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To: SCHULTE
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international crisis group



October 14, 1998

The Honorable Samuel R. Berger
National Security Advisor
White House
1st Floor, West Wing
Washington, DC 20500

Dear Mr. Berger,

I am pleased to enclose four recent International Crisis Group reports on the Balkans. Each was published during the past month.

Doing Democracy a Disservice: 1998 Elections in Bosnia and Herzegovina, Too Little Too Late: Implementation of the Sarajevo Declaration, and Whither Bosnia? all provide insight into recent developments in Bosnia. The reports include a pre-election critique of the September poll, an analysis of refugee returns to the Bosnian capital and an examination of the political climate and the role of the international community in general.

Kosovo's Long Hot Summer is enclosed as a briefing on the military, political, and humanitarian developments in Kosovo as of early September. Though events on the ground have changed dramatically in recent days, the report examines the evolution of the Kosovo Liberation Army and the internal dynamics of Kosovar Albanian politics and the impact of both on the options that the international community may consider to promote a political solution to the conflict.

Indeed, while the current situation in Kosovo has commanded the attention of the international community, it is clear that events elsewhere continue to hinder efforts to rebuild Balkan stability. I therefore hope you will find the enclosed reports useful in your analysis of conditions in the entire region.

If you have any questions or would like further information, please don't hesitate to contact me.

Sincerely,

George Biddle
Vice President

OCT 19 15:15

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**DOING DEMOCRACY A DISSERVICE:
1998 ELECTIONS IN BOSNIA AND HERZEGOVINA**

ICG Report

9 September 1998

Sarajevo

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DOING DEMOCRACY A DISSERVICE: 1998 ELECTIONS IN BOSNIA AND HERZEGOVINA

EXECUTIVE SUMMARY

The stakes in Bosnia's forthcoming elections, the fifth internationally-supervised poll since the end of the war, could not be higher, for Bosnia and Herzegovina (Bosnia) and also for the international community. Having invested enormous financial and political capital in the peace process, the international community expects a return on its investment. That is why leading international figures including US Secretary of State Madeleine Albright have entered the Bosnian political fray, urging Bosnians to back parties which "support Dayton" and threatening to withdraw aid if they do not. The elections will bring some changes so the event will be hailed as a triumph. However, they will not lay the ground for a self-sustaining peace process. That can only be achieved by political reform and, in particular, a redesign of the electoral system to guarantee Bosnians ethnic security.

Democratic elections are all too often simplistically put forward in the West as a panacea, as if by itself the act of voting will all cure ills within a society. Here it is worth bearing in mind that both Bosnia and the rest of the former Yugoslavia had already held democratic elections when they fell apart in war. Indeed, their disintegration can, in part, be attributed to the nature of the democracy which emerged. In Bosnia the 1990 election amounted to a poor ethnic census and as politicians exclusively represented the narrow interests of their own ethnic group and not the entire electorate, Bosnian society polarised and politics degenerated into a zero-sum affair.

The issue of democracy in a multi-ethnic state has generated a great deal of academic debate. Early political philosophers such as John Stuart Mill were sceptical about the prospects for democracy in a multi-ethnic state arguing that "free institutions are next to impossible in an country made up of different nationalities". Contemporary political scientists have a more optimistic view and look to designing democratic institutions in such a way that they reconcile legitimate interests of different communities based on local conditions. In Bosnia, therefore, the environment for democracy, the conditions and the political and electoral systems are critical.

Though elections formed the cornerstone of the Dayton Peace Agreement (DPA), the conditions in which any kind of fair poll could take place simply did not and could not exist without a major restructuring of Bosnian society. Before giving the go-ahead to Bosnia's 1996 elections, the OSCE's then Chairman-in-Office Flavio Cotti warned that if minimal prerequisites were not met before polling day, the vote ought not to take place as it would lead to "pseudo-democratic legitimisation of extreme nationalist power structures". His words were prophetic. The elections simply ratified the status quo, conferring mandates on the nationalists who had prosecuted the war who continued to pursue the same policies. The result was further zero-sum politics. The current elections will again ratify the status quo. They will not of themselves take the peace process forward. However, today's Bosnia is very different from that of 1996.

The changes which will be hailed as electoral breakthroughs should not be attributed to the flowering of democracy in Bosnia. They are instead the result of the way in which the international community has ridden roughshod over Bosnia's democratic institutions. The status quo has been forcibly changed by interventionist policies aimed at loosening the grip of the

political parties which emerged victorious in the 1996 poll. Snatch operations against indicted war criminals, robust SFOR intervention in Banja Luka in the summer of 1997, SFOR seizure of Bosnian Serb television's transmitters in October 1997, destroying the financial base of hard-line politicians, dismissing officials and striking candidates from electoral lists have created a new Bosnian reality.

The greatest changes will be among Serbs in Republika Srpska where support for the SDS is likely to disintegrate. The SDS already lost control over the entity's National Assembly in November 1997, has seen its financial base disappear, and has been deprived of access to media. In recent months the power struggle has spilled over into violence with one assassination and another attempted assassination. The post-electoral alliances may prove interesting.

Among Bosniacs, the changes will be less dramatic. The main opposition party, the SDP, is likely to do better because there should be no repetition of the fraud which marred the 1996 poll, electors who backed Haris Silajdzic in 1996 will probably switch allegiance, and the party has waged a successful campaign. At the presidential level, however, the SDP did not bother even to put up a candidate against the incumbent Alija Izetbegovic. This throws up an interesting possibility in the battle for the Croat member of the Presidency because of a quirk in the electoral system. Electors in the Federation have one vote at the presidential level and can choose whether to use it for a Bosniac or a Croat candidate. Since Izetbegovic's election is a foregone conclusion, a large number of Bosniacs in the Federation may opt to vote for the Croat member of the Presidency, in which case the HDZ's candidate and favourite Ante Jelavic could be defeated. Otherwise, the NHI, the new Croat party of Kresimir Zubak is likely to make modest inroads which could, nevertheless, transform politics in certain cantons.

Despite the changes in parties and personnel in power, the elections will not have much impact on the logic of Bosnian politics. Having been elected on the basis of votes of a single community, ethnically-based parties will only represent the interests, or what they deem to be the interests of that one ethnic group and feel no obligation to the rest of Bosnia's population. Instead of seeking accommodation, these parties will view every political issue as a "zero-sum" game in which there will inevitably be a winner and a loser and thus fail to reach compromise. The fundamental flaw is the lack of ethnic security. This is the underlying reason for conflict within the country as well as for the lack of trust between ethnic groups. Moreover, the lack of ethnic security undermines everything the international community is attempting to achieve and fails to offer Bosnians a future. As a result, many young, educated Bosnians are voting with their feet and emigrating.

In every country, the electoral system has a profound effect on political life, influencing the way parties campaign and political elites behave. In multi-ethnic societies the choice of system is especially important. Depending on the system selected, it can either provide incentives for parties to be broad-based and accommodating, or it can achieve the opposite, namely to encourage parties to form around narrow appeals to ethnicity. ICG has proposed a radical reform of the electoral system requiring candidates to seek the support of all ethnic groups, not just their own. Moreover, a permanent electoral law is currently being drawn up for Bosnia which should be passed by the end of the year. For democracy to thrive in Bosnia, for Bosnians to have a future and the peace process to become self-sustaining in the absence of today's colossal international presence, it is critical that the new law builds in ethnic security.

