format shall be supplemented to take into account the special considerations of the region.
3. The Parties agree to complete within 180 days after this Annex enters into force the negotiations above on agreed numerical limits on the categories referred to in paragraph 2(a) of this Article. If the Parties fail to agree to such limits within 180 days after this Annex enters into force, the following limits shall apply, according to a ratio of 5:2:2 based on the approximate ratio of populations of the Parties:
1. the baseline shall be the determined holdings of the Federal Republic of Yugoslavia (hereinafter the "baseline");
 2. the limits for the Federal Republic of Yugoslavia shall be seventy-five (75) percent of the baseline;
 3. the limits for the Republic of Croatia shall be thirty (30) percent of the baseline;
 4. the limits for Bosnia and Herzegovina shall be thirty (30) percent of the baseline; and
 5. the allocations for Bosnia and Herzegovina will be divided between the Entities on the basis of a ratio of two (2) for the Federation of Bosnia and Herzegovina and one (1) for the Republika Srpska.
4. The OSCE will assist the Parties in their negotiations under Articles II and IV of this Annex and in the implementation and verification (including verification of holdings declarations) of resulting agreements.

Article V: Regional Arms Control Agreement

The OSCE will assist the Parties by designating a special representative to help organize and conduct negotiations under the auspices of the OSCE Forum on Security Cooperation ("FSC") with the goal of establishing a regional balance in and around the former Yugoslavia. The Parties undertake to cooperate fully with the OSCE to that end and to facilitate regular inspections by other parties. Further, the Parties agree to establish a commission together with representatives of the OSCE for the purpose of facilitating the resolution of any disputes that might arise.

Article VI: Entry into Force

This Annex shall enter into force upon signature.

For the Republic of Bosnia and Herzegovina

For the Republic of Croatia

For the Federal Republic of Yugoslavia

For the Federation of Bosnia and Herzegovina

For the Republika Srpska

Annex 2: Agreement on Inter-Entity Boundary Line and Related Issues

The Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska (the "Parties") have agreed as follows:

Article I: Inter-Entity Boundary Line

The boundary between the Federation of Bosnia and Herzegovina and the Republika Srpska (the "Inter-Entity Boundary Line") shall be as delineated on the map at the Appendix.

Article II: Adjustment by the Parties

The Parties may adjust the Inter-Entity Boundary Line only by mutual consent. During the period in which the multinational military Implementation Force ("IFOR") is deployed

pursuant to Annex 1-A to the General Framework Agreement, the Parties shall consult with the IFOR Commander prior to making any agreed adjustment and shall provide notification of such adjustment to the IFOR Commander.

Article III: Rivers

1. Where the Inter-Entity Boundary Line follows a river, the line shall follow natural changes (accretion or erosion) in the course of the river unless otherwise agreed. Artificial changes in the course of the river shall not affect the location of the Inter-Entity Boundary Line unless otherwise agreed. No artificial changes may be made except by agreement among the Parties.
2. In the event of sudden natural changes in the course of the river (avulsion or cutting of new bed), the line shall be determined by mutual agreement of the Parties. If such event occurs during the period in which the IFOR is deployed, any such determination shall be subject to the approval of the IFOR Commander.

Article IV: Delineation and Marking

1. The line on the 1:50,000 scale map to be provided for the Appendix delineating the Inter-Entity Boundary Line, and the lines on the 1:50,000 scale map to be provided for Appendix A to Annex 1-A delineating the Inter-Entity Zone of Separation and the Agreed Cease-Fire Line and its Zone of Separation, which are accepted by the Parties as controlling and definitive, are accurate to within approximately 50 meters. During the period in which the IFOR is deployed, the IFOR Commander shall have the right to determine, after consultation with the Parties, the exact delineation of such Lines and Zones, provided that with respect to Sarajevo the IFOR Commander shall have the right to adjust the Zone of Separation as necessary.
2. The Lines and Zones described above may be marked by representatives of the Parties in coordination with and under the supervision of the IFOR. Final authority for placement of such markers shall rest with the IFOR. These Lines and Zones are defined by the maps and documents agreed to by the Parties and not by the physical location of markers.
3. Following entry into force of this Agreement, the Parties shall form a joint commission, comprised of an equal number of representatives from each Party, to prepare an agreed technical document containing a precise description of the Inter-Entity Boundary Line. Any such document prepared during the period in which the IFOR is deployed shall be subject to the approval of the IFOR Commander.

Article V: Arbitration for the Brcko Area

1. The Parties agree to binding arbitration of the disputed portion of the Inter-Entity Boundary Line in the Brcko area indicated on the map attached at the Appendix.
2. No later than six months after the entry into force of this Agreement, the Federation shall appoint one arbitrator, and the Republika Srpska shall appoint one arbitrator. A third arbitrator shall be selected by agreement of the Parties' appointees within thirty days thereafter. If they do not agree, the third arbitrator shall be appointed by the President of the International Court of Justice. The third arbitrator shall serve as presiding officer of the arbitral tribunal.
3. Unless otherwise agreed by the Parties, the proceedings shall be conducted in accordance with the UNCITRAL rules. The arbitrators shall apply relevant legal and equitable principles.
4. Unless otherwise agreed, the area indicated in paragraph 1 above shall continue to be administered as currently.
5. The arbitrators shall issue their decision no later than one year from the entry into force of this Agreement. The decision shall be final and binding, and the Parties shall implement it without delay.

Article VI: Transition

In those areas transferring from one Entity to the other in accordance with the demarcation described herein, there shall be a transitional period to provide for the orderly transfer of authority. The transition shall be completed forty-five (45) days after the Transfer of

Authority from the UNPROFOR Commander to the IFOR Commander, as described in Annex 1-A.

Article VII: Status of Appendix

The Appendix shall constitute an integral part of this Agreement.

Article VIII: Entry into Force

This Agreement shall enter into force upon signature.

For the Republic of Bosnia and Herzegovina

For the Federation of Bosnia and Herzegovina

For the Republika Srpska

Endorsed:

For the Republic of Croatia

Endorsed:

For the Federal Republic of Yugoslavia

Appendix to Annex 2

The Appendix to Annex 2 consists of this document together with

a. a 1:600,000 scale UNPROFOR road map consisting of one map sheet, attached hereto; and

b. a 1:50,000 scale Topographic Line Map, to be provided as described below.

On the basis of the attached 1:600,000 scale map, the Parties request that the United States Department of Defense provide a 1:50,000 scale Topographic Line Map, consisting of as many map sheets as necessary, in order to provide a more precise delineation of the Inter-Entity Boundary Line. Such map shall be incorporated as an integral part of this Appendix, and the Parties agree to accept such map as controlling and definitive for all purposes.

For the Republic of Bosnia and Herzegovina

For the Federation of Bosnia and Herzegovina

For the Republika Srpska

Endorsed:

For the Republic of Croatia

Endorsed:

For the Federal Republic of Yugoslavia

Annex 3: Agreement on Elections

In order to promote free, fair, and democratic elections and to lay the foundation for representative government and ensure the progressive achievement of democratic goals throughout Bosnia and Herzegovina, in accordance with relevant documents of the Organization for Security and Cooperation in Europe (OSCE), the Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska ("the Parties") have agreed as follows:

Article I: Conditions for Democratic Elections

1. The Parties shall ensure that conditions exist for the organization of free and fair elections, in particular a politically neutral environment; shall protect and enforce the right to vote in secret without fear or intimidation; shall ensure freedom of expression and of the press; shall allow and encourage freedom of association (including of political parties); and shall ensure freedom of movement.
2. The Parties request the OSCE to certify whether elections can be effective under current social conditions in both Entities and, if necessary, to provide assistance to the Parties in creating these conditions.
3. The Parties shall comply fully with paragraphs 7 and 8 of the OSCE Copenhagen Document, which are attached to this Agreement.

Article II: The OSCE Role

1. OSCE. The Parties request the OSCE to adopt and put in place an elections program for Bosnia and Herzegovina as set forth in this Agreement.

2. Elections. The Parties request the OSCE to supervise, in a manner to be determined by the OSCE and in cooperation with other international organizations the OSCE deems necessary, the preparation and conduct of elections for the House of Representatives of Bosnia and Herzegovina; for the Presidency of Bosnia and Herzegovina; for the House of Representatives of the Federation of Bosnia and Herzegovina; for the National Assembly of the Republika Srpska; for the Presidency of the Republika Srpska; and, if feasible, for cantonal legislatures and municipal governing authorities.
3. The Commission. To this end, the Parties request the OSCE to establish a Provisional Election Commission ("the Commission").
4. Timing. Elections shall take place on a date ("Election Day") six months after entry into force of this Agreement or, if the OSCE determines a delay necessary, no later than nine months after entry into force.

Article III: The Provisional Election Commission

1. Rules and Regulations. The Commission shall adopt electoral rules and regulations regarding: the registration of political parties and independent candidates; the eligibility of candidates and voters; the role of domestic and international election observers; the ensuring of an open and fair electoral campaign; and the establishment, publication, and certification of definitive election results. The Parties shall comply fully with the electoral rules and regulations, any internal laws and regulations notwithstanding.
2. Mandate of the Commission. The responsibilities of the Commission, as provided in the electoral rules and regulations, shall include:
 - a. supervising all aspects of the electoral process to ensure that the structures and institutional framework for free and fair elections are in place;
 - b. determining voter registration provisions;
 - c. ensuring compliance with the electoral rules and regulations established pursuant to this Agreement;
 - d. ensuring that action is taken to remedy any violation of any provision of this Agreement or of the electoral rules and regulations established pursuant to this Agreement, including imposing penalties against any person or body that violates such provisions; and
 - e. accrediting observers, including personnel from international organizations and foreign and domestic non-governmental organizations, and ensuring that the Parties grant accredited observers unimpeded access and movement.
3. Composition and Functioning of the Commission. The Commission shall consist of the Head of the OSCE Mission, the High Representative or his or her designee, representatives of the Parties, and such other persons as the Head of the OSCE Mission, in consultation with the Parties, may decide. The Head of the OSCE Mission shall act as Chairman of the Commission. In the event of disputes within the Commission, the decision of the Chairman shall be final.
4. Privileges and Immunities. The Chairman and Commission shall enjoy the right to establish communications facilities and to engage local and administrative staff, and the status, privileges and immunities accorded to a diplomatic agent and mission under the Vienna Convention on Diplomatic Relations.

Article IV: Eligibility

1. Voters. Any citizen of Bosnia and Herzegovina aged 18 or older whose name appears on the 1991 census for Bosnia and Herzegovina shall be eligible, in accordance with electoral rules and regulations, to vote. 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, provided that the person is determined to have been registered in that municipality as confirmed by the local election commission and the Provisional Election Commission.

Such a citizen may, however, apply to the Commission to cast his or her ballot elsewhere. The exercise of a refugee's right to vote shall be interpreted as confirmation of his or her intention to return to Bosnia and Herzegovina. By Election Day, the return of refugees should already be underway, thus allowing many to participate in person in elections in Bosnia and Herzegovina. The Commission may provide in the electoral rules and regulations for citizens not listed in the 1991 census to vote.

Article V: Permanent Election Commission

The Parties agree to create a permanent Election Commission with responsibilities to conduct future elections in Bosnia and Herzegovina.

Article VI: Entry into Force

This Agreement shall enter into force upon signature.

For the Republic of Bosnia and Herzegovina

For the Federation of Bosnia and Herzegovina

For the Republika Srpska

Attachment to Annex 3 on Elections

Document of the Second Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe, Copenhagen, 1990.

Paragraphs 7 and 8:

(7) To ensure that the will of the people serves as the basis of the authority of government, the participating States will

(7.1) - hold free elections at reasonable intervals, as established by law;

(7.2) - permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote;

(7.3) - guarantee universal and equal suffrage to adult citizens;

(7.4) - ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public;

(7.5) - respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination;

(7.6) - respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities;

(7.7) - ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution;

(7.8) - provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process;

(7.9) - ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures.

(8) - The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law. They will also endeavour to facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings.

Annex 4: Constitution - Constitution of Bosnia and Herzegovina

Preamble

Based on respect for human dignity, liberty, and equality,

Dedicated to peace, justice, tolerance, and reconciliation,

Convinced that democratic governmental institutions and fair procedures best produce peaceful relations within a pluralist society,

Desiring to promote the general welfare and economic growth through the protection of private property and the promotion of a market economy,

Guided by the Purposes and Principles of the Charter of the United Nations,

Committed to the sovereignty, territorial integrity, and political independence of Bosnia and Herzegovina in accordance with international law,

Determined to ensure full respect for international humanitarian law,

Inspired by 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,

Recalling the Basic Principles agreed in Geneva on September 8, 1995, and in New York on September 26, 1995,

Bosniacs, Croats, and Serbs, as constituent peoples (along with Others), and citizens of Bosnia and Herzegovina hereby determine that the Constitution of Bosnia and Herzegovina is as follows:

Article I: Bosnia and Herzegovina

1. Continuation. 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, with its internal structure modified as provided herein and with its present internationally recognized borders. It shall remain a Member State of the United Nations and may as Bosnia and Herzegovina maintain or apply for membership in organizations within the United Nations system and other international organizations.
2. Democratic Principles. Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections.
3. Composition. Bosnia and Herzegovina shall consist of the two Entities, the Federation of Bosnia and Herzegovina and the Republika Srpska (hereinafter "the Entities").
4. Movement of Goods. Services. Capital. and Persons. There shall be freedom of movement throughout Bosnia and Herzegovina. Bosnia and Herzegovina and the Entities shall not impede full freedom of movement of persons, goods, services, and capital throughout Bosnia and Herzegovina. Neither Entity shall establish controls at the boundary between the Entities.
5. Capital. The capital of Bosnia and Herzegovina shall be Sarajevo.
6. Symbols. Bosnia and Herzegovina shall have such symbols as are decided by its Parliamentary Assembly and approved by the Presidency.
7. Citizenship. There shall be a citizenship of Bosnia and Herzegovina, to be regulated by the Parliamentary Assembly, and a citizenship of each Entity, to be regulated by each Entity, provided that:
 - a. All citizens of either Entity are thereby citizens of Bosnia and Herzegovina.
 - b. No person shall be deprived of Bosnia and Herzegovina or Entity citizenship arbitrarily or so as to leave him or her stateless. No person shall be deprived of Bosnia and Herzegovina or Entity citizenship on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
 - c. All persons who were citizens of the Republic of Bosnia and Herzegovina immediately prior to the entry into force of this Constitution are citizens of

Bosnia and Herzegovina. The citizenship of persons who were naturalized after April 6, 1992 and before the entry into force of this Constitution will be regulated by the Parliamentary Assembly.

- d. Citizens of Bosnia and Herzegovina may hold the citizenship of another state, provided that there is a bilateral agreement, approved by the Parliamentary Assembly in accordance with Article IV(4)(d), between Bosnia and Herzegovina and that state governing this matter. Persons with dual citizenship may vote in Bosnia and Herzegovina and the Entities only if Bosnia and Herzegovina is their country of residence.
- e. A citizen of Bosnia and Herzegovina abroad shall enjoy the protection of Bosnia and Herzegovina. Each Entity may issue passports of Bosnia and Herzegovina to its citizens as regulated by the Parliamentary Assembly. Bosnia and Herzegovina may issue passports to citizens not issued a passport by an Entity. There shall be a central register of all passports issued by the Entities and by Bosnia and Herzegovina.