Sarajevo, 9 September 1998

DOING DEMOCRACY A DISSERVICE: 1998 ELECTIONS IN BOSNIA AND HERZEGOVINA

I. INTRODUCTION

Bosnians go to the polls on 12 and 13 September 1998 in the second post-war general elections. The vote takes place almost two years to the day after the first polls and nearly three years after the signing of the Dayton Peace Agreement (DPA). The stakes could not be higher, for Bosnia and Herzegovina (Bosnia), but also for the international community which has invested so much financial and political capital in the peace process and is looking for a return on that investment. Indeed, in the weeks running up to the vote a series of leading international figures -- notably US Secretary of State Madeleine Albright who visited Bosnia at the end of August 1998 -- have entered the Bosnian political fray, on the one hand, urging Bosnians to back parties which "support Dayton" at the polls, and, on the other, threatening to withdraw economic aid in the event that they do not.

This paper examines the nature of Bosnian democracy, the post-war environment in which elections have taken place, the legacy of the flawed elections of 1996 and resulting political failings as well as attempts to overcome those failings; it considers the various elections which are taking place and the likely outcomes and consequences of each poll; and it analyses the fundamental flaws in the existing political system with proposals for the kind of change which could help place Bosnian democracy on an even keel and make the peace process self-sustaining.

II. THE NATURE OF BOSNIAN DEMOCRACY

Democratic elections are all too often simplistically put forward in the West as a panacea for all former Communist countries, irrespective of their political heritage and constituency, as if by itself the act of voting will cure all ills within a society. Here, however, it is worth bearing in mind that both Bosnia and the rest of the former Yugoslavia had already held democratic elections when they fell apart in war. Indeed, the disintegration both of the former Yugoslavia and of Bosnia can, in part at least, be attributed to the nature of the democracy which emerged. In Bosnia, for example, in the 1990 elections, which by most accounts were held to a high standard and were as free and fair as could be hoped, the voting corresponded to a poor ethnic census. Bosniacs voted for the Bosniac party, Serbs for the Serb party and Croats for the Croat party. Moreover, although the three ethnically-based parties were ostensibly in coalition, they rapidly fell out with each other after the poll. As politicians exclusively represented the narrow interests of their own ethnic group and not the entire electorate, Bosnian society polarised and politics degenerated into a zero-sum affair.

Given Bosnia's unfortunate experience of democracy to date, observers must inevitably wonder how it may be made to work more successfully, or whether it can work at all. The issue of democracy in a multi-ethnic state has over the past hundred and fifty years generated a great deal of academic debate. Interestingly, 19th century political philosophers were sceptical about the prospects of democracy in ethnically-divided societies. John Stuart Mill, for example, argued that democracy was incompatible with the structure of a multi-ethnic state, as "free institutions

are next to impossible in a country made of up different nationalities".¹ At the time, there were few democracies in the world and therefore a dearth of empirical evidence from which to draw definitive conclusions. In the intervening period, democratic government has spread across the world with the result that today there are instances of multi-ethnic societies which are also functioning democracies. In the light of these developments, the academic debate has also moved on. Contemporary political scientists have a more optimistic view of the prospects of democracy in multi-ethnic societies and look to designing democratic institutions in such a way that they reconcile legitimate interests of different communities based on local circumstances.² In Bosnia, therefore, the environment for democracy, that is the conditions and the political and electoral systems, are critical.

A. Environment

In December 1995, the starting point for Bosnia's post-war democratic experiment, the country was effectively divided into three mutually-hostile ethnic territories. The population was largely destitute and therefore heavily dependent on their own ethnic authorities whose rule was based on a mixture of the rigid, all-powerful party structure inherited from the Communist system and informal, even less transparent arrangements which had been improvised during the war. Though elections formed the cornerstone of the DPA, the conditions in which any kind of fair poll could take place simply did not and could not exist without a major restructuring of Bosnian society. Many of those responsible for the greatest atrocities committed in the conflict, some formally indicted for war crimes, most not, occupied key positions of authority; media were under control of the ruling ethnically-based political parties and served as conveyor belts for their views; and there was hardly any basis upon which even to begin to construct civil society.

The division of Bosnia into two entities and the terms of the DPA concerning elections made the task of building a democratic system in Bosnia yet more difficult. Common institutions are formed on the basis of the results of mutually-exclusive polls. Moreover, the rights of Bosnians to stand as candidates for elections is curtailed according to their ethnicity.³

B. Post-War Electoral Experience

Since the end of the war there have already been four internationally-supervised polls in Bosnia and Herzegovina. This includes a special poll in Mostar in June 1996⁴ and municipal elections in September 1997,⁵ as well as the September 1996 general elections at national, entity and cantonal

¹ John Stuart Mill, *Considerations on Representative Government*, Liberal Arts Press, New York, 1958 [1861].

² For an excellent summary of potential system design, see *The International IDEA Handbook of Electoral System Design*, International IDEA, Stockholm, 1997.

³ All electoral provisions stipulated in the entity constitutions and the DPA are contained in an appendix at the end of the ICG report *Changing the Logic of Bosnian Politics* of 10 March 1998.

⁴ The Mostar poll took place under the auspices of the European Union Administration of Mostar. For a comprehensive study, see ICG papers *Elections in Mostar: Political Analysis and Elections in Mostar: Technical Analysis* of July 1996.

⁵ For a comprehensive study of the 1997 Bosnian municipal elections, see ICG papers *Beyond Ballot Boxes: Municipal Elections in Bosnia and Herzegovina* of 10 September 1998 and *ICG Analysis of 1997 Municipal Election Results* of October 1997.

substantial numbers in their home municipalities in the Federation are those from Drvar, Glamoc and Grahovo, where they formed the overwhelming majority of the population before the war.

2. Political Failings

Having received democratic mandates in the September 1996 elections, the various ruling ethnically-based parties behaved predictably. They all persisted with the same policies they had pursued both before and during the war, defending what they interpreted as the narrow interest of their community in a zero-sum game. After massive and sustained international pressure, Bosnia's joint institutions did eventually come together in January 1997. However, it is no exaggeration to state that to date they have failed to function, that every issue has been viewed in zero-sum terms, and that almost all "breakthroughs" have required disproportionate, indeed often ridiculous, amounts of time, effort and concessions on the part of the international community. Moreover, in practice, the political impasse has created a position in which, on the one hand, most public offices have to be filled simultaneously by three Bosnians (a Serb, Croat and Bosniac); and, on the other hand, these Bosnians do less and less work of any substance because they cannot reach accord.

C. Attempts to Overcome Failures of the Political System

As it became clear that Bosnia's rival ethnic leaders would never live up to their DPA commitments of their own accord, the international community changed tack. The new approach has effectively involved taking over the running of the country. It has also meant taking on the three ruling ethnically-based parties. And it has included a series of changes to the electoral law designed to make politicians more accountable to their electorate.

1. Creeping Protectorate

The original legislation designed to knit Bosnia loosely back together in line with the DPA, known as the quick-start package, including, for example, the central bank law, was drawn up by the Office of the High Representative (OHR). After some nine months of cajoling and watering down, it was adopted by Bosnia's House of Representatives on 20 June 1997. In order to speed the process in future, the Peace Implementation Council (PIC) augmented the powers of the High Representative at its Bonn meeting of 10 December 1997. As a result, the High Representative now has the authority to dismiss any officials, elected or otherwise, who oppose the peace process and to impose solutions in intractable disputes.

With his new authority, the High Representative has pushed through a series of key measures aimed at bringing communities together. These include a common vehicle licence plate, which has made it possible for Bosnians to travel throughout the country with a reasonable degree of security (knowing that their ethnic identity is not on public display), a new Bosnian flag and passport. He has also dismissed obstructionist officials, including the deputy mayor of Drvar and the mayor of Stolac. And increasingly he is appointing special envoys in strategic parts of the country. In addition to the international supervisor in Brcko, there is now an international special envoy in Drvar and an international chairman of the interim municipal board in Srebrenica.

Moreover, the PIC threatened at its latest meeting in June 1998 in Luxembourg that further envoys might be appointed.¹²

2. Attempts to Loosen the Grip of the Ruling Ethnically-based Parties

In effect, almost everything the international community does in Bosnia upsets the existing order within the country and thus works against the interests of the ruling, ethnically-based parties. The most significant moves to date have been the arrests of persons indicted by the International Criminal Tribunal for the former Yugoslavia (ICTY), and in particular the 10 July 1997 snatch operation in which the UK's elite Special Air Services killed Simo Drljaca and arrested Milan Kovacevic, both so-called "sealed indictees", i.e. both had been indicted for war crimes, indeed for genocide, in unpublished indictments. With that one swoop, the cycle of impunity which had hitherto characterised the wars of Yugoslav dissolution was broken. Although the most notorious indictees, Radovan Karadzic and Ratko Mladic, remain at liberty, to date 27 out of 57 public indictees have been removed to The Hague.¹³

In addition to arresting indictees and dismissing Bosnian officials from their posts, the international community, via the Election Appeals Sub-Commission (EASC) of the OSCE, has been striking increasingly numbers of candidates from the ruling parties' electoral lists in response to clear, egregious and usually repeated violations of electoral rules and regulations. In the most recent instance, the EASC struck 15 members of the ruling Croat party, the *Hrvatska demokratska zajednica* (Croat Democratic Union or HDZ), from the party list on Friday 4 September 1998.¹⁴

The international community has also begun the systematic restructuring of the Bosnian media. Control of the key state-owned television stations in both entities has been wrested from the ruling parties, international supervisors have been placed in the stations, and a new regulatory framework under an Independent Media Commission (IMC) has been introduced. Meanwhile, the HDZ has been punished by having candidates struck from the party list for the on-going biased coverage of the Croatian state network HRT which broadcasts to most of Bosnia. The internationally-funded television station, the Open Broadcast Network, which was launched one week before the September 1996 poll, has evolved into a much-watched, highly influential medium. And the OHR has since May 1998 been running a public information campaign on all

¹² Paragraph 74 of the declaration from the PIC Steering Board's Luxembourg meeting said: The Steering Board requests the High Representative to establish an evaluation system drawing on existing data and resources, of peace implementation in individual cantons and municipalities and indicate to the Steering Board what steps need to be taken. Options would include the appointment on an ad hoc basis of a Special Envoy to co-ordinate local and international activity in non-compliant municipalities."

¹³ Of the 30 who remain at large, 25 are Bosnian Serbs, three are citizens of rump Yugoslavia and two are Bosnian Croats. Six indictees have died or been killed (including Drljaca) and 18 indictments have been withdrawn.

¹⁴ The striking of candidates followed repeated warnings to HRT, the Croatian broadcaster, to stop its highly unbalanced and often misleading news and editorial programmes, re-transmitted throughout much of Bosnia, and to stop using Bosnian Croat soldiers to intimidate HDZ officials and voters who indicated that they might switch allegiance to a more moderate Croat party. The striking of 15 candidates will mean that these 15 individuals, including some of the HDZ's top officials, will lose their elected positions (although they will, presumably, continue to exercise power within the HDZ), and that the HDZ may lose several seats in the canton 2 (Posavina) legislature.

Bosnian television stations with 10-minute features explaining key issues to the Bosnian public backed up by a series of well-produced advertisements showing the benefits of ethnic tolerance and reconciliation.

Since many leading figures in the ruling ethnically-based parties have personally benefited from the informal financial practices established during the war, the international community has moved to limit the opportunities for such abuse. The European Union's Customs and Fiscal Assistance Office to Bosnia (CAFAO) has been especially effective in this field. Whereas revenues due to the state once invariably ended up in private pockets, now an increasing proportion is making its way via official channels into state coffers. For example, the government of Republika Srpska has recently begun to receive tax revenue from at least some of the cigarettes consumed within the entity.

Ever since the end of the war in December 1995, international donors, non-governmental organisations, the OHR and the OSCE's democratisation wing have been working to build civil society within Bosnia. While the results of the many projects in this field have often been disappointing, an indigenous non-governmental sector, including, for example, the Coalition for Return, the association of displaced persons organisations from throughout the country, now exists. Moreover, opposition political parties have benefited and continue to benefit from the expertise of western democracy-building groups such as the National Democratic Institute. And although they do not receive financial subsidies as in previous polls, opposition political parties have benefited from a network of OSCE-funded public resource centres around the country where they are able to print election materials and use facilities for campaigning.

3. Changes to Electoral Law

In an attempt to open up the electoral process and make politicians more accountable to the electorate, the Provisional Election Commission (PEC),¹⁵ the OSCE's rule-making body, changed several aspects of the electoral system. Political parties in these elections were obliged to produce a programme expressing their views on return, minority rights, economic reform, reconstruction and social services. Every political party was obliged to place a mix of men and women on the party list in such a way that no more than seven of the top ten candidates could be of the same sex. All candidates were obliged to declare their personal assets. The PEC also limited the mandate conferred by the elections to two years at all levels, except the three members of Bosnia's Presidency whose terms are required by the DPA to be four years. And the OSCE attempted to organise a series of live television debates between the presidential candidates.

In practice, the party programmes have generally been so bland it is difficult to tell one party from the other. The personal assets declarations, by contrast, have generated a series of interesting comparative analyses in the media. The presidential debates failed to come off as SDA candidate for the Bosnian seat on the Presidency, Alija Izetbegovic, refused to appear besides Fikret Abdic, the renegade Bosniac war-time leader. And HDZ candidate Ante Jelavic boycotted the event in protest against the striking of HDZ candidates from the party list.

¹⁵

In 1996 the PEC comprised four international members and three Bosnian members, each of whom effectively represented one of the ruling ethnically-based parties. In 1998 its composition was changed to include additional members representing opposition parties and civil society.

III. THE VARIOUS POLLS AND THEIR LIKELY OUTCOMES

With so many candidates and parties, six separate polls taking place on the same day, as well as the prospect of many hundred thousand absentee ballots, the Bosnian political scene is inevitably confusing. The following section attempts to focus on the key candidates, the main factors influencing the results of the elections as well as the quirks of the system which are relevant to understanding potential outcomes and the possible implications. It does not refer to this year's registration figures because insufficient data are currently available for a comprehensive analysis. Nor does it consider the various opinion polls which have been carried out. This is because they are inevitably unreliable, given the geographic dispersal of the electorate and a pervasive fear that responses to pollsters' questions will not be kept secret from the ruling parties.

One factor which must additionally be taken into consideration in all polls is voter apathy. After so many polls, and such great promises at the time of the 1996 elections, and yet no obvious change in the conditions in which most displaced persons live or their prospects for return, many Bosnians, and especially the refugee community abroad, may not bother to vote. An additional consideration which may influence the voting decision, at least for non-Serb refugees from Republika Srpska, is that election literature was only sent out in Cyrillic script. That said, the OSCE has been running a massive election-awareness campaign both in the country and abroad to ensure as large a turn-out as possible.