Article II: Human Rights and Fundamental Freedoms

1. Human Rights. Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms. To that end, there shall be a Human Rights Commission for Bosnia and Herzegovina as provided for in Annex 6 to the General Framework Agreement.
2. International Standards. The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law.
3. Enumeration of Rights. All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above; these include:
 - a. The right to life.
 - b. The right not to be subjected to torture or to inhuman or degrading treatment or punishment.
 - c. The right not to be held in slavery or servitude or to perform forced or compulsory labor.
 - d. The rights to liberty and security of person.
 - e. The right to a fair hearing in civil and criminal matters, and other rights relating to criminal proceedings.
 - f. The right to private and family life, home, and correspondence.
 - g. Freedom of thought, conscience, and religion.
 - h. Freedom of expression.
 - i. Freedom of peaceful assembly and freedom of association with others.
 - j. The right to marry and to found a family.
 - k. The right to property.
 - l. The right to education.
 - m. The right to liberty of movement and residence.
4. Non-Discrimination. The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
5. Refugees and Displaced Persons. All refugees and displaced persons have the right freely to return to their homes of origin. They 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 such property that cannot be restored to them. Any

commitments or statements relating to such property made under duress are null and void.

6. Implementation. Bosnia and Herzegovina, 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 above.
7. International Agreements. Bosnia and Herzegovina shall remain or become party to the international agreements listed in Annex I to this Constitution.
8. Cooperation. All competent authorities in Bosnia and Herzegovina shall cooperate with and provide unrestricted access to: any international human rights monitoring mechanisms established for Bosnia and Herzegovina; the supervisory bodies established by any of the international agreements listed in Annex I to this Constitution; the International Tribunal for the Former Yugoslavia (and in particular shall comply with orders issued pursuant to Article 29 of the Statute of the Tribunal); and any other organization authorized by the United Nations Security Council with a mandate concerning human rights or humanitarian law.

Article III: Responsibilities of and Relations Between the Institutions of Bosnia and Herzegovina and the Entities

1. Responsibilities of the Institutions of Bosnia and Herzegovina.

The following matters are the responsibility of the institutions of Bosnia and Herzegovina:

- a. Foreign policy.
- b. Foreign trade policy.
- c. Customs policy.
- d. Monetary policy as provided in Article VII.
- e. Finances of the institutions and for the international obligations of Bosnia and Herzegovina.
- f. Immigration, refugee, and asylum policy and regulation.
- g. International and inter-Entity criminal law enforcement, including relations with Interpol.
- h. Establishment and operation of common and international communications facilities.
- i. Regulation of inter-Entity transportation.
- j. Air traffic control.

2. Responsibilities of the Entities.

- a. The Entities shall have the right to establish special parallel relationships with neighboring states consistent with the sovereignty and territorial integrity of Bosnia and Herzegovina.
- b. Each Entity shall provide all necessary assistance to the government of Bosnia and Herzegovina in order to enable it to honor the international obligations of Bosnia and Herzegovina, provided that financial obligations incurred by one Entity without the consent of the other prior to the election of the Parliamentary Assembly and Presidency of Bosnia and Herzegovina shall be the responsibility of that Entity, except insofar as the obligation is necessary for continuing the membership of Bosnia and Herzegovina in an international organization.
- c. The Entities shall provide a safe and secure environment for all persons in their respective jurisdictions, by maintaining civilian law enforcement agencies operating in accordance with internationally recognized standards and with respect for the internationally recognized human rights and fundamental freedoms referred to in Article II above, and by taking such other measures as appropriate.

- d. Each Entity may also enter into agreements with states and international organizations with the consent of the Parliamentary Assembly. The Parliamentary Assembly may provide by law that certain types of agreements do not require such consent.
3. Law and Responsibilities of the Entities and the Institutions.
 - a. All governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities.
 - b. The Entities and any subdivisions thereof shall comply fully with this Constitution, which supersedes inconsistent provisions of the law of Bosnia and Herzegovina and of the constitutions and law of the Entities, and with the decisions of the institutions of Bosnia and Herzegovina. The general principles of international law shall be an integral part of the law of Bosnia and Herzegovina and the Entities.
 4. Coordination.

The Presidency may decide to facilitate inter-Entity coordination on matters not within the responsibilities of Bosnia and Herzegovina as provided in this Constitution, unless an Entity objects in any particular case.
 5. Additional Responsibilities.
 - a. Bosnia and Herzegovina shall assume responsibility for such other matters as are agreed by the Entities; are provided for in Annexes 5 through 8 to the General Framework Agreement; or are necessary to preserve the sovereignty, territorial integrity, political independence, and international personality of Bosnia and Herzegovina, in accordance with the division of responsibilities between the institutions of Bosnia and Herzegovina. Additional institutions may be established as necessary to carry out such responsibilities.
 - b. Within six months of the entry into force of this Constitution, the Entities shall begin negotiations with a view to including in the responsibilities of the institutions of Bosnia and Herzegovina other matters, including utilization of energy resources and cooperative economic projects.

Article IV: Parliamentary Assembly

The Parliamentary Assembly shall have two chambers: the House of Peoples and the House of Representatives.

1. House of Peoples. The House of Peoples shall comprise 15 Delegates, two-thirds from the Federation (including five Croats and five Bosniacs) and one-third from the Republika Srpska (five Serbs).
 - a. The designated Croat and Bosniac Delegates from the Federation shall be selected, respectively, by the Croat and Bosniac Delegates to the House of Peoples of the Federation. Delegates from the Republika Srpska shall be selected by the National Assembly of the Republika Srpska.
 - b. Nine members of the House of Peoples shall comprise a quorum, provided that at least three Bosniac, three Croat, and three Serb Delegates are present.
2. House of Representatives. The House of Representatives shall comprise 42 Members, two-thirds elected from the territory of the Federation, one-third from the territory of the Republika Srpska.
 - a. Members of the House of Representatives shall be directly elected from their Entity in accordance with an election law to be adopted by the Parliamentary Assembly. The first election, however, shall take place in accordance with Annex 3 to the General Framework Agreement.
 - b. A majority of all members elected to the House of Representatives shall comprise a quorum.

3. Procedures.
 - a. Each chamber shall be convened in Sarajevo not more than 30 days after its selection or election.
 - b. Each chamber shall by majority vote adopt its internal rules and select from its members one Serb, one Bosniac, and one Croat to serve as its Chair and Deputy Chairs, with the position of Chair rotating among the three persons selected.
 - c. All legislation shall require the approval of both chambers.
 - d. All decisions in both chambers shall be by majority of those present and voting. The Delegates and Members shall make their best efforts to see that the majority includes at least one-third of the votes of Delegates or Members from the territory of each Entity. If a majority vote does not include one-third of the votes of Delegates or Members from the territory of each Entity, the Chair and Deputy Chairs shall meet as a commission and attempt to obtain approval within three days of the vote. If those efforts fail, decisions shall be taken by a majority of those present and voting, provided that the dissenting votes do not include two-thirds or more of the Delegates or Members elected from either Entity.
 - e. A proposed decision of the Parliamentary Assembly may be declared to be destructive of a vital interest of the Bosniac, Croat, or Serb people by a majority of, as appropriate, the Bosniac, Croat, or Serb Delegates selected in accordance with paragraph 1(a) above. Such a proposed decision shall require for approval in the House of Peoples a majority of the Bosniac, of the Croat, and of the Serb Delegates present and voting.
 - f. When a majority of the Bosniac, of the Croat, or of the Serb Delegates objects to the invocation of paragraph (e), the Chair of the House of Peoples shall immediately convene a Joint Commission comprising three Delegates, one each selected by the Bosniac, by the Croat, and by the Serb Delegates, to resolve the issue. If the Commission fails to do so within five days, the matter will be referred to the Constitutional Court, which shall in an expedited process review it for procedural regularity.
 - g. The House of Peoples may be dissolved by the Presidency or by the House itself, provided that the House's decision to dissolve is approved by a majority that includes the majority of Delegates from at least two of the Bosniac, Croat, or Serb peoples. The House of Peoples elected in the first elections after the entry into force of this Constitution may not, however, be dissolved.
 - h. Decisions of the Parliamentary Assembly shall not take effect before publication.
 - i. Both chambers shall publish a complete record of their deliberations and shall, save in exceptional circumstances in accordance with their rules, deliberate publicly.
 - j. Delegates and Members shall not be held criminally or civilly liable for any acts carried out within the scope of their duties in the Parliamentary Assembly.
4. Powers. The Parliamentary Assembly shall have responsibility for:
 - a. Enacting legislation as necessary to implement decisions of the Presidency or to carry out the responsibilities of the Assembly under this Constitution.
 - b. Deciding upon the sources and amounts of revenues for the operations of the institutions of Bosnia and Herzegovina and international obligations of Bosnia and Herzegovina.
 - c. Approving a budget for the institutions of Bosnia and Herzegovina.
 - d. Deciding whether to consent to the ratification of treaties.

- e. Such other matters as are necessary to carry out its duties or as are assigned to it by mutual agreement of the Entities.

Article V: Presidency

The Presidency of Bosnia and Herzegovina 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.

1. Election and Term.
 - a. Members of the Presidency shall be directly elected in each Entity (with each voter voting to fill one seat on the Presidency) in accordance with an election law adopted by the Parliamentary Assembly. The first election, however, shall take place in accordance with Annex 3 to the General Framework Agreement. Any vacancy in the Presidency shall be filled from the relevant Entity in accordance with a law to be adopted by the Parliamentary Assembly.
 - b. The term of the Members of the Presidency elected in the first election shall be two years; the term of Members subsequently elected shall be four years. Members shall be eligible to succeed themselves once and shall thereafter be ineligible for four years.
2. Procedures.
 - a. The Presidency shall determine its own rules of procedure, which shall provide for adequate notice of all meetings of the Presidency.
 - b. The Members of the Presidency shall appoint from their Members a Chair. For the first term of the Presidency, the Chair shall be the Member who received the highest number of votes. Thereafter, the method of selecting the Chair, by rotation or otherwise, shall be determined by the Parliamentary Assembly, subject to Article IV(3).
 - c. The Presidency shall endeavor to adopt all Presidency Decisions (i.e., those concerning matters arising under Article V(3)(a) - (e)) by consensus. Such decisions may, subject to paragraph (d) below, nevertheless be adopted by two Members when all efforts to reach consensus have failed.
 - d. A dissenting Member of the Presidency may declare a Presidency Decision to be destructive of a vital interest of the Entity from the territory from which he was elected, provided that he does so within three days of its adoption. Such a Decision shall be referred immediately to the National Assembly of the Republika Srpska, if the declaration was made by the Member from that territory; to the Bosniac Delegates of the House of Peoples of the Federation, if the declaration was made by the Bosniac Member; or to the Croat Delegates of that body, if the declaration was made by the Croat Member. If the declaration is confirmed by a two-thirds vote of those persons within ten days of the referral, the challenged Presidency Decision shall not take effect.
3. Powers. The Presidency shall have responsibility for:
 - a. Conducting the foreign policy of Bosnia and Herzegovina.
 - b. Appointing ambassadors and other international representatives of Bosnia and Herzegovina, no more than two-thirds of whom may be selected from the territory of the Federation.
 - c. Representing Bosnia and Herzegovina in international and European organizations and institutions and seeking membership in such organizations and institutions of which Bosnia and Herzegovina is not a member.
 - d. Negotiating, denouncing, and, with the consent of the Parliamentary Assembly, ratifying treaties of Bosnia and Herzegovina.
 - e. Executing decisions of the Parliamentary Assembly.
 - f. Proposing, upon the recommendation of the Council of Ministers, an annual budget to the Parliamentary Assembly.

- g. Reporting as requested, but not less than annually, to the Parliamentary Assembly on expenditures by the Presidency.
 - h. Coordinating as necessary with international and nongovernmental organizations in Bosnia and Herzegovina.
 - i. Performing such other functions as may be necessary to carry out its duties, as may be assigned to it by the Parliamentary Assembly, or as may be agreed by the Entities.
4. Council of Ministers. The Presidency shall nominate the Chair of the Council of Ministers, who shall take office upon the approval of the House of Representatives. The Chair shall nominate a Foreign Minister, a Minister for Foreign Trade, and other Ministers as may be appropriate, who shall take office upon the approval of the House of Representatives.
- a. Together the Chair and the Ministers shall constitute the Council of Ministers, with responsibility for carrying out the policies and decisions of Bosnia and Herzegovina in the fields referred to in Article III(1), (4), and (5) and reporting to the Parliamentary Assembly (including, at least annually, on expenditures by Bosnia and Herzegovina).
 - b. No more than two-thirds of all Ministers may be appointed from the territory of the Federation. The Chair shall also nominate Deputy Ministers (who shall not be of the same constituent people as their Ministers), who shall take office upon the approval of the House of Representatives.
 - c. The Council of Ministers shall resign if at any time there is a vote of no-confidence by the Parliamentary Assembly.
5. Standing Committee.
- a. Each member of the Presidency shall, by virtue of the office, have civilian command authority over armed forces. Neither Entity shall threaten or use force against the other Entity, and under no circumstances shall any armed forces of either Entity enter into or stay within the territory of the other Entity without the consent of the government of the latter and of the Presidency of Bosnia and Herzegovina. All armed forces in Bosnia and Herzegovina shall operate consistently with the sovereignty and territorial integrity of Bosnia and Herzegovina.
 - b. The members of the Presidency shall select a Standing Committee on Military Matters to coordinate the activities of armed forces in Bosnia and Herzegovina. The Members of the Presidency shall be members of the Standing Committee.

Article VI: Constitutional Court

1. Composition. The Constitutional Court of Bosnia and Herzegovina shall have nine members.
- a. Four members shall be selected by the House of Representatives of the Federation, and two members by the Assembly of the Republika Srpska. The remaining three members shall be selected by the President of the European Court of Human Rights after consultation with the Presidency.
 - b. Judges shall be distinguished jurists of high moral standing. Any eligible voter so qualified may serve as a judge of the Constitutional Court. The judges selected by the President of the European Court of Human Rights shall not be citizens of Bosnia and Herzegovina or of any neighboring state.
 - c. The term of judges initially appointed shall be five years, unless they resign or are removed for cause by consensus of the other judges. Judges initially appointed shall not be eligible for reappointment. Judges subsequently appointed shall serve until age 70, unless they resign or are removed for cause by consensus of the other judges.
 - d. For appointments made more than five years after the initial appointment of judges, the Parliamentary Assembly may provide by law for a different

method of selection of the three judges selected by the President of the European Court of Human Rights.

2. Procedures.
 - a. A majority of all members of the Court shall constitute a quorum.
 - b. The Court shall adopt its own rules of court by a majority of all members. It shall hold public proceedings and shall issue reasons for its decisions, which shall be published.
3. Jurisdiction. The Constitutional Court shall uphold this Constitution.
 - a. The Constitutional Court shall have exclusive jurisdiction to decide any dispute that arises under this Constitution between the Entities or between Bosnia and Herzegovina and an Entity or Entities, or between institutions of Bosnia and Herzegovina, including but not limited to:
 - Whether an Entity's decision to establish a special parallel relationship with a neighboring state is consistent with this Constitution, including provisions concerning the sovereignty and territorial integrity of Bosnia and Herzegovina.
 - Whether any provision of an Entity's constitution or law is consistent with this Constitution.Disputes may be referred only by a member of the Presidency, by the Chair of the Council of Ministers, by the Chair or a Deputy Chair of either chamber of the Parliamentary Assembly, by one-fourth of the members of either chamber of the Parliamentary Assembly, or by one-fourth of either chamber of a legislature of an Entity.
 - b. The Constitutional Court shall also have appellate jurisdiction over issues under this Constitution arising out of a judgment of any other court in Bosnia and Herzegovina.
 - c. The Constitutional Court shall have jurisdiction over issues referred by any court in Bosnia and Herzegovina concerning whether a law, on whose validity its decision depends, is compatible with this Constitution, with the European Convention for Human Rights and Fundamental Freedoms and its Protocols, or with the laws of Bosnia and Herzegovina; or concerning the existence of or the scope of a general rule of public international law pertinent to the court's decision.
4. Decisions. Decisions of the Constitutional Court shall be final and binding.