A. Elections to the Common Institutions

1. Three-Member Presidency

According to the Constitution, Bosnia's three-member Presidency consists of one Serb one Croat and one Bosniac. The Croat and the Bosniac are each directly elected from the territory of the Federation and the Serb is directly elected from the territory of Republika Srpska. Further, they "shall be directly elected in each Entity (with each voter voting to fill one seat on the Presidency)".¹⁶ Serbs from the Federation and Croats and Bosniacs from Republika Srpska cannot become president of their country, nor can Jews, Roma and other minorities. The Serb member is elected by direct ballot from Republika Srpska in a simple First-Past-The-Post vote. The Croat and Bosniac members are elected by direct ballot in the Federation in such a way that both Croat and Bosniac candidates are listed on the same ballot paper and voters are only able to make one choice. They therefore have to choose whether to vote for the Bosniac or the Croat. Both the Bosniac with the most votes and the Croat with the most votes, irrespective of the proportion of the overall poll, are elected to the Presidency.

a. Serb Member of the Presidency

The contest for the Serb member of the Bosnian Presidency is effectively between the incumbent Momcilo Krajisnik of the former ruling *Srpska demokratska stranka* (Serb Democratic Party or SDS) and a close ally of Radovan Karadzic, and Zivko Radisic, the president of the *Socijalistička partije Republike Srpske* (Socialist Party of Republika Srpska SPRS) and representative of the

¹⁶ DPA, Annex 4, Article V.

Sloga coalition which brings together his party, Biljana Plavsic's *Srpski narodni savez* (Serb People's Alliance or SNS) and Milorad Dodik's *Stranka nezavisnih socijaldemokrata* (Party of Independent Social-Democrats or SNSD). The SPRS is generally viewed as a branch of Slobodan Milosevic's Socialist Party in Yugoslavia. That said, Radisic has during the past year, pursued a line independent of Belgrade and at key junctures defied Milosevic.

In the 1996 election Krajisnik polled 690,646 votes or 67.3 percent of the total and his closest rival Mladen Ivanic 307,461 votes or 30 percent. Of Ivanic's support, roughly two-thirds probably came from the absentee votes of Bosniacs and Croats. In 1996 Radisic stood as a candidate for the Presidency of Republika Srpska against Plavsic, then of the SDS, and polled 168,024 votes, or 15.6 percent of the turn-out. In the forthcoming poll, Radisic, as the more moderate candidate, is again likely to benefit from some 200,000 absentee Bosniac and Croat votes. Radisic will also benefit from a radically-altered balance of power in Republika Srpska which has seen the SDS's authority disintegrate during the past 15 months. Indeed, the elections are, above all, likely to ratify the existing political reality so that although Krajisnik is the incumbent, Radisic is the favourite.

The authority of both Krajisnik and the SDS began to decline after the 10 July 1997 snatch operation (see Section II.C(2) above). Moreover, in the wake of the snatch operation, the Stabilisation Force (SFOR) intervened in Banja Luka in July and August 1997 to shore up the position of Biljana Plavsic, the more co-operative president of Republika Srpska, and prevent her harder-line, Pale-based SDS rivals and former colleagues ousting her. On 4 October 1997, after repeated warnings, SFOR intervened to seize the transmission towers of SRT, the Bosnian Serb state television network which had hitherto served as a mouthpiece for the opinions of the SDS. An international supervisor was placed in SRT ostensibly to stop incitements to violence, DPA obstruction, ensure balance in the network's coverage and raise professional standards. In practice, however, the station simply switched allegiance and now serves largely as a conveyor belt for Plavsic's views, albeit without the worst abuses of the former management.

In extraordinary elections Plavsic called for Republika Srpska's National Assembly in November 1997, which were again supervised by the OSCE, the SDS and their even more extreme allies the *Srpska radikalna stranka* (Serb Radical Party or SRS) failed narrowly to win an absolute majority. The massive erosion of their support was in large part due to the new media scene in which the ruling party had minimal access to the main broadcaster. Nevertheless, the SDS and SRS won a clear majority among Serb voters in Republika Srpska, and it was the absentee votes of Croats and Bosniacs which tipped the balance. Moreover, on 18 January 1998 in the wake of the poll, the High Representative engineered the appointment of the moderate Serb Milorad Dodik, whose party holds only two out of the 83 seats, as prime minister with the support of Bosniac and Croat deputies. The crucial vote took place in the absence of the SDS and SRS whose representatives had walked out of the parliament.

Since Dodik's appointment, Republika Srpska has begun to receive large amounts of international aid. Indeed, the OHR even arranged a financial lifeboat to keep the new government afloat and pay civil servants and teachers in the first months. Moreover, international advisers have been working with the new government to restructure Republika Srpska's finances in such a way that the entity benefits from all tax revenue to which it is entitled and that such money is no longer siphoned off into private pockets, thus striking at the SDS's financial base. Although Republika Srpska has effectively been divided for the past year, the Banja Luka authorities have increasingly grown in confidence. Shortly after coming to power, Dodik purged the entity's industry removing SDS loyalists and in July and August 1998 he did

2. National Assembly

The forthcoming Republika Srpska National Assembly election is the third poll at this level since the DPA came into force. In the first election in September 1996, the SDS won an absolute majority with 45 of the 83 seats, and its ally the SRS picked up another 6. After the second extraordinary election of November 1997, the SDS remained the largest party in the parliament with 24 seats, but even together with the SRS, which took a further 15, failed to win an absolute majority. The SDA-led *Koalicija za cjelovitu i demokratsku Bosnu i Hercegovinu* (Coalition for a Whole and Democratic Bosnia and Herzegovina or KBiH) won 16 seats. And the SDP won 2 seats, bringing the number of Bosniac and Croat deputies in the parliament elected by absentee voters to 18. Meanwhile, Plavsic's newly-formed SNS picked up 15 seats, Radisic's SPRS 9 and Dodik's SNSD 2. The result (as discussed in section III.A(1a) above) was the formation of a Dodik-led government with the support of the Bosniac and Croat deputies.

Given that the SDS lost the November 1997 elections, that the party has since been excluded from power and its financial base has collapsed, and that the *Sloga* coalition has shown that it can attract substantial foreign aid, there are no prospects of an SDS recovery. That said, several factors make for an interesting poll and must be taken into consideration.

It is not clear, at this stage, the extent to which various parties will benefit most from the SDS's demise or, critically, how they will behave after the poll. Although Plavsic, Radisic and Dodik have formed a coalition at the presidential levels, each party is fighting the parliamentary election separately. Moreover, despite the alliance, the three parties are very different. Plavsic makes it clear that her SNS exists to defend Serb interests in the party name. Dodik, by contrast, refuses to place an ethnic prefix in front of his party's name, with the result that many Serb voters assume that it represents Bosniac or Croat interests. As long as displaced Bosniacs and Croats vote, there should be a similar number of Bosniac and Croat deputies elected by absentee ballots. Otherwise, Serb commentators anticipate gains for those Serb parties with strong nationalist credentials which are, at the same time, not perceived to be corrupt. The likelihood, therefore, is that Plavsic's SNS will be the major beneficiary, though Poplasen's SRS may also pick up additional votes, and some of the smaller Serb electoral coalitions may win the odd seat. Although Dodik hopes to boost his representation to 10 seats and has presented himself as the man best able to deliver international aid, in practice he will be doing well to achieve half that.

A realignment among Serb parties must be expected after the elections. Moreover, since the SDS will no longer be the force it used to be, it is possible that a new government can be formed based on a new coalition of Serb parties without recourse to the support of Bosniac and Croat deputies. In such an event, it is not clear whether Dodik would remain as prime minister. That said, the international community may decide to make future economic aid conditional on his continued presence in government.

D. Federation of Bosnia and Herzegovina

1. House of Representatives

In 1996 the SDA easily formed the largest group in the 140-member assembly with 78 seats. The HDZ picked up 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 5 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. However, several factors militate against this. 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.¹⁸ 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 organisations. The opposition is therefore likely to boost its showing, though not so much as to threaten the SDA's hold on power in any way.

The emergence of Kresimir Zubak's NHI is certain to have an impact on the HDZ's share of the vote. That said, the NHI is unlikely to gain as many votes as a party as Zubak himself in the election for the Croat member of the Presidency. Inroads both by predominantly-Bosniac opposition parties and the NHI may, ironically, make governing the Federation even more difficult than it has been to date. Hitherto, controversial issues have generally been resolved by agreement between the SDA and HDZ in negotiations outside the normal democratic institutions. In future, it may be necessary to seek accommodation in parliament.

2. Cantonal Elections

In the ten cantonal elections in 1996 the SDA took 6 cantons and the HDZ 4. The combined votes of the two ruling ethnically-based parties ranged from a low of 65 percent in canton 9 (Sarajevo) to highs of 93 percent in cantons 6 and 7 (Central Bosnia and Neretva). The closest battle between the two parties was in canton 6 (Central Bosnia) where the SDA polled 49.7 percent and the HDZ 43.5 percent. This time around, the emergence of Kresimir Zubak's NHI as an alternative to the HDZ and the increasing influence of the predominantly-Bosniac opposition to the SDA could generate interesting results in certain key cantons and possibly even radically alter politics there. If, for example, the NHI makes inroads into the HDZ's support in canton 6 (Central Bosnia), the entire environment for refugee return could be transformed. Otherwise, the HDZ and SDA are likely to lose most ground in canton 9 (Sarajevo) and canton 3 (Tuzla-Podrinja). And the absentee votes of displaced Serbs should have an impact on the results in canton 10.

IV. FUNDAMENTAL FLAWS AND POTENTIAL SOLUTIONS

While the elections will generate a certain amount of change in parties and personnel in power in Bosnia, they will not have much impact on the logic of Bosnian politics. It will not, for example, be possible for the international community to withdraw from Bosnia confident that the new democratically-elected authorities will be able to govern the country in such a fashion that it does

¹⁸ See ICG paper *Addendum to the 22 September 1996 ICG Report on Elections in Bosnia and Herzegovina*.

not slip back into war. The failure of political reconstruction can be interpreted in two ways. It may be viewed as proof that Bosniacs, Croats and Serbs cannot live together and that therefore Bosnia should be partitioned into ethnic ghettos. Or it may be interpreted as the reflection of a flawed political system, and that, therefore, the political system itself should be reformed in such a fashion that Bosniacs, Croats and Serbs can live together. This analysis assumes the latter interpretation. The following section examines the flaws in the system and their consequences for the future of Bosnia. And it proposes the kind of radical reform required to turn the current cease-fire into a self-sustaining peace process.

A. Absence of Ethnic Security

The fundamental flaw in the existing political system is that it fails to provide ethnic security. This is because political parties are ethnically-based and politicians only have to seek support from one ethnic group to win office. Bosniacs can be elected without receiving a single vote cast by a Serb or a Croat. Serbs can be elected without receiving any Bosniac or Croat support. And Croats can be elected without receiving a single Bosniac or Serb vote. Moreover, when political parties representing the interests of a single community win the support of 50 percent of the electorate plus one vote, they have absolute authority. The ethnic group in power is therefore in a position to dictate to the other ethnic groups in such a way that Bosnians who do not belong to that ethnic group have no political rights. In effect, numbers are everything. A Bosniac majority means Bosniac ethnic rule. A Serb majority means Serb ethnic rule. And a Croat majority means Croat ethnic rule. Everybody wishes to live under their own ethnic authorities, but fears the ethnic rule of any other community.

Although the electoral system currently in place approximates to many which are used in Western Europe, it is inappropriate in Bosnia because of the nature of Bosnian society. When Western Europeans vote for their political representatives, it is never clear which party or candidates they have supported, and, in any case, elected office-holders automatically work on behalf of the entire electorate in the hope that in future polls they will also win the support of voters who did not back them last time around. In Bosnia, by contrast, politicians know by the clearly-distinguishable names of Serbs, Croats and Bosniacs who has not voted for them and who, under the current system, will never vote for them.

The key to the success of democratic government in Western Europe and the West in general is its inclusive nature and the dependency relationship between politicians and the entire electorate. With the ethnic divisions in Bosnia and the current electoral system, politics is by definition exclusive and politicians are only dependent on a part of the electorate. As a result, it will always be easier and more rewarding for politicians to outbid each other on ethnic issues, rather than to preach moderation.

B. Consequences of Flaws

Ethnic security is the key issue in Bosnia. The absence of ethnic security is the fundamental, underlying reason for conflict within the country as well as for the lack of trust between ethnic groups. Moreover, on the one hand, it undermines everything the international community is attempting to achieve in the country and, on the other, it fails to offer Bosnians a future. Without attempting to address this issue, the international community has no hope of withdrawing from

the country with the satisfaction of having laid the groundwork for a stable democracy. Instead, it faces the prospect of an indefinite presence.

1. Obstacle to Peace Process and Especially Refugee Return

The logic behind the existing system is especially frightening. Having been elected on the basis of votes of a single community, an ethnically-based party will only represent the interests, or what they deem to be the interests, of that one people and feel no obligation to the rest of Bosnia's population. Instead of seeking accommodation in common institutions, these parties view every political issue as a "zero-sum" game in which there will inevitably be a winner and a loser and thus fail at all times to reach compromise. Worse still, the way to get ahead in politics is clearly to defend the interests of one's own community in the most robust manner possible. The consequence is a vicious cycle of fear and insecurity.

While it is possible, for example, for SFOR, to create a sufficiently secure environment for so-called "minority" returnees to make their way home to territories controlled by the military of a different ethnic group, it is virtually impossible for that community to reintegrate itself into the society. The problem is that returnees are obliged to live in a system in which authority exclusively represents the interests and culture of a different ethnic group and they have little or no influence over that authority. It is difficult to have confidence in the durability of such a solution in the absence of a permanent SFOR presence with foreigners micro-managing all aspects of the country's affairs.

2. Voting with Feet

The most indicative sign of the failings of the political system is the attitude of young, educated Bosnians. While the OSCE urges them to use their vote wisely for a better future, many are voting with their feet and leaving the country in search of that elusive goal. Establishing the extent of the exodus is difficult. The Office of the United Nations High Commissioner for Refugees (UNHCR) compiles total figures for Bosnians who have found durable solutions abroad, of whom there were 504,000 by the end of 1997,¹⁹ but does not collate information about those who have left the country since the DPA came into force. The United States have accepted more than 25,000 Bosnian refugees each year for the past two years, most of whom were living in Croatia and Yugoslavia. Young Bosnians also look to Canada and Australia as possible destinations. Moreover, the press regularly carries information notices for Bosnians concerning emigration. The latest issue of the Sarajevo weekly *Svijet*, for example, contains a half-page advertisement on page 45 on emigration to Australia promising help acquiring visas and financial support, pointing out that priority was given to candidates from mixed marriages. Since citizens of Republika Srpska only received Bosnian passports in August 1998, the exodus may just be beginning.

¹⁹ UNHCR, *Bosnia and Herzegovina Repatriation and Return Operation 1998*.

C. Permanent Electoral Law

Under the DPA, the Provisional Election Commission is supposed to hand over its authority to a Bosnian-run Permanent Election Commission to conduct future elections.²⁰ At the same time, the future election laws have to be drawn up and adopted by Bosnia's Parliamentary Assembly.²¹ This legislation is currently being drawn up in the OHR and should be ready by the end of the year. It offers the best chance remaining to construct a political system which builds in ethnic security.