Article VII: Central Bank

There shall be a Central Bank of Bosnia and Herzegovina, which shall be the sole authority for issuing currency and for monetary policy throughout Bosnia and Herzegovina.

1. The Central Bank's responsibilities will be determined by the Parliamentary Assembly. For the first six years after the entry into force of this Constitution, however, it may not extend credit by creating money, operating in this respect as a currency board; thereafter, the Parliamentary Assembly may give it that authority.
2. The first Governing Board of the Central Bank shall consist of a Governor appointed by the International Monetary Fund, after consultation with the Presidency, and three members appointed by the Presidency, two from the Federation (one Bosniac, one Croat, who shall share one vote) and one from the Republika Srpska, all of whom shall serve a six-year term. The Governor, who shall not be a citizen of Bosnia and Herzegovina or any neighboring state, may cast tie-breaking votes on the Governing Board.
3. Thereafter, the Governing Board of the Central Bank of Bosnia and Herzegovina shall consist of five persons appointed by the Presidency for a term of six years. The Board shall appoint, from among its members, a Governor for a term of six years.

Article VIII: Finances

1. The Parliamentary Assembly shall each year, on the proposal of the Presidency, adopt a budget covering the expenditures required to carry out the responsibilities of institutions of Bosnia and Herzegovina and the international obligations of Bosnia and Herzegovina.
2. If no such budget is adopted in due time, the budget for the previous year shall be used on a provisional basis.
3. The Federation shall provide two-thirds, and the Republika Srpska one-third, of the revenues required by the budget, except insofar as revenues are raised as specified by the Parliamentary Assembly.

Article IX: General Provisions

1. No person who is serving a sentence imposed by the International Tribunal for the Former Yugoslavia, and no person who is under indictment by the Tribunal and who has failed to comply with an order to appear before the Tribunal, may stand as a candidate or hold any appointive, elective, or other public office in the territory of Bosnia and Herzegovina.
2. Compensation for persons holding office in the institutions of Bosnia and Herzegovina may not be diminished during an officeholder's tenure.
3. Officials appointed to positions in the institutions of Bosnia and Herzegovina shall be generally representative of the peoples of Bosnia and Herzegovina.

Article X: Amendment

1. Amendment Procedure. This Constitution may be amended by a decision of the Parliamentary Assembly, including a two-thirds majority of those present and voting in the House of Representatives.
2. Human Rights and Fundamental Freedoms. No amendment to this Constitution may eliminate or diminish any of the rights and freedoms referred to in Article II of this Constitution or alter the present paragraph.

Article XI: Transitional Arrangements

Transitional arrangements concerning public offices, law, and other matters are set forth in Annex II to this Constitution.

Article XII: Entry into Force

1. This Constitution shall enter into force upon signature of the General Framework Agreement as a constitutional act amending and superseding the Constitution of the Republic of Bosnia and Herzegovina.
2. Within three months from the entry into force of this Constitution, the Entities shall amend their respective constitutions to ensure their conformity with this Constitution in accordance with Article III(3)(b).

Annex I: Additional Human Rights Agreements To Be Applied In Bosnia And Herzegovina

1. 1948 Convention on the Prevention and Punishment of the Crime of Genocide
2. 1949 Geneva Conventions I-IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I-II thereto
3. 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto
4. 1957 Convention on the Nationality of Married Women
5. 1961 Convention on the Reduction of Statelessness
6. 1965 International Convention on the Elimination of All Forms of Racial Discrimination
7. 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto
8. 1966 Covenant on Economic, Social and Cultural Rights
9. 1979 Convention on the Elimination of All Forms of Discrimination against Women
10. 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
11. 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

12. 1989 Convention on the Rights of the Child
13. 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
14. 1992 European Charter for Regional or Minority Languages
15. 1994 Framework Convention for the Protection of National Minorities

Annex II: Transitional Arrangements

1. Joint Interim Commission.
 - a. The Parties hereby establish a Joint Interim Commission with a mandate to discuss practical questions related to the implementation of the Constitution of Bosnia and Herzegovina and of the General Framework Agreement and its Annexes, and to make recommendations and proposals.
 - b. The Joint Interim Commission shall be composed of four persons from the Federation, three persons from the Republika Srpska, and one representative of Bosnia and Herzegovina.
 - c. Meetings of the Commission shall be chaired by the High Representative or his or designee.
2. Continuation of Laws.
All laws, regulations, and judicial rules of procedure in effect within the territory of Bosnia and Herzegovina when the Constitution enters into force shall remain in effect to the extent not inconsistent with the Constitution, until otherwise determined by a competent governmental body of Bosnia and Herzegovina .
3. Judicial and Administrative Proceedings.
All proceedings in courts or administrative agencies functioning within the territory of Bosnia and Herzegovina when the Constitution enters into force shall continue in or be transferred to other courts or agencies in Bosnia and Herzegovina in accordance with any legislation governing the competence of such courts or agencies.
4. Offices.
Until superseded by applicable agreement or law, governmental offices, institutions, and other bodies of Bosnia and Herzegovina will operate in accordance with applicable law.
5. Treaties.
Any treaty ratified by the Republic of Bosnia and Herzegovina between January 1, 1992 and the entry into force of this Constitution shall be disclosed to Members of the Presidency within 15 days of their assuming office; any such treaty not disclosed shall be denounced. Within six months after the Parliamentary Assembly is first convened, at the request of any member of the Presidency, the Parliamentary Assembly shall consider whether to denounce any other such treaty.

Declaration On Behalf Of The Republic Of Bosnia And Herzegovina

The Republic of Bosnia and Herzegovina approves the Constitution of Bosnia and Herzegovina at Annex 4 to the General Framework Agreement.
For the Republic of Bosnia and Herzegovina

Declaration On Behalf Of The Federation Of Bosnia And Herzegovina

The Federation of Bosnia and Herzegovina, on behalf of its constituent peoples and citizens, approves the Constitution of Bosnia and Herzegovina at Annex 4 to the General Framework Agreement.
For the Federation of Bosnia and Herzegovina

Declaration On Behalf Of The Republika Srpska

The Republika Srpska approves the Constitution of Bosnia and Herzegovina at Annex 4 to the General Framework Agreement.

For the Republika Srpska

Annex 5: Agreement on Arbitration

The Federation of Bosnia and Herzegovina and the Republika Srpska agree to honor the following obligations as set forth in the Agreed Basic Principles adopted at Geneva on September 8, 1995, by the Republic of Bosnia and Herzegovina, the Republic of Croatia, and the Federal Republic of Yugoslavia, the latter representing also the Republika Srpska:

Paragraph 2.4. *"The two entities will enter into reciprocal commitments. . .(c) to engage in binding arbitration to resolve disputes between them."*

Paragraph 3. *"The entities have agreed in principle to the following:... 3.5 The design and implementation of a system of arbitration for the solution of disputes between the two entities."*

For the Federation of Bosnia and Herzegovina

For the Republika Srpska

Annex 6: Agreement on Human Rights

The Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska (the "Parties") have agreed as follows:

Chapter One: Respect for Human Rights

Article I: Fundamental Rights and Freedoms

The Parties shall secure to all persons within their jurisdiction the highest level of internationally recognized human rights and fundamental freedoms, including the rights and freedoms provided in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols and the other international agreements listed in the Appendix to this Annex. These include:

1. The right to life.
2. The right not to be subjected to torture or to inhuman or degrading treatment or punishment.
3. The right not to be held in slavery or servitude or to perform forced or compulsory labor.
4. The rights to liberty and security of person.
5. The right to a fair hearing in civil and criminal matters, and other rights relating to criminal proceedings.
6. The right to private and family life, home, and correspondence.
7. Freedom of thought, conscience and religion.
8. Freedom of expression.
9. Freedom of peaceful assembly and freedom of association with others.
10. The right to marry and to found a family.
11. The right to property.
12. The right to education.
13. The right to liberty of movement and residence.
14. The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in the Annex to this Constitution secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Chapter Two: The Commission on Human Rights

Part A: General

Article II: Establishment of the Commission

1. To assist in honoring their obligations under this Agreement, the Parties hereby establish a Commission on Human Rights (the "Commission"). The Commission shall consist of two parts: the Office of the Ombudsman and the Human Rights Chamber.
2. The Office of the Ombudsman and the Human Rights Chamber shall consider, as subsequently described:
 - a. alleged or apparent violations of human rights as provided in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto, or
 - b. alleged or apparent discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status arising in the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to this Annex, where such violation is alleged or appears to have been committed by the Parties, including by any official or organ of the Parties, Cantons, Municipalities, or any individual acting under the authority of such official or organ.
3. The Parties recognize the right of all persons to submit to the Commission and to other human rights bodies applications concerning alleged violations of human rights, in accordance with the procedures of this Annex and such bodies. The Parties shall not undertake any punitive action directed against persons who intend to submit, or have submitted, such allegations.

Article III: Facilities, Staff and Expenses

1. The Commission shall have appropriate facilities and a professionally competent staff. There shall be an Executive Officer, appointed jointly by the Ombudsman and the President of the Chamber, who shall be responsible for all necessary administrative arrangements with respect to facilities and staff. The Executive Officer shall be subject to the direction of the Ombudsman and the President of the Chamber insofar as concerns their respective administrative and professional office staff.
2. The salaries and expenses of the Commission and its staff shall be determined jointly by the Parties and shall be borne by Bosnia and Herzegovina. The salaries and expenses shall be fully adequate to implement the Commission's mandate.
3. The Commission shall have its headquarters in Sarajevo, including both the headquarters Office of the Ombudsman and the facilities for the Chamber. The Ombudsman shall have at least one additional office in the territory of the Federation and the Republika Srpska and at other locations as it deems appropriate. The Chamber may meet in other locations where it determines that the needs of a particular case so require, and may meet at any place it deems appropriate for the inspection of property, documents or other items.
4. The Ombudsman and all members of the Chamber shall not be held criminally or civilly liable for any acts carried out within the scope of their duties. When the Ombudsman and members of the Chamber are not citizens of Bosnia and Herzegovina, they and their families shall be accorded the same privileges and immunities as are enjoyed by diplomatic agents and their families under the Vienna Convention on Diplomatic Relations.
5. With full regard for the need to maintain impartiality, the Commission may receive assistance as it deems appropriate from any governmental, international, or non-governmental organization.

Part B: Human Rights Ombudsman

Article IV: Human Rights Ombudsman

1. The Parties hereby establish the Office of the Human Rights Ombudsman (the "Ombudsman").

2. The Ombudsman shall be appointed for a non-renewable term of five years by the Chairman- in-Office of the Organization for Security and Cooperation in Europe (OSCE), after consultation with the Parties. He or she shall be independently responsible for choosing his or her own staff. Until the transfer described in Article XIV below, the Ombudsman may not be a citizen of Bosnia and Herzegovina or of any neighboring state. The Ombudsman appointed after that transfer shall be appointed by the Presidency of Bosnia and Herzegovina.
3. Members of the Office of the Ombudsman must be of recognized high moral standing and have competence in the field of international human rights.
4. The Office of the Ombudsman shall be an independent agency. In carrying out its mandate, no person or organ of the Parties may interfere with its functions.

Article V: Jurisdiction of the Ombudsman

1. Allegations of violations of human rights received by the Commission shall generally be directed to the Office of the Ombudsman, except where an applicant specifies the Chamber.
2. The Ombudsman may investigate, either on his or her own initiative or in response to an allegation by any Party or person, non-governmental organization, or group of individuals claiming to be the victim of a violation by any Party or acting on behalf of alleged victims who are deceased or missing, alleged or apparent violations of human rights within the scope of paragraph 2 of Article II. The Parties undertake not to hinder in any way the effective exercise of this right.
3. The Ombudsman shall determine which allegations warrant investigation and in what priority, giving particular priority to allegations of especially severe or systematic violations and those founded on alleged discrimination on prohibited grounds.
4. The Ombudsman shall issue findings and conclusions promptly after concluding an investigation. A Party identified as violating human rights shall, within a specified period, explain in writing how it will comply with the conclusions.
5. Where an allegation is received which is within the jurisdiction of the Human Rights Chamber, the Ombudsman may refer the allegation to the Chamber at any stage.
6. The Ombudsman may also present special reports at any time to any competent government organ or official. Those receiving such reports shall reply within a time limit specified by the Ombudsman, including specific responses to any conclusions offered by the Ombudsman.
7. The Ombudsman shall publish a report, which, in the event that a person or entity does not comply with his or her conclusions and recommendations, will be forwarded to the High Representative described in Annex 10 to the General Framework Agreement while such office exists, as well as referred for further action to the Presidency of the appropriate Party. The Ombudsman may also initiate proceedings before the Human Rights Chamber based on such Report. The Ombudsman may also intervene in any proceedings before the Chamber.

Article VI: Powers

1. The Ombudsman shall have access to and may examine all official documents, including classified ones, as well as judicial and administrative files, and can require any person, including a government official, to cooperate by providing relevant information, documents and files. The Ombudsman may attend administrative hearings and meetings of other organs and may enter and inspect any place where persons deprived of their liberty are confined or work.
2. The Ombudsman and staff are required to maintain the confidentiality of all confidential information obtained, except where required by order of the Chamber, and shall treat all documents and files in accordance with applicable rules.

Part C: Human Rights Chamber

Article VII: Human Rights Chamber

1. The Human Rights Chamber shall be composed of fourteen members.

2. Within 90 days after this Agreement enters into force, the Federation of Bosnia and Herzegovina shall appoint four members and the Republika Srpska shall appoint two members. The Committee of Ministers of the Council of Europe, pursuant to its resolution (93)6, after consultation with the Parties, shall appoint the remaining members, who shall not be citizens of Bosnia and Herzegovina or any neighboring state, and shall designate one such member as the President of the Chamber.
3. All members of the Chamber shall possess the qualifications required for appointment to high judicial office or be jurists of recognized competence. The members of the Chamber shall be appointed for a term of five years and may be reappointed.
4. Members appointed after the transfer described in Article XIV below shall be appointed by the Presidency of Bosnia and Herzegovina.