D. ICG's Electoral Proposal²²

ICG first proposed a radical reform of Bosnia's electoral system building in incentives for ethnic co-operation in its paper examining the September 1997 municipal elections which was followed with a more comprehensive analysis in March 1998. The key to the proposal is the requirement that candidates are obliged to seek the support of all ethnic groups and not just their own, thus making them answerable to the entire electorate. The proposal is controversial to some western eyes, however, in that it would require the compilation divides of separate ethnic rolls.

Key features of the system are setting the *ethnic* results of the elections in advance so as to build in security; dividing the Bosnian electorate into Serb, Croat, Bosniac and "Other" voters and then giving each community an equal say in the election of members of other communities via "weighted", multiple votes; considering ballots spoiled unless all sections are filled in to encourage electors to vote in all categories; and setting a minimum threshold of support from a candidate's own community to ensure that "straw men" are not elected.

Ironically, it is by dividing the Bosnian electorate in the above fashion that it is possible to replicate in Bosnia the interest-based coalitions that form the basis of democratic politics in the West. The system would not and does not make Bosnians love each other. Instead, it aspires simply to force Serbs, Croats and Bosniacs to deal with each other constructively and protects each community from the ethnic rule of the other.

V. CONCLUSION

This paper is rather provocatively called *Doing Democracy a Disservice* for two reasons. Firstly, because in reality Bosnian democracy is a charade. And secondly, and more importantly, because the current political system fails to provide Bosnians with the ethnic security they require for their society to evolve in a healthy manner.

²⁰ DPA, Annex 3, Article V.

²¹ DPA, Annex 5, Article IV and Article V.

²² For a comprehensive analysis of electoral systems and their appropriateness for Bosnia, see ICG Paper *Changing the Logic of Bosnian Politics: Discussion Paper on Electoral Reform*, 10 March 1998.

In order to get the peace process moving in Bosnia, the international community has had to ride roughshod over the country's democratic institutions. This is because in the absence of all pre-conditions for democratic government and an inappropriate electoral system, those institutions have predictably failed to function. In order to begin constructing the environment for a healthy democracy to take root, the international community has been obliged to dismantle the existing power structure and break the ruling ethnically-based parties. This task has been easiest where those parties have been most corrupt and will surely bear some fruit in the forthcoming elections. That said, the polls are only likely to ratify the results of changes which have already taken place on the ground. They will not of themselves take the peace process forward as such and will not alter the zero-sum nature of Bosnian politics. Moreover, the advances are likely to crumble once the international community begins to back off from its interventions by fiat. Bosnian society still requires massive restructuring which, as with all other advances to date, cannot be achieved by democratic means and are unlikely to be sustainable without a NATO presence.

In every country, the electoral system has a profound effect on the evolution of political life, influencing the way parties campaign and political elites behave. In multi-ethnic societies the choice of system is especially important. Depending on the system selected, it can either provide incentives for parties to be broad-based and accommodating, or it can achieve the opposite, namely to encourage parties to form around narrow appeals to ethnicity. Bosnia's current system corresponds to the latter. For the country and its citizens to have a future and the peace process to become self-sustaining, it has to conform to the former. It is critical now, via the permanent electoral law, to construct a system which builds in ethnic security and provides incentives to Bosnia's communities to work constructively together, building institutions which can function in the absence of today's colossal international presence.

Sarajevo, 9 September 1998

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rather than react to crises after they happen.

Senator George Mitchell, ICG Board of Trustees Chair

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Too Little Too Late: Implementation of the Sarajevo Declaration

ICG Report

August 1998

Sarajevo

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TOO LITTLE TOO LATE: IMPLEMENTATION OF THE SARAJEVO DECLARATION

Executive Summary

Sarajevo's Bosniac authorities were given the opportunity to demonstrate their much-vaunted commitment to multi-ethnicity when, on 3 February 1998, representatives of the state of Bosnia and Herzegovina (Bosnia), the Federation of Bosnia Herzegovina (Federation), Sarajevo Canton and the international community adopted the Sarajevo Declaration. The Declaration stressed the importance of the Bosnian capital "as a model of coexistence and tolerance for the rest of the country" and made it clear that: "The international community will condition continuation of assistance for Sarajevo on fulfilment of the benchmarks set out in this Declaration and on adequate progress toward meeting the 1998 goal of at least 20,000 minority returns."

Seven months on, the Sarajevo authorities have failed to meet most of the Declaration's main benchmarks or take adequate, concrete steps to enable the return of anywhere close to 20,000 minorities this year. Indeed, as of early August, only 1,300 minorities -- 7 percent of the target number -- had actually returned. These failures are, in large part, due to stalling, incompetence and general lack of will on the part of Sarajevo authorities and officials of the ruling SDA (Party of Democratic Action).

The much-heralded "year of minority returns" has failed to materialise. Nonetheless, the low number of returns to Sarajevo are among the most shameful failures, in light of several factors: the large amount of foreign aid -- 500 million DM -- lavished on Sarajevo since the end of the war, augmented by huge sums injected into the local economy by thousands of foreigners living in Sarajevo; a low level of violence against returnees owing in substantial part to the large foreign presence; and the low number of minorities who have stayed in or returned to Sarajevo -- only 13 percent today, compared with 50 percent before the war. Even this percentage is jeopardised by the continued influx of Bosniacs, including tens of thousands who did not previously live in Sarajevo; the outflow of minorities; and the fact that a large percentage of minorities who have returned (or remained) are elderly.

Sarajevo officials have argued that the main reason for the low number of minority returns is a lack of housing space, and have accused the international community of thwarting returns by not providing enough assistance for housing reconstruction. In fact, the number of people per home on average has declined from 3.6 before the war to 3.2. A major reason for the housing shortage is that many families that remained in Sarajevo during the war now occupy two or more homes. Bosniacs displaced from elsewhere have been treated shabbily; many have been evicted from their temporary accommodation in order to make them available for people with political connections, including those whose pre-war homes are habitable.

In response to threatened sanctions in the Sarajevo Declaration, Federation authorities did eventually amend the entity's property legislation in line with the demands of the Office of the High Representative (OHR). Although the amendments remove most legal obstacles to return, Federation authorities refused to make further reforms, citing the failure of Republika Srpska authorities to amend their property laws. Moreover, Sarajevo officials have applied the laws

regarding socially-owned apartments so as to favour Bosniacs who remained in Sarajevo over minorities and even over Bosniacs displaced from elsewhere in the country.

- *In light of the slow progress in minority returns to both entities, and for numerous other reasons, the 4 October 1998 deadline for the filing of claims to recover socially-owned apartments should be extended for twelve months.*
- *The international community should condition further aid to Republika Srpska on adoption of non-discriminatory property laws; and should urge that entity's authorities to adopt property laws that do not suffer from the defects from which the Federation laws suffer, on the grounds that their greater obstruction of minority returns to date justifies demands for speedier progress now.*

The Sarajevo Declaration called on the Sarajevo Cantonal Police Force to hire more minority officers, and to develop a plan for hiring officers over the next two years so as to reach percentages that reflect the composition of the pre-war population. The current force has an adequate percentage of Croats but only 2 percent of officers are Serbs or "others", well below even the *current* population composition (5 percent Serb and 3 percent others).

Initial progress in identifying offensive passages in school texts and materials has not yet resulted in their deletion. The Cantonal Ministry of Education agreed to remove or black-out all offensive passages and accounts of the recent war, but by the start of the school year in September, had not yet done so.

In July of this year, because the Canton had failed to meet most of the Sarajevo Declaration's main benchmarks, the US suspended 9 million DM of reconstruction assistance, and the European Commission introduced clauses in reconstruction contracts totalling some 18 million DM stating that the projects would not be started pending advice from the OHR concerning the Canton's compliance with the Declaration.