Article VIII: Jurisdiction of the Chamber

1. The Chamber shall receive by referral from the Ombudsman on behalf of an applicant, or directly from any Party or person, non-governmental organization, or group of individuals claiming to be the victim of a violation by any Party or acting on behalf of alleged victims who are deceased or missing, for resolution or decision applications concerning alleged or apparent violations of human rights within the scope of paragraph 2 of Article II.
2. The Chamber shall decide which applications to accept and in what priority to address them. In so doing, the Chamber shall take into account the following criteria:
 - a. Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted and that the application has been filed with the Commission within six months from such date on which the final decision was taken.
 - b. The Chamber shall not address any application which is substantially the same as a matter which has already been examined by the Chamber or has already been submitted to another procedure or international investigation or settlement.
 - c. The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition.
 - d. The Chamber may reject or defer further consideration if the application concerns a matter currently pending before any other international human rights body responsible for the adjudication of applications or the decision of cases, or any other Commission established by the Annexes to the General Framework Agreement.
 - e. In principle, the Chamber shall endeavor to accept and to give particular priority to allegations of especially severe or systematic violations and those founded on alleged discrimination on prohibited grounds.
 - f. Applications which entail requests for provisional measures shall be reviewed as a matter of priority in order to determine (1) whether they should be accepted and, if so (2) whether high priority for the scheduling of proceedings on the provisional measures request is warranted.
3. The Chamber may decide at any point in its proceedings to suspend consideration of, reject or strike out, an application on the ground that (a) the applicant does not intend to pursue his application; (b) the matter has been resolved; or (c) for any other reason established by the Chamber, it is no longer justified to continue the examination of the application; provided that such result is consistent with the objective of respect for human rights.

Article IX: Friendly Settlement

1. At the outset of a case or at any stage during the proceedings, the Chamber may attempt to facilitate an amicable resolution of the matter on the basis of respect for the rights and freedoms referred to in this Agreement.

2. If the Chamber succeeds in effecting such a resolution it shall publish a Report and forward it to the High Representative described in Annex 10 to the General Framework Agreement while such office exists, the OSCE and the Secretary General of the Council of Europe. Such a Report shall include a brief statement of the facts and the resolution reached. The report of a resolution in a given case may, however, be confidential in whole or in part where necessary for the protection of human rights or with the agreement of the Chamber and the parties concerned.

Article X: Proceedings before the Chamber

1. The Chamber shall develop fair and effective procedures for the adjudication of applications. Such procedures shall provide for appropriate written pleadings and, on the decision of the Chamber, a hearing for oral argument or the presentation of evidence. The Chamber shall have the power to order provisional measures, to appoint experts, and to compel the production of witnesses and evidence.
2. The Chamber shall normally sit in panels of seven, composed of two members from the Federation, one from the Republika Srpska, and four who are not citizens of Bosnia and Herzegovina or any neighboring state. When an application is decided by a panel, the full Chamber may decide, upon motion of a party to the case or the Ombudsman, to review the decision; such review may include the taking of additional evidence where the Chamber so decides. References in this Annex to the Chamber shall include, as appropriate, the Panel, except that the power to develop general rules, regulations and procedures is vested in the Chamber as a whole.
3. Except in exceptional circumstances in accordance with rules, hearings of the Chamber shall be held in public.
4. Applicants may be represented in proceedings by attorneys or other representatives of their choice, but shall also be personally present unless excused by the Chamber on account of hardship, impossibility, or other good cause.
5. The Parties undertake to provide all relevant information to, and to cooperate fully with, the Chamber.

Article XI: Decisions

1. Following the conclusion of the proceedings, the chamber shall promptly issue a decision, which shall address:
 - a. whether the facts found indicate a breach by the Party concerned of its obligations under this Agreement; and if so
 - b. what steps shall be taken by the Party to remedy such breach, including orders to cease and desist, monetary relief (including pecuniary and non-pecuniary injuries), and provisional measures.
2. The Chamber shall make its decision by a majority of members. In the event a decision by the full Chamber results in a tie, the President of the Chamber shall cast the deciding vote.
3. Subject to review as provided in paragraph 2 of Article X, the decisions of the Chamber shall be final and binding.
4. Any member shall be entitled to issue a separate opinion on any case.
5. The Chamber shall issue reasons for its decisions. Its decisions shall be published and forwarded to the parties concerned, the High Representative described in Annex 10 to the General Framework Agreement while such office exists, the Secretary General of the Council of Europe and the OSCE.
6. The Parties shall implement fully decisions of the Chamber.

Article XII: Rules and Regulations

The Chamber shall promulgate such rules and regulations, consistent with this Agreement, as may be necessary to carry out its functions, including provisions for preliminary hearings, expedited decisions on provisional measures, decisions by panels of the Chamber, and review of decisions made by any such panels.

Article XIII: Organizations Concerned with Human Rights

1. The Parties shall promote and encourage the activities of non-governmental and international organizations for the protection and promotion of human rights.
2. The Parties join in inviting the United Nations Commission on Human Rights, the OSCE, the United Nations High Commissioner for Human Rights, and other intergovernmental or regional human rights missions or organizations to monitor closely the human rights situation in Bosnia and Herzegovina, including through the establishment of local offices and the assignment of observers, rapporteurs, or other relevant persons on a permanent or mission-by-mission basis and to provide them with full and effective facilitation, assistance and access.
3. The Parties shall allow full and effective access to non-governmental organizations for purposes of investigating and monitoring human rights conditions in Bosnia and Herzegovina and shall refrain from hindering or impeding them in the exercise of these functions.
4. All competent authorities in Bosnia and Herzegovina shall cooperate with and provide unrestricted access to the organizations established in this Agreement; any international human rights monitoring mechanisms established for Bosnia and Herzegovina; the supervisory bodies established by any of the international agreements listed in the Appendix to this Annex; the International Tribunal for the Former Yugoslavia; and any other organization authorized by the U.N. Security Council with a mandate concerning human rights or humanitarian law.

Article XIV: Transfer

Five years after this Agreement enters into force, the responsibility for the continued operation of the Commission shall transfer from the Parties to the institutions of Bosnia and Herzegovina, unless the Parties otherwise agree. In the latter case, the Commission shall continue to operate as provided above.

Article XV: Notice

The Parties shall give effective notice of the terms of this Agreement throughout Bosnia and Herzegovina.

Article XVI: Entry into Force

This Agreement shall enter into force upon signature.

For the Republic of Bosnia and Herzegovina

For the Federation of Bosnia and Herzegovina

For the Republika Srpska

Appendix: Human Rights Agreements

1. 1948 Convention on the Prevention and Punishment of the Crime of Genocide
2. 1949 Geneva Conventions I-IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I-II thereto
3. 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Protocols thereto
4. 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto
5. 1957 Convention on the Nationality of Married Women
6. 1961 Convention on the Reduction of Statelessness
7. 1965 International Convention on the Elimination of All Forms of Racial Discrimination
8. 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto
9. 1966 Covenant on Economic, Social and Cultural Rights
10. 1979 Convention on the Elimination of All Forms of Discrimination against Women
11. 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
12. 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

13. 1989 Convention on the Rights of the Child
14. 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
15. 1992 European Charter for Regional or Minority Languages
16. 1994 Framework Convention for the Protection of National Minorities

Annex 7: Agreement on Refugees and Displaced Persons

The Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republika Srpska (the "Parties") have agreed as follows:

Chapter One: Protection

Article I: Rights of Refugees and Displaced Persons

1. 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 early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina. The Parties confirm that they will accept the return of such persons who have left their territory, including those who have been accorded temporary protection by third countries.
2. The Parties shall ensure that refugees and displaced persons are permitted to return in safety, without risk of harassment, intimidation, persecution, or discrimination, particularly on account of their ethnic origin, religious belief, or political opinion.
3. The Parties shall take all necessary steps to prevent activities within their territories which would hinder or impede the safe and voluntary return of refugees and displaced persons. To demonstrate their commitment to securing full respect for the human rights and fundamental freedoms of all persons within their jurisdiction and creating without delay conditions suitable for return of refugees and displaced persons, the Parties shall take immediately the following confidence building measures:
 - a. the repeal of domestic legislation and administrative practices with discriminatory intent or effect;
 - b. the prevention and prompt suppression of any written or verbal incitement, through media or otherwise, of ethnic or religious hostility or hatred;
 - c. the dissemination, through the media, of warnings against, and the prompt suppression of, acts of retribution by military, paramilitary, and police services, and by other public officials or private individuals;
 - d. the protection of ethnic and/or minority populations wherever they are found and the provision of immediate access to these populations by international humanitarian organizations and monitors;
 - e. the prosecution, dismissal or transfer, as appropriate, of persons in military, paramilitary, and police forces, and other public servants, responsible for serious violations of the basic rights of persons belonging to ethnic or minority groups.
4. Choice of destination shall be up to the individual or family, and the principle of the unity of the family shall be preserved. The Parties shall not interfere with the returnees' choice of destination, nor shall they compel them 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. The Parties shall facilitate the flow of information necessary for refugees and displaced persons to make informed judgments about local conditions for return.
5. The Parties call upon the United Nations High Commissioner for Refugees ("UNHCR") to develop in close consultation with asylum countries and the Parties a repatriation plan that will allow for an early, peaceful, orderly and phased return of

refugees and displaced persons, which may include priorities for certain areas and certain categories of returnees. The Parties agree to implement such a plan and to conform their international agreements and internal laws to it. They accordingly call upon States that have accepted refugees to promote the early return of refugees consistent with international law.

Article II: Creation of Suitable Conditions for Return

1. The Parties undertake to create in their territories the political, economic, and social conditions conducive to the voluntary return and harmonious reintegration of refugees and displaced persons, without preference for any particular group. The Parties shall provide all possible assistance to refugees and displaced persons and work to facilitate their voluntary return in a peaceful, orderly and phased manner, in accordance with the UNHCR repatriation plan.
2. The Parties shall not discriminate against returning refugees and displaced persons with respect to conscription into military service, and shall give positive consideration to requests for exemption from military or other obligatory service based on individual circumstances, so as to enable returnees to rebuild their lives.

Article III: Cooperation with International Organizations and International Monitoring

1. The Parties note with satisfaction the leading humanitarian role of UNHCR, which has been entrusted by the Secretary-General of the United Nations with the role of coordinating among all agencies assisting with the repatriation and relief of refugees and displaced persons.
2. The Parties shall give full and unrestricted access by UNHCR, the International Committee of the Red Cross ("ICRC"), the United Nations Development Programme ("UNDP"), and other relevant international, domestic and nongovernmental organizations to all refugees and displaced persons, with a view to facilitating the work of those organizations in tracing persons, the provision of medical assistance, food distribution, reintegration assistance, the provision of temporary and permanent housing, and other activities vital to the discharge of their mandates and operational responsibilities without administrative impediments. These activities shall include traditional protection functions and the monitoring of basic human rights and humanitarian conditions, as well as the implementation of the provisions of this Chapter.
3. The Parties shall provide for the security of all personnel of such organizations.

Article IV: Repatriation Assistance

The Parties shall facilitate the provision of adequately monitored, short-term repatriation assistance on a nondiscriminatory basis to all returning refugees and displaced persons who are in need, in accordance with a plan developed by UNHCR and other relevant organizations, to enable the families and individuals returning to reestablish their lives and livelihoods in local communities.

Article V: Persons Unaccounted For

The Parties shall provide information through the tracing mechanisms of the ICRC on all persons unaccounted for. The Parties shall also cooperate fully with the ICRC in its efforts to determine the identities, whereabouts and fate of the unaccounted for.

Article VI: Amnesty

Any returning refugee or displaced person charged with a crime, other than a serious violation of international humanitarian law as defined in the Statute of the International Tribunal for the Former Yugoslavia since January 1, 1991 or a common crime unrelated to the conflict, shall upon return enjoy an amnesty. In no case shall charges for crimes be imposed for political or other inappropriate reasons or to circumvent the application of the amnesty.

Chapter Two: Commission for Displaced Persons and Refugees

Article VII: Establishment of the Commission

The Parties hereby establish an independent Commission for Displaced Persons and Refugees (the "Commission"). The Commission shall have its headquarters in Sarajevo and may have offices at other locations as it deems appropriate.

Article VIII: Cooperation

The Parties shall cooperate with the work of the Commission, and shall respect and implement its decisions expeditiously and in good faith, in cooperation with relevant international and nongovernmental organizations having responsibility for the return and reintegration of refugees and displaced persons.

Article IX: Composition

1. The Commission shall be composed of nine members. Within 90 days after this Agreement enters into force, the Federation of Bosnia and Herzegovina shall appoint four members, two for a term of three years and the others for a term of four years, and the Republika Srpska shall appoint two members, one for a term of three years and the other for a term of four years. The President of the European Court of Human Rights shall appoint the remaining members, each for a term of five years, and shall designate one such member as the Chairman. The members of the Commission may be reappointed.
2. Members of the Commission must be of recognized high moral standing.
3. The Commission may sit in panels, as provided in its rules and regulations. References in this Annex to the Commission shall include, as appropriate, such panels, except that the power to promulgate rules and regulations is vested only in the Commission as a whole.
4. Members appointed after the transfer described in Article XVI below shall be appointed by the Presidency of Bosnia and Herzegovina.

Article X: Facilities, Staff and Expenses

1. The Commission shall have appropriate facilities and a professionally competent staff, experienced in administrative, financial, banking and legal matters, to assist it in carrying out its functions. The staff shall be headed by an Executive Officer, who shall be appointed by the Commission.
2. The salaries and expenses of the Commission and its staff shall be determined jointly by the Parties and shall be borne equally by the Parties.
3. Members of the Commission shall not be held criminally or civilly liable for any acts carried out within the scope of their duties. Members of the Commission, and their families, who are not citizens of Bosnia and Herzegovina shall be accorded the same privileges and immunities as are enjoyed by diplomatic agents and their families under the Vienna Convention on Diplomatic Relations.
4. The Commission may receive assistance from international and nongovernmental organizations, in their areas of special expertise falling within the mandate of the Commission, on terms to be agreed.
5. The Commission shall cooperate with other entities established by the General Framework Agreement, agreed by the Parties, or authorized by the United Nations Security Council.

Article XI: Mandate

The Commission shall receive and decide any claims for real property in Bosnia and Herzegovina, where the property has not voluntarily been sold or otherwise transferred since April 1, 1992, 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.

Article XII: Proceedings before the Commission

1. Upon receipt of a claim, the Commission shall determine the lawful owner of the property with respect to which the claim is made and the value of that property. The Commission, through its staff or a duly designated international or nongovernmental organization, shall be entitled to have access to any and all property records in Bosnia and Herzegovina, and to any and all real property located in Bosnia and

Herzegovina for purposes of inspection, evaluation and assessment related to consideration of a claim.

2. 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. Any person requesting compensation in lieu of return who is found by the Commission to be the lawful owner of that property shall be awarded just compensation as determined by the Commission. The Commission shall make decisions by a majority of its members.
3. In determining the lawful owner of any property, the Commission shall not recognize as valid any illegal property transaction, including any transfer that was made under duress, in exchange for exit permission or documents, or that was otherwise in connection with ethnic cleansing. Any person who is awarded return of property may accept a satisfactory lease arrangement rather than retake possession.
4. The Commission shall establish fixed rates that may be applied to determine the value of all real property in Bosnia and Herzegovina that is the subject of a claim before the Commission. The rates shall be based on an assessment or survey of properties in the territory of Bosnia and Herzegovina undertaken prior to April 1, 1992, if available, or may be based on other reasonable criteria as determined by the Commission.
5. The Commission shall have the power to effect any transactions necessary to transfer or assign title, mortgage, lease, or otherwise dispose of property with respect to which a claim is made, or which is determined to be abandoned. In particular, the Commission may lawfully sell, mortgage, or lease real property to any resident or citizen of Bosnia and Herzegovina, or to either Party, where the lawful owner has sought and received compensation in lieu of return, or where the property is determined to be abandoned in accordance with local law. The Commission may also lease property pending consideration and final determination of ownership.
6. In cases in which the claimant is awarded compensation in lieu of return of the property, the Commission may award a monetary grant or a compensation bond for the future purchase of real property. The Parties welcome the willingness of the international community assisting in the construction and financing of housing in Bosnia and Herzegovina to accept compensation bonds awarded by the Commission as payment, and to award persons holding such compensation bonds priority in obtaining that housing.
7. Commission decisions shall be final, and any title, deed, mortgage, or other legal instrument created or awarded by the Commission shall be recognized as lawful throughout Bosnia and Herzegovina.
8. Failure of any Party or individual to cooperate with the Commission shall not prevent the Commission from making its decision.

Article XIII: Use of Vacant Property

The Parties, after notification to the Commission and in coordination with UNHCR and other international and nongovernmental organizations contributing to relief and reconstruction, may temporarily house refugees and displaced persons in vacant property, subject to final determination of ownership by the Commission and to such temporary lease provisions as it may require.

Article XIV: Refugees and Displaced Persons Property Fund

1. A Refugees and Displaced Persons Property Fund (the "Fund") shall be established in the Central Bank of Bosnia and Herzegovina to be administered by the Commission. The Fund shall be replenished through the purchase, sale, lease and mortgage of real property which is the subject of claims before the Commission. It may also be replenished by direct payments from the Parties, or from contributions by States or international or nongovernmental organizations.
2. Compensation bonds issued pursuant to Article XII(6) shall create future liabilities on the Fund under terms and conditions to be defined by the Commission.

Article XV: Rules and Regulations

The Commission shall promulgate such rules and regulations, consistent with this Agreement, as may be necessary to carry out its functions. In developing these rules and regulations, the Commission shall consider domestic laws on property rights.

Article XVI: Transfer

Five years after this Agreement takes effect, responsibility for the financing and operation of the Commission shall transfer from the Parties to the Government of Bosnia and Herzegovina, unless the Parties otherwise agree. In the latter case, the Commission shall continue to operate as provided above.

Article XVII: Notice

The Parties shall give effective notice of the terms of this Agreement throughout Bosnia and Herzegovina, and in all countries known to have persons who were citizens or residents of Bosnia and Herzegovina.

Article XVIII: Entry into Force

This Agreement shall enter into force upon signature.

For the Republic of Bosnia and Herzegovina

For the Federation of Bosnia and Herzegovina

For the Republika Srpska

Annex 8: Agreement on the Commission to Preserve National Monuments

The Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska (the "Parties") have agreed as follows:

Article I: Establishment of the Commission

The Parties hereby establish an independent Commission to Preserve National Monuments (the "Commission"). The Commission shall have its headquarters in Sarajevo and may have offices at other locations as it deems appropriate.

Article II: Composition

1. The Commission shall be composed of five members. Within 90 days after this Agreement enters into force, the Federation of Bosnia and Herzegovina shall appoint two members, and the Republika Srpska one member, each serving a term of three years. The Director-General of the United Nations Educational, Scientific and Cultural Organization shall appoint the remaining members, each for a term of five years, and shall designate one such member as the Chairman. The members of the Commission may be reappointed. No person who is serving a sentence imposed by the International Tribunal for the Former Yugoslavia, and no person who is under indictment by the Tribunal and who has failed to comply with an order to appear before the Tribunal, may serve on the Commission.
2. Members appointed after the transfer described in Article IX below shall be appointed by the Presidency of Bosnia and Herzegovina.

Article III: Facilities, Staff and Expenses

1. The Commission shall have appropriate facilities and a professionally competent staff, generally representative of the ethnic groups comprising Bosnia and Herzegovina, to assist it in carrying out its functions. The staff shall be headed by an executive officer, who shall be appointed by the Commission.
2. The salaries and expenses of the Commission and its staff shall be determined jointly by the Entities and shall be borne equally by them.
3. Members of the Commission shall not be held criminally or civilly liable for any acts carried out within the scope of their duties. Members of the Commission, and their families, who are not citizens of Bosnia and Herzegovina shall be accorded the same privileges and immunities as are enjoyed by diplomatic agents and their families under the Vienna Convention on Diplomatic Relations.

Article IV: Mandate

The Commission shall receive and decide on petitions for the designation of property having cultural, historic, religious or ethnic importance as National Monuments.

Article V: Proceedings before the Commission

1. Any Party, or any concerned person in Bosnia and Herzegovina, may submit to the Commission a petition for the designation of property as a National Monument. Each such petition shall set forth all relevant information concerning the property, including:
 - a. the specific location of the property;
 - b. its current owner and condition;
 - c. the cost and source of funds for any necessary repairs to the property;
 - d. any known proposed use; and
 - e. the basis for designation as a National Monument.
2. In deciding upon the petition, the Commission shall afford an opportunity for the owners of the proposed National Monument, as well as other interested persons or entities, to present their views.
3. For a period of one year after such a petition has been submitted to the Commission, or until a decision is rendered in accordance with this Annex, whichever occurs first, all Parties shall refrain from taking any deliberate measures that might damage the property.
4. The Commission shall issue, in each case, a written decision containing any findings of fact it deems appropriate and a detailed explanation of the basis for its decision. The Commission shall make decisions by a majority of its members. Decisions of the Commission shall be final and enforceable in accordance with domestic law.
5. In any case in which the Commission issues a decision designating property as a National Monument, the Entity in whose territory the property is situated (a) shall make every effort to take appropriate legal, scientific, technical, administrative and financial measures necessary for the protection, conservation, presentation and rehabilitation of the property, and (b) shall refrain from taking any deliberate measures that might damage the property.

Article VI: Eligibility

The following shall be eligible for designation as National Monuments: movable or immovable property of great importance to a group of people with common cultural, historic, religious or ethnic heritage, such as monuments of architecture, art or history; archaeological sites; groups of buildings; as well as cemeteries.

Article VII: Rules and Regulations

The Commission shall promulgate such rules and regulations, consistent with this Agreement, as may be necessary to carry out its functions.

Article VIII: Cooperation

Officials and organs of the Parties and their Cantons and Municipalities, and any individual acting under the authority of such official or organ, shall fully cooperate with the Commission, including by providing requested information and other assistance.

Article IX: Transfer

Five years after this Agreement enters into force, the responsibility for the continued operation of the Commission shall transfer from the Parties to the Government of Bosnia and Herzegovina, unless the Parties otherwise agree. In the latter case, the Commission shall continue to operate as provided above.

Article X: Notice

The Parties shall give effective notice of the terms of this Agreement throughout Bosnia and Herzegovina.

Article XI: Entry into Force

This Agreement shall enter into force upon signature.

For the Republic of Bosnia and Herzegovina

For the Federation of Bosnia and Herzegovina

For the Republika Srpska

Annex 9: Agreement on Bosnia and Herzegovina Public Corporations

Bearing in mind that reconstruction of the infrastructure and the functioning of transportation and other facilities are important for the economic resurgence of Bosnia and Herzegovina, and for the smooth functioning of its institutions and the organizations involved in implementation of the peace settlement, the Federation of Bosnia and Herzegovina and the Republika Srpska (the "Parties") have agreed as follows:

Article I: Commission on Public Corporations

1. The Parties hereby establish a Commission on Public Corporations (the "Commission") to examine establishing Bosnia and Herzegovina Public Corporations to operate joint public facilities, such as for the operation of utility, energy, postal and communication facilities, for the benefit of both Entities.
2. The Commission shall have five Members. Within fifteen days after this Agreement enters into force, the Federation of Bosnia and Herzegovina shall appoint two Members, and the Republika Srpska one Member. Persons appointed must be familiar with the specific economic, political and legal characteristics Bosnia and Herzegovina and be of high recognized moral standing. Recognizing that the Commission will benefit from international expertise, the Parties request the President of the European Bank for Reconstruction and Development to appoint the remaining two Members and to designate one as the Chairman.
3. The Commission shall in particular examine the appropriate internal structure for such Corporations, the conditions necessary to ensure their successful, permanent operation, and the best means of procuring long-term investment capital.

Article II: Establishment of a Transportation Corporation

1. The Parties, recognizing an immediate need to establish a Public Corporation to organize and operate transportation facilities, such as roads, railways and ports, for their mutual benefit, hereby establish a Bosnia and Herzegovina Transportation Corporation (the "Transportation Corporation") for such purpose.
2. The Transportation Corporation shall have its headquarters in Sarajevo and may have offices at other locations as it deems appropriate. It shall have appropriate facilities and choose a professionally competent Board of Directors, Officers and Staff, generally representative of the ethnic groups comprising Bosnia and Herzegovina, to carry out its functions. The Commission shall choose the Board of Directors, which shall in turn appoint the Officers and select the Staff.
3. The Transportation Corporation is authorized to construct, acquire, hold, maintain and operate and dispose of real and personal property in accordance with specific plans that it develops. It is also authorized to fix and collect rates, fees, rentals and other charges for the use of facilities it operates; enter into all contracts and agreements necessary for the performance of its functions; and take other actions necessary to carry out these functions.
4. The Transportation Corporation shall operate transportation facilities as agreed by the Parties. The Parties shall, as part of their agreement, provide the Corporation with necessary legal authority. The Parties shall meet within fifteen days after this Agreement enters into force to consider which facilities the Corporation will operate.
5. Within thirty days after this Agreement enters into force, the Parties shall agree on sums of money to be contributed to the Transportation Corporation for its initial operating budget. The Parties may at any time transfer to the Transportation Corporation additional funds or facilities that belong to them and the rights thereto. The Parties shall decide the means by which the Transportation Corporation will be authorized to raise additional capital.

Article III: Other Public Corporations

The Parties may decide, upon recommendation of the Commission, to use establishment of the Transportation Corporation as a model for the establishment of other joint public corporations, such as for the operation of utility, energy, postal and communication facilities.

Article IV: Cooperation

The Commission, the Transportation Corporation and other Public Corporations shall cooperate fully with all organizations involved in implementation of the peace settlement, or which are otherwise authorized by the United Nations Security Council, including the International Tribunal for the Former Yugoslavia.

Article V: Ethics

Members of the Commission and Directors of the Transportation Corporation may not have an employment or financial relationship with any enterprise that has, or is seeking, a contract or agreement with the Commission or the Corporation, respectively, or otherwise has interests that can be directly affected by its actions or inactions.

Article VI: Entry into Force

This Agreement shall enter into force upon signature.

For the Federation of Bosnia and Herzegovina

For the Republika Srpska

Annex 10: Agreement on Civilian Implementation

The Republic of Bosnia and Herzegovina, the Republic of Croatia, the Federal Republic of Yugoslavia, the Federation of Bosnia and Herzegovina, and the Republika Srpska (the "Parties") have agreed as follows:

Article I: High Representative

1. The Parties agree that the implementation of the civilian aspects of the peace settlement will entail a wide range of activities including continuation of the humanitarian aid effort for as long as necessary; rehabilitation of infrastructure and economic reconstruction; the establishment of political and constitutional institutions in Bosnia and Herzegovina; promotion of respect for human rights and the return of displaced persons and refugees; and the holding of free and fair elections according to the timetable in Annex 3 to the General Framework Agreement. A considerable number of international organizations and agencies will be called upon to assist.
2. In view of the complexities facing them, the Parties request the designation of a High Representative, to be appointed consistent with relevant United Nations Security Council resolutions, to facilitate the Parties' own efforts and to mobilize and, as appropriate, coordinate the activities of the organizations and agencies involved in the civilian aspects of the peace settlement by carrying out, as entrusted by a U.N. Security Council resolution, the tasks set out below.

Article II: Mandate and Methods of Coordination and Liaison

1. The High Representative shall:
 - a. Monitor the implementation of the peace settlement;
 - b. Maintain close contact with the Parties to promote their full compliance with all civilian aspects of the peace settlement and a high level of cooperation between them and the organizations and agencies participating in those aspects.
 - c. Coordinate the activities of the civilian organizations and agencies in Bosnia and Herzegovina to ensure the efficient implementation of the civilian aspects of the peace settlement. The High Representative shall respect their autonomy within their spheres of operation while as necessary giving general guidance to them about the impact of their activities on the implementation of the peace settlement. The civilian organizations and agencies are requested to assist the High Representative in the execution of his or her responsibilities by providing all information relevant to their operations in Bosnia- Herzegovina.
 - d. Facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation.
 - e. Participate in meetings of donor organizations, particularly on issues of rehabilitation and reconstruction.

- f. Report periodically on progress in implementation of the peace agreement concerning the tasks set forth in this Agreement to the United Nations, European Union, United States, Russian Federation, and other interested governments, parties, and organizations.
 - g. Provide guidance to, and receive reports from, the Commissioner of the International Police Task Force established in Annex 11 to the General Framework Agreement.
2. In pursuit of his or her mandate, the High Representative shall convene and chair a commission (the "Joint Civilian Commission") in Bosnia and Herzegovina. It will comprise senior political representatives of the Parties, the IFOR Commander or his representative, and representatives of those civilian organizations and agencies the High Representative deems necessary.
 3. The High Representative shall, as necessary, establish subordinate Joint Civilian Commissions at local levels in Bosnia and Herzegovina.
 4. A Joint Consultative Committee will meet from time to time or as agreed between the High Representative and the IFOR Commander.
 5. The High Representative or his designated representative shall remain in close contact with the IFOR Commander or his designated representatives and establish appropriate liaison arrangements with the IFOR Commander to facilitate the discharge of their respective responsibilities.
 6. The High Representative shall exchange information and maintain liaison on a regular basis with IFOR, as agreed with the IFOR Commander, and through the commissions described in this Article.
 7. The High Representative shall attend or be represented at meetings of the Joint Military Commission and offer advice particularly on matters of a political-military nature. Representatives of the High Representative will also attend subordinate commissions of the Joint Military Commission as set out in Article VIII(8) of Annex 1A to the General Framework Agreement.
 8. The High Representative may also establish other civilian commissions within or outside Bosnia and Herzegovina to facilitate the execution of his or her mandate.
 9. The High Representative shall have no authority over the IFOR and shall not in any way interfere in the conduct of military operations or the IFOR chain of command.

Article III: Staffing

1. The High Representative shall appoint staff, as he or she deems necessary, to provide assistance in carrying out the tasks herein.
2. The Parties shall facilitate the operations of the High Representative in Bosnia and Herzegovina, including by the provision of appropriate assistance as requested with regard to transportation, subsistence, accommodations, communications, and other facilities at rates equivalent to those provided for the IFOR under applicable agreements.
3. The High Representative shall enjoy, under the laws of Bosnia and Herzegovina, such legal capacity as may be necessary for the exercise of his or her functions, including the capacity to contract and to acquire and dispose of real and personal property.
4. Privileges and immunities shall be accorded as follows:
 - a. The Parties shall accord the office of the High Representative and its premises, archives, and other property the same privileges and immunities as are enjoyed by a diplomatic mission and its premises, archives, and other property under the Vienna Convention on Diplomatic Relations.
 - b. The Parties shall accord the High Representative and professional members of his or her staff and their families the same privileges and immunities as are enjoyed by diplomatic agents and their families under the Vienna Convention on Diplomatic Relations.

- c. The Parties shall accord other members of the High Representative staff and their families the same privileges and immunities as are enjoyed by members of the administrative and technical staff and their families under the Vienna Convention on Diplomatic Relations.