Aid should continue to be withheld until the Cantonal authorities take at least the following steps:

- *They must accept the international community's definition of double occupancy.*
- *They must undertake a systematic investigation of the Canton's property records in order to root out abuse, in particular double occupancy, giving high priority to the records of the homes of the 7,100 non-Bosniac families that have registered to return.*
- *They must evict illegal occupants, especially where housing would thereby be made available for minorities who wish to return, and must find alternative accommodation for people who truly have no alternative accommodation available to them.*
- *They must resolve the 80 or so remaining priority cases (out of 166) brought to their attention by the UN High Commissioner for Refugees, the Federation Ombudsmen and the Jewish community.*
- *They must cancel permanent occupancy rights granted after 7 February 1998.*
- *They must process claims for socially-owned apartments expeditiously, without discrimination and consistent with the law.*
- *They must take concrete steps to hire immediately at least 100 Serb and "other" police officers.*
- *They must stop making false or misleading statements in the media suggesting that compliance with the demands of the international community would require them to throw people out on the streets who stayed in Sarajevo throughout the war.*

Sarajevans rightfully have urged that officials -- including members of the ruling SDA -- who are responsible for obstruction and are profiting from double occupancies should be punished. The OHR has not been sufficiently vigorous in pressing officials to live up to their obligations.

- *The Reconstruction and Return Task Force should appoint a team to investigate claims of housing abuse and identify the officials who are responsible for the failure to fulfil the commitments made in the Sarajevo Declaration and/or who are benefiting from double occupancies. This task should be made a top priority, and High Representative Carlos Westendorp should ensure that the investigatory team has the resources and political support to follow the evidence wherever it may lead.*

Sarajevo, 9 September 1998

TOO LITTLE TOO LATE: IMPLEMENTATION OF THE SARAJEVO DECLARATION

I. INTRODUCTION

In December 1997 the Peace Implementation Council meeting in Bonn called for a high-level conference on returns to the Sarajevo Canton. Although there had been more minority returns to the Sarajevo Canton than anywhere else in Bosnia and Herzegovina (Bosnia), it was agreed that, as the capital of the country and the recipient of considerable financial aid, the Canton should have made more progress in facilitating minority returns.

The Sarajevo Conference, held on 3 February 1998, adopted a Declaration which called for the dismantling of specific obstacles to the return of minorities,¹ and set deadlines by which various benchmarks were to be achieved. Cantonal authorities exhibited little political will to achieve these goals. Implementation began only when sanctions were threatened; the suspension of 27 million DM of aid in July was followed by further small improvements. Nevertheless, these steps have been little and late.

In February 1998 ICG published a paper outlining factors in the Sarajevo Canton that thwart returns and putting forward a number of recommendations.² Here, in its second report on Sarajevo, ICG examines the progress and lack of progress made and offers recommendations which, if implemented, would facilitate greater minority returns to Bosnia's capital city and reverse the process of ethnic homogenisation which is already well underway.

II. COMMITMENTS MADE IN THE SARAJEVO DECLARATION

On 3 February 1998 the Office of the High Representative (OHR), the US Government and the European Commission hosted the Sarajevo Return Conference which produced the Sarajevo Declaration. The Declaration stressed the importance of Sarajevo "as a model of coexistence and tolerance for the rest of the country"³ and outlined the greatest obstacles to return along with deadlines for their resolution. The Declaration conditioned future aid to the Canton on fulfilling a set of benchmarks and "adequate progress" in achieving at least 20,000 minority returns in 1998. The US Special Envoy to the Balkans, Robert Gelbard, stated at the conference: "The United States and its international partners are ready to continue helping you in absorbing refugees and rebuilding the economy You must not fail. If you fail we will not be able to sustain the level of support we have to this point provided."

¹ The term minorities is used, in this paper, to refer to non-Bosniacs; in the Sarajevo Canton Bosniacs are in the majority, and the other ethnic groups can therefore be considered as minorities. The term is *not* used in the more narrow legal sense it has acquired within Bosnia to refer to members of groups other than those recognised as "constituent peoples". The Bosnian Constitution, Annex 4 of the Dayton Peace Agreement, in its last preambular paragraph, recognises "Bosniacs, Croats, and Serbs as constituent peoples [of Bosnia] (along with Others)." Thus, within Bosnia's legal system, Bosniacs, Croats and Serbs are all to be treated as constituent peoples rather than minorities.

² ICG report, *Rebuilding a Multi-Ethnic Sarajevo: The Need for Minority Returns*, 3 February 1998.

³ Sarajevo Declaration, p.1.

The Sarajevo Declaration identified five areas that hindered return and their remedies:

1. *Legislative.* The Declaration called for the amendment of discriminatory property legislation, the implementation and dissemination of information on the *Law on Amnesty* and assurances that returnees would be able to acquire documents necessary for employment and return within a week of their registration.
2. *Housing.* The Declaration called for all socially-owned apartments undergoing or planned for reconstruction to be allocated through a Sarajevo Housing Committee (SHC) and stated that the Reconstruction and Return Task Force (RRTF) and local authorities would work together to identify alternative accommodation for people displaced by returns.⁴ It also called on the Canton's Ministry for Spatial Planning to identify 2,000 cases of double occupancy by 30 June 1998, and to resolve outstanding return cases, including priority cases identified by the Office of the UN High Commissioner for Refugees (UNHCR) and those of the Jewish community.
3. *Public Order and Security Issues.* The Declaration called on the cantonal police force to recruit more minorities, guarantee the safety of returnees, and enforce housing related orders, for which they were required to develop a detailed strategy. The Federation Mine Action Centre was called on to develop a detailed plan for de-mining to support returns.
4. *Employment.* The Declaration called on Sarajevo authorities to form an Employment and Return Commission and remove obstacles to trade and investment, and on Federation authorities to pass anti-discrimination laws.
5. *Education.* The Declaration called on Sarajevo educational authorities to establish an Education Working Group to create a non-discriminatory education programme to be utilised beginning in the 1998/99 school year.

A Sarajevo Return Commission was established to implement the Sarajevo Declaration. It created several sub-groups: the Cantonal Employment and Return Commission, the Education Working Group and the Sarajevo Housing Committee. Aside from establishing these working groups, the Sarajevo Canton has been slow to implement other specific measures called for in the Declaration. The international community expressed its disappointment in the Chairman's Conclusions of the 16 April 1998 Federation Forum⁵ and the 9 June 1998 meeting of the Peace Implementation Council in Luxembourg.⁶

⁴ The Reconstruction and Return Task Force, chaired by the OHR and comprised of international organisations and donors, publishes a quarterly review of progress in the Declaration's implementation.

⁵ "Participants were concerned that the Sarajevo Canton has not fully lived up to the commitments to implement measures under the Sarajevo Declaration" Chairman's Conclusions, Federation Forum, 16 April 1998.

⁶ "While welcoming the results of the Sarajevo and Banja Luka Returns Conferences, the Steering Board is disappointed by the insufficient progress toward the agreed targets. It urges the relevant authorities to accelerate implementation and remove immediately all remaining political, legal and administrative obstacles to minority returns." Declaration of the Ministerial Meeting of the Steering Board of the Peace Implementation Council, Luxembourg, 9 June 1998, p. 4.

III. PALTRY RETURN FIGURES

The most glaring shortfall in the implementation of the Sarajevo Declaration are the return figures. Although some 7,100 minority families have registered to return,⁷ according to UNHCR, only 1,292 minority persons (504 Croats, 692 Serbs and 96 "Others") moved into Sarajevo in the first seven months of 1998. In comparison, according to UNHCR figures, several municipalities during this period attracted a greater number of minorities in relation to their total populations.⁸ In all, 5,204 minorities returned to the Federation (current population 2.3 million⁹) during this period, compared with only 859 minorities to Republika Srpska (current population 1 million).