Article IV: Cooperation

The Parties shall fully cooperate with the High Representative and his or her staff, as well as with the international organizations and agencies as provided for in Article IX of the General Framework Agreement.

Article V: Final Authority to Interpret

The High Representative is the final authority in theater regarding interpretation of this Agreement on the civilian implementation of the peace settlement.

Article VI: Entry into Force

This Agreement shall enter into force upon signature.

For the Republic of Bosnia and Herzegovina

For the Republic of Croatia

For the Federal Republic of Yugoslavia

For the Federation of Bosnia and Herzegovina

For the Republika Srpska

Annex 11: Agreement on International Police Task Force

The Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republika Srpska (the "Parties") have agreed as follows:

Article I: Civilian Law Enforcement

1. As provided in Article III(2)(c) of the Constitution agreed as Annex 4 to the General Framework Agreement, the Parties shall provide a safe and secure environment for all persons in their respective jurisdictions, by maintaining civilian law enforcement agencies operating in accordance with internationally recognized standards and with respect for internationally recognized human rights and fundamental freedoms, and by taking such other measures as appropriate.
2. To assist them in meeting their obligations, the Parties request that the United Nations establish by a decision of the Security Council, as a UNCIVPOL operation, a U.N. International Police Task Force (IPTF) to carry out, throughout Bosnia and Herzegovina, the program of assistance the elements of which are described in Article III below.

Article II: Establishment of the IPTF

1. The IPTF shall be autonomous with regard to the execution of its functions under this Agreement. Its activities will be coordinated through the High Representative described in Annex 10 to the General Framework Agreement.
2. The IPTF will be headed by a Commissioner, who will be appointed by the Secretary General of the United Nations in consultation with the Security Council. It shall consist of persons of high moral standing who have experience in law enforcement. The IPTF Commissioner may request and accept personnel, resources, and assistance from states and international and nongovernmental organizations.
3. The IPTF Commissioner shall receive guidance from the High Representative.
4. The IPTF Commissioner shall periodically report on matters within his or her responsibility to the High Representative, the Secretary General of the United Nations, and shall provide information to the IFOR Commander and, as he or she deems appropriate, other institutions and agencies.
5. The IPTF shall at all times act in accordance with internationally recognized standards and with respect for internationally recognized human rights and fundamental freedoms, and shall respect, consistent with the IPTF's responsibilities, the laws and customs of the host country.

6. The Parties shall accord the IPTF Commissioner, IPTF personnel, and their families the privileges and immunities described in Sections 18 and 19 of the 1946 Convention on the Privileges and Immunities of the United Nations. In particular, they shall enjoy inviolability, shall not be subject to any form of arrest or detention, and shall have absolute immunity from criminal jurisdiction. IPTF personnel shall remain subject to penalties and sanctions under applicable laws and regulations of the United Nations and other states.
7. The IPTF and its premises, archives, and other property shall be accorded the same privileges and immunities, including inviolability, as are described in Articles II and III of the 1946 Convention on the Privileges and Immunities of the United Nations.
8. In order to promote the coordination by the High Representative of IPTF activities with those of other civilian organizations and agencies and of the (IFOR), the IPTF Commissioner or his or her representatives may attend meetings of the Joint Civilian Commission established in Annex 10 to the General Framework Agreement and of the Joint Military Commission established in Annex 1, as well as meetings of their subordinate commissions. The IPTF Commissioner may request that meetings of appropriate commissions be convened to discuss issues within his or her area of responsibility.

Article III: IPTF Assistance Program

1. IPTF assistance includes the following elements, to be provided in a program designed and implemented by the IPTF Commissioner in accordance with the Security Council decision described in Article I(2):
 - a. monitoring, observing, and inspecting law enforcement activities and facilities, including associated judicial organizations, structures, and proceedings;
 - b. advising law enforcement personnel and forces;
 - c. training law enforcement personnel;
 - d. facilitating, within the IPTF' s mission of assistance, the Parties' law enforcement activities;
 - e. assessing threats to public order and advising on the capability of law enforcement agencies to deal with such threats.
 - f. advising governmental authorities in Bosnia and Herzegovina on the organization of effective civilian law enforcement agencies; and
 - g. assisting by accompanying the Parties' law enforcement personnel as they carry out their responsibilities, as the IPTF deems appropriate.
2. In addition to the elements of the assistance program set forth in paragraph 1, the IPTF will consider, consistent with its responsibilities and resources, requests from the Parties or law enforcement agencies in Bosnia and Herzegovina for assistance described in paragraph 1.
3. The Parties confirm their particular responsibility to ensure the existence of social conditions for free and fair elections, including the protection of international personnel in Bosnia and Herzegovina in connection with the elections provided for in Annex 3 to the General Framework Agreement. They request the IPTF to give priority to assisting the Parties in carrying out this responsibility.

Article IV: Specific Responsibilities of the Parties

1. The Parties shall cooperate fully with the IPTF and shall so instruct all their law enforcement agencies.
2. Within 30 days after this Agreement enters into force, the Parties shall provide the IPTF Commissioner or his or her designee with information on their law enforcement agencies, including their size, location, and force structure. Upon request of the IPTF Commissioner, they shall provide additional information, including any training, operational, or employment and service records of law enforcement agencies and personnel.

3. 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.
4. Upon request by the IPTF, the Parties shall make available for training qualified personnel, who are expected to take up law enforcement duties immediately following such training.
5. The Parties shall facilitate the operations of the IPTF in Bosnia and Herzegovina, including by the provision of appropriate assistance as requested with regard to transportation, subsistence, accommodations, communications, and other facilities at rates equivalent to those provided for the IFOR under applicable agreements.

Article V: Failure to Cooperate

1. Any obstruction of or interference with IPTF activities, failure or refusal to comply with an IPTF request, or other failure to meet the Parties' responsibilities or other obligations in this Agreement, shall constitute a failure to cooperate with the IPTF.
2. The IPTF Commissioner will notify the High Representative and inform the IFOR Commander of failures to cooperate with the IPTF. The IPTF Commissioner may request that the High Representative take appropriate steps upon receiving such notifications, 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 organizations on further responses.

Article VI: Human Rights

1. When IPTF personnel learn of credible information concerning violations of internationally recognized human rights or fundamental freedoms or of the role of law enforcement officials or forces in such violations, they shall provide such information to the Human Rights Commission established in Annex 6 to the General Framework Agreement, the International Tribunal for the Former Yugoslavia, or to other appropriate organizations.
2. The Parties shall cooperate with investigations of law enforcement forces and officials by the organizations described in paragraph 1.

Article VII: Application

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.

Article VIII: Entry into Force

This Agreement shall enter into force upon signature.

For the Republic of Bosnia and Herzegovina

For the Federation of Bosnia and Herzegovina

For the Republika Srpska

APPENDIX B

MAP OF BOSNIA AND HERZEGOVINA



APPENDIX C

UNITED NATIONS SECURITY COUNCIL RESOLUTION 1244

Adopted by the Security Council at its 4011th meeting, on 10 June 1999

The Security Council,

Bearing in mind the purposes and principles of the Charter of the United Nations, and the primary responsibility of the Security Council for the maintenance of international peace and security,

Recalling its resolutions 1160 (1998) of 31 March 1998, 1199 (1998) of 23 September 1998, 1203 (1998) of 24 October 1998 and 1239 (1999) of 14 May 1999,

Regretting that there has not been full compliance with the requirements of these resolutions,

Determined to resolve the grave humanitarian situation in Kosovo, Federal Republic of Yugoslavia, and to provide for the safe and free return of all refugees and displaced persons to their homes,

Condemning all acts of violence against the Kosovo population as well as all terrorist acts by any party,

Recalling the statement made by the Secretary-General on 9 April 1999, expressing concern at the humanitarian tragedy taking place in Kosovo,

Reaffirming the right of all refugees and displaced persons to return to their homes in safety,

Recalling the jurisdiction and the mandate of the International Tribunal for the Former Yugoslavia,

Welcoming the general principles on a political solution to the Kosovo crisis adopted on 6 May 1999 (S/1999/516, annex 1 to this resolution) and welcoming also the acceptance by the Federal Republic of Yugoslavia of the principles set forth in points 1 to 9 of the paper presented in Belgrade on 2 June 1999 (S/1999/649, annex 2 to this resolution), and the Federal Republic of Yugoslavia's agreement to that paper,

Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in the Helsinki Final Act and annex 2,

Reaffirming the call in previous resolutions for substantial autonomy and meaningful self-administration for Kosovo,

Determining that the situation in the region continues to constitute a threat to international peace and security,

Determined to ensure the safety and security of international personnel and the implementation by all concerned of their responsibilities under the present resolution, and acting for these purposes under Chapter VII of the Charter of the United Nations,

1. Decides that a political solution to the Kosovo crisis shall be based on the general principles in annex 1 and as further elaborated in the principles and other required elements in annex 2;
2. Welcomes the acceptance by the Federal Republic of Yugoslavia of the principles and other required elements referred to in paragraph 1 above, and demands the full cooperation of the Federal Republic of Yugoslavia in their rapid implementation;
3. Demands in particular that the Federal Republic of Yugoslavia put an immediate and verifiable end to violence and repression in Kosovo, and begin and complete verifiable phased withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable, with which the deployment of the international security presence in Kosovo will be synchronized;
4. Confirms that after the withdrawal an agreed number of Yugoslav and Serb military and police personnel will be permitted to return to Kosovo to perform the functions in accordance with annex 2;
5. Decides on the deployment in Kosovo, under United Nations auspices, of international civil and security presences, with appropriate equipment and personnel as required, and welcomes the agreement of the Federal Republic of Yugoslavia to such presences;
6. Requests the Secretary-General to appoint, in consultation with the Security Council, a Special Representative to control the implementation of the international civil presence, and further requests the Secretary-General to instruct his Special Representative to coordinate closely with the international security presence to ensure that both presences operate towards the same goals and in a mutually supportive manner;
7. Authorizes Member States and relevant international organizations to establish the international security presence in Kosovo as set out in point 4 of annex 2 with all necessary means to fulfil its responsibilities under paragraph 9 below;
8. Affirms the need for the rapid early deployment of effective international civil and security presences to Kosovo, and demands that the parties cooperate fully in their deployment;
9. Decides that the responsibilities of the international security presence to be deployed and acting in Kosovo will include:
 - a. Deterring renewed hostilities, maintaining and where necessary enforcing a ceasefire, and ensuring the withdrawal and preventing the return into Kosovo of Federal and Republic military, police and paramilitary forces, except as provided in point 6 of annex 2;
 - b. Demilitarizing the Kosovo Liberation Army (KLA) and other armed Kosovo Albanian groups as required in paragraph 15 below;
 - c. Establishing a secure environment in which refugees and displaced persons can return home in safety, the international civil presence can operate, a transitional administration can be established, and humanitarian aid can be delivered;
 - d. Ensuring public safety and order until the international civil presence can take responsibility for this task;
 - e. Supervising demining until the international civil presence can, as appropriate, take over responsibility for this task;
 - f. Supporting, as appropriate, and coordinating closely with the work of the international civil presence;
 - g. Conducting border monitoring duties as required;

- h. Ensuring the protection and freedom of movement of itself, the international civil presence, and other international organizations;
10. Authorizes the Secretary-General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo;
11. Decides that the main responsibilities of the international civil presence will include:
 - a. Promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo, taking full account of annex 2 and of the Rambouillet accords (S/1999/648);
 - b. Performing basic civilian administrative functions where and as long as required;
 - c. Organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections;
 - d. Transferring, as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo's local provisional institutions and other peace-building activities;
 - e. Facilitating a political process designed to determine Kosovo's future status, taking into account the Rambouillet accords (S/1999/648);
 - f. In a final stage, overseeing the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement;
 - g. Supporting the reconstruction of key infrastructure and other economic reconstruction;
 - h. Supporting, in coordination with international humanitarian organizations, humanitarian and disaster relief aid;
 - i. Maintaining civil law and order, including establishing local police forces and meanwhile through the deployment of international police personnel to serve in Kosovo;
 - j. Protecting and promoting human rights;
 - k. Assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo;
12. Emphasizes the need for coordinated humanitarian relief operations, and for the Federal Republic of Yugoslavia to allow unimpeded access to Kosovo by humanitarian aid organizations and to cooperate with such organizations so as to ensure the fast and effective delivery of international aid;
13. Encourages all Member States and international organizations to contribute to economic and social reconstruction as well as to the safe return of refugees and displaced persons, and emphasizes in this context the importance of convening an international donors' conference, particularly for the purposes set out in paragraph 11 (g) above, at the earliest possible date;
14. Demands full cooperation by all concerned, including the international security presence, with the International Tribunal for the Former Yugoslavia;
15. Demands that the KLA and other armed Kosovo Albanian groups end immediately all offensive actions and comply with the requirements for demilitarization as laid down by the head of the international security presence in consultation with the Special Representative of the Secretary-General;
16. Decides that the prohibitions imposed by paragraph 8 of resolution 1160 (1998) shall not apply to arms and related material for the use of the international civil and security presences;

17. Welcomes the work in hand in the European Union and other international organizations to develop a comprehensive approach to the economic development and stabilization of the region affected by the Kosovo crisis, including the implementation of a Stability Pact for South Eastern Europe with broad international participation in order to further the promotion of democracy, economic prosperity, stability and regional cooperation;
18. Demands that all States in the region cooperate fully in the implementation of all aspects of this resolution;
19. Decides that the international civil and security presences are established for an initial period of 12 months, to continue thereafter unless the Security Council decides otherwise;
20. Requests the Secretary-General to report to the Council at regular intervals on the implementation of this resolution, including reports from the leaderships of the international civil and security presences, the first reports to be submitted within 30 days of the adoption of this resolution;
21. Decides to remain actively seized of the matter.

Annex 1

Statement by the Chairman

on the conclusion of the meeting of the G-8 Foreign Ministers

held at the Petersberg Centre on 6 May 1999

The G-8 Foreign Ministers adopted the following general principles on the political solution to the Kosovo crisis:

- Immediate and verifiable end of violence and repression in Kosovo;
- Withdrawal from Kosovo of military, police and paramilitary forces;
- Deployment in Kosovo of effective international civil and security presences, endorsed and adopted by the United Nations, capable of guaranteeing the achievement of the common objectives;
- Establishment of an interim administration for Kosovo to be decided by the Security Council of the United Nations to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo;
- The safe and free return of all refugees and displaced persons and unimpeded access to Kosovo by humanitarian aid organizations;
- A political process towards the establishment of an interim political framework agreement providing for a substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of the KLA;
- Comprehensive approach to the economic development and stabilization of the crisis region.

Annex 2

Agreement should be reached on the following principles to move towards a resolution of the Kosovo crisis:

1. An immediate and verifiable end of violence and repression in Kosovo.
2. Verifiable withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable.

3. Deployment in Kosovo under United Nations auspices of effective international civil and security presences, acting as may be decided under Chapter VII of the Charter, capable of guaranteeing the achievement of common objectives.
4. The international security presence with substantial North Atlantic Treaty Organization participation must be deployed under unified command and control and authorized to establish a safe environment for all people in Kosovo and to facilitate the safe return to their homes of all displaced persons and refugees.
5. Establishment of an interim administration for Kosovo as a part of the international civil presence under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, to be decided by the Security Council of the United Nations. The interim administration to provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo.
6. After withdrawal, an agreed number of Yugoslav and Serbian personnel will be permitted to return to perform the following functions:
 - Liaison with the international civil mission and the international security presence;
 - Marking/clearing minefields;
 - Maintaining a presence at Serb patrimonial sites;
 - Maintaining a presence at key border crossings.
7. Safe and free return of all refugees and displaced persons under the supervision of the Office of the United Nations High Commissioner for Refugees and unimpeded access to Kosovo by humanitarian aid organizations.
8. A political process towards the establishment of an interim political framework agreement providing for substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of UCK. Negotiations between the parties for a settlement should not delay or disrupt the establishment of democratic self-governing institutions.
9. A comprehensive approach to the economic development and stabilization of the crisis region. This will include the implementation of a stability pact for South-Eastern Europe with broad international participation in order to further promotion of democracy, economic prosperity, stability and regional cooperation.
10. Suspension of military activity will require acceptance of the principles set forth above in addition to agreement to other, previously identified, required elements, which are specified in the footnote below.(1) A military-technical agreement will then be rapidly concluded that would, among other things, specify additional modalities, including the roles and functions of Yugoslav/Serb personnel in Kosovo:

Withdrawal

- Procedures for withdrawals, including the phased, detailed schedule and delineation of a buffer area in Serbia beyond which forces will be withdrawn;

Returning personnel

- Equipment associated with returning personnel;
- Terms of reference for their functional responsibilities;
- Timetable for their return;
- Delineation of their geographical areas of operation;
- Rules governing their relationship to the international security presence and the international civil mission.

Notes

1. Other required elements:
 - A rapid and precise timetable for withdrawals, meaning, e.g., seven days to complete withdrawal and air defence weapons withdrawn outside a 25 kilometre mutual safety zone within 48 hours;
 - Return of personnel for the four functions specified above will be under the supervision of the international security presence and will be limited to a small agreed number (hundreds, not thousands);
 - Suspension of military activity will occur after the beginning of verifiable withdrawals;
 - The discussion and achievement of a military-technical agreement shall not extend the previously determined time for completion of withdrawals.

APPENDIX D

TÜRKÇE ÖZET

Bu tez, soğuk savaşın bitişini takip eden döneminin en tartışmalı konulardan biri olan insani müdahale sonrası barış inşa etme sürecini incelemektedir. Barış inşası, genel olarak silahlı çatışma sonrası savaş yorgunu toplumlarda, barışın sağlanması olarak tanımlanmaktadır. Nispeten yeni bir kavram olup Birleşmiş Milletler (BM) Genel Sekreteri Butros B. Ghali'nin "Bir Barış Gündemi" isimli raporunda soğuk savaş sonrası ortaya çıkan güvenlik sorunlarıyla başa çıkmak için formüle edilen dört öğeden birini oluşturmaktadır.

Barış inşası, insani yardım sağlanmasından, uygulanabilir politik ve sivil yapıların oluşturulmasına ve çatışmanın esas sebeplerine yönelik uzlaşma çabalarına kadar çok kapsamlı bir yaklaşım gerektirmektedir. Dolayısıyla, bu durum, hedef alınan ülke için bütün toplum ve idari oluşumların tekrar yapılandırılması, müdahale eden devletler içinse uzun ve tartışmalı bir operasyon anlamına gelmektedir.

Barış inşası için hızlı bir yöntem yoktur. Askeri, siyasi ve mâli kaynakların uzun vadede, çatışmadan barışa ve uzlaşmaya geçişe yönlendirilmesini gerektirmektedir. Bu bağlamda barış inşası ciddi bir kısıtlama ile karşılaşmaktadır. Her şeyden önce, yerel kurumların kabulü ve katkısı olmaksızın uluslararası toplum, hızlı çözümler üretilip, çeşitli mekanizmalar empoze etmeye çalışmaktadır. Öte yandan barış inşasının diğer sınırlamaları ise müdahale ve yardım ulaştırmada gecikme ile uluslararası örgütler arasındaki yetersiz koordinasyondur.

Uluslararası toplum insani felaketleri durdurma amaçlı müdahalelerden sonra, bazı ülkelerde siyasi süreç ve yapıları yeniden oluşturup çatışmanın kökenlerini çözme gayretine girmiştir. Böylesi bir siyasi değişim, soğuk savaş sonrası dönemin en önemli meselelerinden birinin sonucudur: İnsani müdahalenin boyutu ne olmalıdır? Somali'deki gibi başarısızlığı kanıtlanan insani krizi durdurma amaçlı kısa bir müdahale olarak mı kalmalı; yoksa çatışmaya yol açan sebeplere yönelik uzun vadeli bir program mı üstlenmelidir? Bu eğilim, ikincinin lehinde gelişerek takip eden tartışmaya yol açmıştır.

Bu temelde çalışmanın esas sorunsalı, insani müdahale sonrası barış inşasının uygulanabilirliği, barış inşa stratejisinin unsurları ve başarılı bir strateji için gerekli koşullardır. Bu soruların cevabını bulabilmek için insani müdahalenin nasıl barış inşasını kapsayacak şekilde evrildiği, bu noktada çeşitli barış inşa araçlarının yayıflıkları ile barış inşasındaki en tartışmalı yöntem de incelenmektedir.

Bu çalışma, temel barış inşa araçlarıyla uzun vadeli politik ve sivil süreçlerin yaratılması hedefinin uygulanabilirliğini sorgulamaktadır. Özellikle etnik olarak bölünmüş, ortak çıkarlar yerine güvensizlik ve öfkenin bulunduğu karışık toplumları ele almaktadır. Yönetim ve güvenlik reformları, çatışma sonrası seçimler, insan hakları, mültecilerin geri dönüşü, sivil toplumun güçlendirilmesi gibi barış inşa araçları ve amaçları incelenerek böyle bir hedefin gerçekleştirilebilirliği araştırılmaktadır. Ayrıca, Birleşmiş Milletler, Avrupa Güvenlik ve İşbirliği Konferansı (AGİK), NATO gibi başlıca uluslararası aktörlerin barış inşasının bir öğrenme süreci olduğu, edinilen tecrübenin kullanılmasıyla başarının artırılacağı iddiası da sorgulanmaktadır.

Bu çalışma, Bosna, Kosova ve Doğu Timor günümüzdeki barış inşa örnekleri arasından Bosna ve Hersek üzerinde odaklanmaktadır. Bosna'nın örnek olay olarak seçilmesi, soğuk savaş sonrası barış inşa amaçlı ilk insani müdahale operasyonu olmasındandır. Uluslararası toplum on yıla yakın bir süredir Bosna'da şiddeti önlemek için yeni yapılar oluşturmaya çalışmaktadır. Bu yüzden süreç ve yaptırımlar açısından Bosna en ideal örnektir. Bütün bunlara ek olarak, Bosna ve Hersek, Avrupa kıtasında yer almasından dolayı bölgeyle ilgilenen güçlü ülkelerden ve uluslararası örgütlerden mümkün olan en yüksek yardımı almaktadır.

Buna rağmen nerdeyse on yıllık barış inşa çabaları sonrası, barış Bosna ve Hersek'te kurumsallaşamamış, uluslararası toplum çekildiği zaman Bosna'ya ne olacağı sorusu cevapsız kalmıştır. Bu bağlamda, Bosna ve Hersek barış inşa sürecini incelemek ve savaş yorgunu ülkelerdeki başarı şansını değerlendirmek açısından iyi bir örnek oluşturmaktadır. Ayrıca, bugüne kadar uluslararası strateji kazanılan tecrübenin diğer savaş yorgunu toplumlara aktarılan bir öğrenme süreci olarak değerlendirilmesinden dolayı bu araştırma, Kosova müdahalesini de bu açıdan değerlendirmektedir.

Örnek olaylar temelinde genel stratejiyi oluşturan barış inşa araçlarının olumlu ve olumsuz yönlerini değerlendiren kapsamlı bir araştırma eksikliği vardır.

Bu noktada tezin katkısı, bütün barış inşa araçlarının başarı ve başarısızlıklarını incelemek ve en ileri örnek olan Bosna ve Hersek'teki on yıllık ilerlemeyi ölçmektir. Siyaset üretimine katkıda bulunmayı hedefleyen araştırmaların fazlalığına karşılık, böylesi karmaşık bir konuda analiz yapan akademik çalışmalar sayılıdır. Bu sebeple, tez, barış inşa operasyonları üzerine yapılan çalışmaları zenginleştirmeyi hedeflemektedir.

Tez, şu bölümlerden oluşmaktadır: Birinci bölüm, çalışmanın amacını, sorunsalını ve esas argümanını ortaya koymaktadır. Bu bölüm ayrıca literatür taramasını ve tezin bu alandaki çalışmalara katkısını da içermektedir. İkinci bölüm, teorik çerçeveyi çizip uzun vadeli barış inşa amaçlı insani müdahalenin tanımını yapmaktadır. Daha sonra barış inşası kavramı, hedefleri, araçları ve çatışma sonrası ortamda barış inşasının sınırları incelenmektedir. Bu bölüm insani müdahalenin tarihsel gelişimini, meşruiyeti ve ne zaman başlayıp ne zaman bitmesiyle ilgili tartışmayı ve operasyon sonrası müdahalenin amacının ne olması gerektiğini anlatmaktadır. Barış inşa kavramını açıklayıp, özenle tanımlanmış amaç ve önceliklerin eksikliğine, düzgün bir stratejinin yokluğuna ve çeşitli barış inşa araçlarının zayıflıklarına işaret etmektedir.

Üçüncü bölüm, Bosna'daki savaşı durduran uluslararası müdahaleyi, Dayton Barış Anlaşmasının taraflara empoze edilmesinin yanı sıra söz konusu anlaşmanın değerlendirmesini içermektedir. Bosna'daki savaşla ilgili bilgi verildikten sonra uluslararası toplumun başlangıçta şiddeti durdurmaktaki başarısızlığı üzerine yoğunlaşmaktadır. Aynı zamanda bu bölüm Cutileiro, Vance-Owen, ve Owen-Stoltenberg Planları gibi faydasız barış çabalarını da değerlendirmektedir. Daha sonra ise Dayton Barış Anlaşmasının kabulünü, uluslararası topluma geniş yetkiler ve dokunulmazlıklar veren özel durumunu, anlaşmanın esas bölümlerini, içeriğini ve zayıflıklarını aktarmaktadır.

Dördüncü bölüm ise Dayton Barış Anlaşmasını ve Bosna ve Hersek'teki barış inşası gündemini ortaya koymaktadır. Yönetim ve güvenlik reformlarından, çatışma sonrası seçimlere, insan hakları, mültecilerin geri dönüşü ve sivil toplumun geliştirilmesine kadar, bütün barış inşa araçlarını sıralayarak uluslararası toplumun Bosna'daki barış inşa çabalarını değerlendirmektedir. Bu bölüm Dayton Anlaşmasının uygulanmasından sorumlu başlıca uluslararası örgütlerin görevlerini de incelemektedir. Bütün barış inşa araçlarının kapsamlı araştırılması, uluslararası

toplumun Bosna ve Hersek'teki barış inşa etme stratejisinin eksikliklerini ortaya çıkarmaktadır.

Beşinci bölüm, Bosna ve Hersek'te edinilen tecrübenin Kosova'da nasıl uygulandığını eleştirel bir bakış açısı ile araştırmaktadır. Bu bölüm, Kosova'daki çatışma ile başlayıp Rambouillet Anlaşmasının reddedilişine ve Birleşmiş Milletler Güvenlik Konseyi'nin 1244 sayılı kararının empoze edililişine değinmektedir. Değişik uluslararası örgütler tarafından yönetilen ve Birleşmiş Milletler Genel Sekreterinin Özel Temsilcisi tarafından denetlenen Birleşmiş Milletler Güvenlik Konseyi'nin söz konusu kararının uygulanmasını ve Kosova'daki barış inşasını tanımlamaktadır. Uluslararası toplumun Bosna ve Hersek'teki ile Kosova'daki misyonunun farklı olmasına rağmen pratikte benzer mekanizmalar ve tamamıyla aynı barış inşa araçları uygulanmaya konmaktadır. Ayrıca Kosova'nın belirsiz statüsü işleri daha da zorlaştırmaktadır. Bu da sonuçta Bosna'da edinilen tecrübeye rağmen uluslararası toplumun aynı yöntemi kullanıp aynı barış inşa araçlarıyla hatalarını tekrar ettiğini göstermektedir.

Altıncı bölüm sonucu oluşturup uluslararası toplumun nerdeyse on yıllık barış inşa ve uzlaşma çabalarının değerlendirmesini içermektedir. Aynı zamanda Bosna'da edinilen tecrübenin Kosova'daki sorunlara çare olamadığına dikkat çekip uluslararası toplumun barış inşasının bir öğrenme süreci olduğu iddiasını sorgulamaktadır. Sonuçta bu tez barış inşasını kavramsallaştırıp yeni bir yaklaşımın gerekliliğini göstermektedir.

Bu tez Bosna ve Hersek'teki barış inşa araçlarını inceleyerek şu sonuçlara varmıştır: yönetim reformları ve çok halklı bir Bosna ve Hersek devleti yaratılması, uluslararası toplumun Dayton Barış Anlaşması'ndan sonraki ana hedefi olmuştur. Bu sebeple Bosna'daki bütün etnik grupların çıkarını korumak maksadıyla yeni Bosna Devleti, merkezi olmayan bir idari yapı üzerine kurulmuştur. Bu yeni Bosna ve Hersek devleti iki oluşturucu entiteden (parça / kurucu devletten) oluşmaktadır. Bunlar *Republika Srpska* adlı Sırp oluşturucu devleti ve *Bosna-Hersek* federasyonudur. Böyle bir sistem federasyon içinde federasyon olarak tanımlanmaktadır.

Republika Srpska merkezi bir idareye sahipken, Bosna-Hersek federasyonu ara bir hükümet, on kanton ve 81 belediyeden oluşan hem çok gevşek hem de karmaşık bir yapıya sahiptir. Sistemin esasını etnik gruplar arasındaki güç paylaşımı

oluşturmaktadır. Savaş sonrası ortamda etnik grupların haklarının kurumsal güvenliği çok önemliydi. Bu da oluşturucu halklara geniş otonomi, veto ve etnik nüfusa oranlı temsil hakkıyla sağlandı. Merkezden yerel yönetimlere kayan güç dağılımı, merkezi yapıların kısıtlı yetkisine ve zayıflamasına yol açmıştır.

Şu anda Bosna ve Hersek'in en büyük sorunlarından biri ise Boşnakların merkezi hükümeti güçlendirme gayretine karşılık, Sırpların gevşek bir federasyonla devam etme kararlılığıdır. Dayton Barış Anlaşması'ndan sonra oluşturulan idari yapı milliyetçi politikacılar tarafından kötüye kullanılmış, iki oluşturucu entiteyi birleştirmek için gerekli reformların uygulanılmasından kaçınılmıştır. Yerel yöneticilerin ve karar alma mekanizmalarının işbirliğinden kaçınması, Avrupa Birliği Yüksek Temsilcisinin çok eleştirilen yasama, yürütme ve yargı güçlerini üstlenmesine yol açmıştır. Bu sayede Yüksek Temsilci Dayton Anlaşması'nı uygulamaktan kaçınan ve dolayısıyla barış inşasını baltalayan seçilmiş veya atanmış herhangi bir yöneticiyi, devlet memurunu, belediye başkanını, parlamento üyesini, başbakan hatta cumhurbaşkanını bile görevden alma yetkisine sahip olmuştur.

Güvenlik reformlarına gelince, Dayton Barış Anlaşması'nın askeri yönü anlaşmanın en başarılı uygulama sahası olmuştur. Savaş sonrası Bosna'da can güvenliği sağlanmış ve düzensiz ordular dağıtılmıştır. Fakat Bosna'daki üç etnik grubun ordularının tek bir emir-komuta zincirine bağlanarak tek bir ordu çatısı altında birleşmeyi reddetmesi Bosna ve Hersek'in NATO'nun "Barış İçin Ortaklık" programının dışında kalmasına yol açmıştır. Güvenlik reformları, polis ve yargı organlarını da içermektedir. Bosna'daki polis güçleri Birleşmiş Milletler'in Uluslararası Polis Gücü tarafından gözetlenip eğitilmiş, etnik temelde ayrımcılık yapmadan uluslararası standartlara uygun çalışabilmeleri için desteklenmiştir.

Ne var ki, uluslararası toplumun çabaları Bosna ve Hersek polisini geliştirmekte başarılı olmasına rağmen, polis entiteler arasında bölünerek işbirliğinden uzak bir halde görev yapmaktadır. Güvenlik reformlarının son unsuru olan hukuka saygı ve yargının bağımsızlığı ise Bosna ve Hersek'te zayıftır. Burada güçlü bir hukuk devleti yerine yozlaşmış ve adaletsiz mahkemeler, tutarsız hukuksal uygulamalar, etnik temelde muamele ve bölünmüş bir hukuksal alan mevcuttur.

Çatışma sonrası seçimler, Avrupa Güvenlik ve İşbirliği Konferansı (AGİK)'nın gözetimi altında 1996 yılından 2000 yılına kadar başarıyla düzenlenmesine karşı Bosna ve Hersek'te gücünü etnik sorunların devamından alan

barış inşasıyla ilgilenmeyen milliyetçi partilerin başa geçmesini engelleyememiştir. Uluslararası toplumun uzaşmacı partilere verdiği açık destek de milliyetçi partilerin oylarını azaltamamıştır. Bu durum, seçimlerle çok etnikli bir devletin oluşturulamayacağını ve bunun ne kadar doğru bir barış inşa mekanizması olduğu sorusunu gündeme getirmiştir.

İnsan haklarının korunması, müdahalenin esas sebeplerinden biridir; dolayısıyla Bosna'da insan haklarının geliştirilmesi de barış inşasının önemli unsurlarından biridir. Fakat, Dayton Anlaşması yeni Bosna ve Hersek Devleti'nde detaylı bir insan hakları koruma mekanizması oluşturduğu halde uygulamada durum sorunludur. Uluslararası mekanizmalar insan haklarının korunmasında standartları tespit etmişlerdir; ancak bu mekanizmalar tek başına bu standartlara ulaşılmasını sağlayamazlar. Savaş sonrası toplumlarda ise bu mekanizmaların düzgün çalışmasını sağlayacak yapılanmalar ya yoktur ya da etkisizdir.

Ayrıca, savaş suçlularının cezalandırılması, insan hakları konusunda öncelikli alanlardan birisidir. Bosna ve Hersek'te işlenen inanılmaz savaş ve insanlık suçları göz önüne alındığında uzlaşma sağlanması ve bütün bir toplumun değil sadece suçluların yargılanması için savaş suçlularının cezalandırılması gereklidir. Ancak unutulmamalıdır ki savaş suçlularının cezalandırılması bugün bile çok hassas bir konudur. Çünkü bir taraf için savaş suçlusunu olarak tanımlanan kişiler, diğer taraf için savaş kahramanı olarak algılanmaktadır. Bu yüzden Sırp, yaklaşık on yıldır tek bir savaş suçlusunu dahi uluslararası makamlara teslim etmemişlerdir.

Mültecilerin ve yer değiştirmiş kişilerin evlerine geri dönmesi, Bosna'nın özel durumundan dolayı barış inşasının en önemli unsurudur. Savaşın sonunda nerdeyse Bosna halkının yarısı, şiddetten korunmak ve hayatlarını kurtarmak için evlerinden kaçmak zorunda bırakılmıştır. Bosna ve Hersek'te yapılan etnik temizliğin sonuçlarını değiştirmek için mültecilerin evlerine geri dönmesi, Dayton Anlaşmasının ana hedefidir. Savaş sonrası yıllarda geri dönüş konusunda ilerleme sağlanamazken, 2001 yılından itibaren mültecilerin evlerine dönüşünde artış görülmektedir.

Bu araştırma, mültecilerin evlerine dönme konusundaki sıkıntılarının güvenlik, iş imkânları, bürokratik zorluklar ve çocukların eğitimi olduğunu belirlemiştir. Geri dönüş konusundaki ilerleme, çok etnikli Bosna'nın yeniden

yapılanmasında önemli bir gelişme olarak değerlendirilmesine rağmen tarihsel ve demografik yerleşim şeklinin asla eskisi gibi olamayacağına inanılmaktadır.

Sivil toplumun geliştirilmesi, Bosna ve Hersek'te kullanılan diğer bir barış inşa aracıdır. Güçlü bir sivil toplumun ve çok sayıda hükümet dışı örgütün varlığının Bosna'da farklılıkların barındırılmasında tolerans ve anlayışa katkıda bulunacağı düşünülmektedir. Fakat bu tez, uluslararası toplumun sağladığı maddi destek ve teşvike rağmen Bosna'da sivil toplumun zayıf olduğunu ve halkın katılımını sağlayamadığını iddia etmektedir. Sıradan vatandaşlar, sivil toplumun getirebileceği faydayı görememektedir.

Bu yüzden, Bosna'daki sivil toplum örgütleri, etnik gruplar arasında barış ve uzlaşma sağlanması için aktif olarak çalışan birkaç kişinin katılımıyla oluşmakta, beklenen etkiyi yaratamamaktadır. Ayrıca Bosna ve Hersek'te sivil toplum bağımsız var olamamakta, uluslararası toplumun sağladığı maddi desteğe ihtiyaç duymaktadır. Sonuç olarak, sivil toplum Bosna'da halkın katılımından uzak, uluslararası toplumun mali desteğine bağımlı ve sadece bazı entelektüellerin ve barış gönüllülerinin desteklediği bir çaba olarak kalmaktadır.

Bu tez, barış inşasının uygulanabilirliğini, uluslararası barış inşa stratejisinin eksikliklerini ve Bosna'da edinilen tecrübenin diğer savaş yorgunu toplumlara aktarılabilme olasılığını sorgulamaktadır. Uluslararası toplumun birçok barış inşa aracının incelenmesi doğrultusundaki bu araştırma, mekanizmanın eksiklikleri olduğuna işaret etmektedir. Eksikliklerin ötesinde, bazı barış inşa araçlarının tartışmalı, bazılarının ise tamamen faydasız olduğunu ortaya çıkarmıştır.

Örneğin yönetim reformları, kendi kendisine yeten yerel kurumlar yaratmak yerine uluslararası toplumun gözetimine bağlı acayip bir yapı oluşturmuştur. Öte yandan uluslararası toplumun uzlaşmacı siyasi partilere verdiği açık destek, halk arasında yarattığı şüphelerden dolayı geri teperek tam tersi bir etki yararmış ve oyların aşırı milliyetçi partilere kaymasını engelleyememiştir. Bütün barış inşa araçları, karşılaştırmalı olarak değerlendirildiğinde ise şu ana kadar Bosna ve Hersek'te en faydasız barış inşa aracının sivil toplumu geliştirme çabaları olduğu tespit edilmiştir.

Bunların yanında, Birleşmiş Milletler, NATO, Avrupa Güvenlik ve İşbirliği Konferansı gibi başlıca uluslararası aktörlerin barış inşasının bir öğrenme süreci olduğu iddiası da irdelendi. Bu çalışma, uluslararası toplumun Kosova müdahalesi

sonrası barış inşa çabalarının Bosna ve Hersek'tekine benzer bir stratejinin ürünü olduğunu, pratikte aynı hataların tekrarlandığını ve kazanılan tecrübenin Kosova'daki sorunları çözmekte yetersiz kaldığını göstermektedir. Her ne kadar edinilen bir kısım tecrübeler, çatışma sonrası seçimler ve polis reformu gibi bazı barış inşa araçlarının verimliliğini artırmışsa da; aslında iki savaş yorgunu olan toplumda genelde aynı mekanizmalar kullanıldığından dolayı aynı hatalar tekrarlanmıştır.

Bu araştırma, barış inşasında yeni bir yaklaşıma ihtiyaç olduğunu ortaya çıkarmaktadır. Bu yeni yaklaşım, barış inşa araçlarını daha yapıcı ve üretken bir şekilde kullanarak her etnik sorunun özelliğine göre belirlenmelidir. Bu yaklaşım, uluslararası toplumun askeri ve sivil uygulama ayırımından, değişik uluslararası örgütler arasındaki iletişim, işbirliği ve çıkar çatışmasından doğan eksiklikleri gibi noktaları da göz önünde bulundurmalıdır. Aynı zamanda uluslararası örgütlerin görevlerini uzatmanın, tekrar tanımlamanın, yeni yetki alanları yaratmanın ve yerel otoritelere esas sorumluluğu devretmeyi ertelemenin sakıncalarını akılda tutmalıdır. Ayrıca, çeşitli barış inşa araçlarının zayıflıkları ışığında, zaman ve kaynak kaybı olmadan yeni bir süreç yaratarak başarıyı artırmalıdır.

Sonuçta, uluslararası toplumun barış inşa stratejisi ve araçlarının zayıflıkları yanında etnik grupların uzlaşma ve barış inşa mekanizmalarını uygulama niyeti de ciddiyetle gözden geçirilmelidir. Bunun sebebi ise uzun süren etnik sorunlara dışarıdan yapılan müdahalenin sınırlı bir etkiye sahip olmasıdır. Bundan söz etmek, yapmaktan daha kolayken bu, barış inşa operasyonlarının karşılaştığı en çetrefilli sorundur.

APPENDIX E

VITA

DİLEK LATİF

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Date and Place of Birth: 26.10.1973, Nicosia, North Cyprus

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EDUCATION

- September 2005 Ph.D. Degree, Department of International Relations, Faculty of Economics and Administrative Sciences, Middle East Technical University (M.E.T.U.), Ankara / Turkey.
- August 2003 Certificate on The Enlarged European Union and Its Regions, Summer Academy 2003, European Academy of Bozen /Bolzano, Italy.
- February 1999 M. Sc. Degree, Thesis: "United Nations' Changing Role in the Post Cold War Era". Supervisor: Assoc. Prof. Dr. Meliha B. Altunışık, Department of International Relations, Faculty of Economics and Administrative Sciences, Middle East Technical University (M.E.T.U.), Ankara / Turkey.
- July 1996 B.A. Degree in International Relations, Department of International Relations, Faculty of Business and Administration, Eastern Mediterranean University (E.M.U), Famagusta, Turkish Republic of Northern Cyprus (TRNC).

PROFESSIONAL EXPERIENCE

- September 2004 - Lecturer, Department of International Relations, Girne American University (G.A.U), North Cyprus.
- 2004 Spring Semester Part-time instructor, Department of History, Eastern Mediterranean University (E.M.U). Elective Course taught: Post Ottoman History of Balkans (HIST 306).
- 2003-2004 Fall Semester Part-time instructor, Department of International Relations, Girne American University (G.A.U). Courses taught: European Union Studies IR (402), Global Security (IRE 413)
- October 2001– February Part-time instructor, Department of International Relations, Eastern Mediterranean University (E.M.U).

- 2003 Courses taught: International Relations I (IR 207), International Relations II (IR 216), Introduction to Politics (POL 104), The History and Politics of Cyprus (IR 403).
- June-August 1999 Internship in UNHCR (United Nations High Commissioner for Refugees), BO Ankara, at the Durable Solutions Unit.
- 1998-1999 Assistant in the Association of Academic Staff in Middle East Technical University (M.E.T.U.), Ankara / Turkey.
- 1994-1996 Student assistant, Department of International Relations, Faculty of Business and Administration, Eastern Mediterranean University (E.M.U), Famagusta, Turkish Republic of Northern Cyprus (TRNC).

PUBLICATIONS

- 2004 From Peacekeeping to Humanitarian Intervention. The United Nation's Approach to Peace: The Case of Cyprus, (in The Journal of Cyprus Studies, Eastern Mediterranean University Press, Special Issue 'Cyprus, Cypriotism, and Europe' volume 8/9, number 22/25, 2002/2003).
- 2002 Refugee Policy of the Turkish Republic, (in The Turkish Yearbook of International Relations, Ankara University Press, Number XXXIII, 2002, p.1-30).
- November 2000 The International Relations of Unrecognized States, A Case Study: Turkish Republic of Northern Cyprus-Organization of the Islamic Conference Relations, (in the Proceedings of the Third International Congress for Cyprus Studies).
- 2000 United Nations' Changing Role in the Post Cold War Era, (in the Turkish Yearbook of International Relations, Number XXX 2000).

PAPERS PRESENTED AT CONFERENCES

- 28-29 November 2002 Fourth Congress for Cyprus Studies (EMU), "The United Nations' Engagement in Cyprus: Humanitarian Intervention or Peacekeeping Effort?"
- 20 January 2001 KIBES, İstanbul, "Tanınmamış Devletlerin Uluslararası İlişkileri KKTC- İslam Konferansı Örgütü Örneği", (Kudret Özersay'la birlikte).
- 13-17 November 2000 Third Congress for Cyprus Studies (EMU), "The International Relations of Unrecognized States, A Case Study: Turkish Republic of Northern Cyprus-Organization of the Islamic Conference Relations", (with Kudret Özersay).

SEMINARS

- 11 December 2004 Bi-Communal Workshop ‘ Education for Peace’, Ledra Palace, Nicosia, “Recommendations for an Education for Peace in Divided Societies”.
- 12-17 July 2004 Seventh International Seminar, Democracy and Human Rights in Multiethnic Societies, Konjic, BiH, “ Two Instruments of Peace building- Democratization and Development of Human Rights: The Case of Bosnia and Herzegovina.”
- 24 May 2004 The Monday Untitled Seminars, Faculty of Art and Science, Eastern Mediterranean University (EMU), “International Community’s Peace Building Efforts in Bosnia and Herzegovina.”

HONORS AND AWARDS

Scholarship for tuition of E.M.U during four years of Undergraduate Study.

Graduated from E.M.U (2nd in the department) with High Honour degree (GPA:3.67/4),

Scholarship from the Ministry of Education in Turkish Republic of Northern Cyprus (TRNC) for Masters and Ph.D Degree.

LANGUAGES

Fluency in Turkish and English (speaking, writing, understanding)

ACADEMIC INTERESTS

Conflict Resolution- peaceful settlement of ethnic conflicts and power-sharing in multi-ethnic communities, International Organizations- the United Nations: Peace Operations, Peace-keeping, Peace-building; European Union, Ethnic Conflicts- Bosnia, Kosovo, Cyprus, International Refugee Question, and Humanitarian Intervention.

ACADEMIC PROJECTS

- July- December 2004- Researcher in the bi-communal ‘Education for Peace Project’ carried out by POST (Project Oriented Searching Team) in the North, sponsored by UNDP in Cyprus.

NON-ACADEMIC INTERESTS

Member of the board of an NGO: POST (Project Oriented Searching Team)