Since the end of the war, 20,426 minorities moved to Sarajevo, 44 percent of all minorities (46,294) who moved to areas in the Federation; and 3,078 minorities moved to Republika Srpska. Taking into account the differential in overall population numbers, the return rate of minorities to the Federation has been nearly three times the return rate to Republika Srpska.

Despite the overall failure to achieve minority returns throughout the country, Sarajevo Canton's record cannot be considered as even relatively successful since it has also received far more assistance -- 500 million DM since the end of the war (about 1,400 DM per capita), including 80 million DM for housing -- than other areas.¹⁰ Moreover, as the capital of Bosnia it is expected to serve as a genuine symbol of the country's multi-ethnicity, as well as the commitment of Sarajevo's leadership to regaining that multi-ethnic character. Today, unlike before the war, the vast majority of Sarajevo's inhabitants are Bosniac.

Pre-war and Present Population of Sarajevo Canton:

Year	Bosniacs		Croats		Serbs		Others		Total
1991 ¹¹	252,000	50%	35,000	7%	139,000	28%	75,000	15%	501,000
12/97 ¹²	310,000	87%	18,000	5%	16,000	5%	11,000	3%	355,000

⁷ According to the Cantonal Ministry for Refugees, as of 14 August 1998, 12,004 families had registered to return: 4,899 Bosniac families, 2,062 Croat, 4,541 Serb and 502 "Others". "Others" are most likely to be non-Bosniacs (people of mixed marriages, Jews, Roma, Hungarians, etc.)

⁸ 636 Bosnians returned to several municipalities where they make up the minority in the Herzegovina-Neretva Canton, the total population of which is 233,000; 513 Croats returned to minority areas in the Zenica-Doboj Canton, the total population of which is 328,000; and 1,909 Serbs returned to Croat-controlled Canton 10, the total population of which is 90,000.

⁹ According to the Federation Statistics Institute, the 2.3 million population of the Federation is comprised as follows: 75.9 percent Bosniac, 21 percent Croat, 2.5 percent Serb and .6 percent other.

¹⁰ More than twice as much aid, per capita, has gone to Sarajevo than to other areas in the Federation, other than to Mostar (which received large amounts of aid from the EU in 1994 and 1995, and Gorazde, owing to its high level of destruction and its importance to the DPA. Gorazde had received 857 DM capita by the end of 1997 (61 percent of the rate given Sarajevo), Konjic received 702 DM per capita; Sanski Most, 629 DM per capita; and Bihac, 496 DM per capita. ICG report, *Minority Return or Mass Relocation*, 14 May 1998, p. 15, based on figures provided by the Project Information Monitoring System of the International Management Group, dated 20 Jan. 1998.

¹¹ 1991 census. These figures do not include the entire pre-war City of Sarajevo, but rather only those areas that are currently under Federation control.

¹² Data provided by UNHCR.

Some 82,000 of the present Bosniac population are displaced persons from other regions in Bosnia.¹³ About 228,000 people who fled the Canton had not returned by the end of 1997. This figure includes 24,000 Bosniacs, 17,000 Croats, 123,000 Serbs,¹⁴ and 64,000 "Others".¹⁵ As the following charts indicate, Bosniacs account for virtually all of the relocations (people who moved to Sarajevo who did not live there previously), 90 percent of returns in 1997 and the first half of 1998, and some 85 percent of all returns and relocations.¹⁶

Registered Returns of Internally Displaced Persons and Refugees:¹⁷

Year	Bosniacs		Croats		Serbs		Others		Total
1997	26,254	92.1%	1,409	4.9%	660	2.3%	194	0.7%	28,517
1/1/98-31/7/98	2,550	67.9%	479	12.7%	684	18.2%	46	1.2%	3,265
Total	28,804	89.2%	1,888	5.9%	1,344	4.2%	240	0.7%	32,276

Registered Relocation of Internally Displaced Persons and Refugees:

Year	Bosniacs		Croats		Serbs		Others		Total
1997	19,623	97.8%	97	0.5%	294	1.5%	40	0.2%	20,054
1/1/98-31/7/98	2,519	96.8%	25	1.0%	8	0.3%	50	1.9%	2,602
Total	22,142	97.7%	122	0.6%	302	1.3%	90	0.4%	22,656

Total of all Registered Returns and Relocations:

Year	Bosniacs		Croats		Serbs		Others		Total
1996 ¹⁸	64,898	79.8%	11,794	14.5%	4,646	5.7%			81,338
1997	45,877	94.5%	1,506	3.1%	954	1.9%	234	0.5%	48,571
1/1/98-1/8/98	5,069	80.4%	504	7.9%	692	10.9%	96	1.5%	6,361
Total	115,844	85.1%	13,804	10.1%	6,292	4.6%	330	0.3%	136,270

¹³ Ministry for Labour, Social Policy, Displaced Persons and Refugees, *Plan for the Return of Displaced Persons and Refugees to Sarajevo in 1998*, February 1998.

¹⁴ After the Sarajevo suburbs, held by Serb forces during the war, were transferred to the Federation of Bosnia and Herzegovina in February and March 1996, more than 60,000 Serbs fled.

¹⁵ The decline of 64,000 in the number of "Others" is likely to be accounted for in substantial part by re-identification by those people rather than flight. Thus, the actual numbers of Bosniacs, Croats and Serbs who have not returned is likely to be higher by up to 64,000.

¹⁶ The term "returns" refers to displaced persons returning to their pre-war place of origin, and "relocation" refers to displaced persons relocating to a place from which they did not originate.

¹⁷ Data provided by UNHCR.

¹⁸ UNHCR does not have the figures for 1996 broken down by ethnicity, and could only provide the total amount of returns and relocations. The figure for Croats and Serbs was derived by subtracting the number of returns in 1997 as shown above from the total number of these returns in 1996 and 1997 as provided in the UNHCR Statistics Package of 15 January 1998. The 1997 Croat and Serb return figures vary from source to source, and even within the UNHCR. The figures above were derived from the UNHCR databank while the 15 January 1998 Statistics Package lists 1,499 Croats and 923 Serbs. Moreover, a figure for the number of "Others" who have returned is not available; as a result the figure for Bosniac returns, derived from subtracting the Croat and Serb returns from the total, may be slightly greater.

The overall rate of return has been lower in 1998 than in the preceding two years, though minority returns as a percentage of overall returns have been increasing. According to the Cantonal Ministry for Refugees,¹⁹ returns were negligible in January and February 1998, and minority returns averaged 75 families every two weeks between March and 17 July.²⁰ In the latter half of July, 151 minority families returned. In the first two weeks of August, 83 minority families returned. By 14 August 1998, according to the Ministry for Refugees, minority returns amounted to 517 Serb families (783 individuals), 339 Croat families (608 individuals) and 49 families described as "Others" (106 individuals). However, international observers have noted that minorities are leaving the Canton in numbers that could offset returns.²¹

Most returning minority families consist of only one or two individuals.²² One family member may return in order to assess the family's longer-term prospects, or only the elderly return. This suggests that housing problems are not the only obstacles to minority return. Minorities must also have opportunities to practice their religion, their children must be able to receive an unbiased education and working-age minorities need access to jobs on a non-discriminatory basis.

Interest of minorities in returning to Sarajevo far exceeds actual returns. As of 14 August, 2,062 Croat families had registered to return, and Kresimir Zubak, the Croat member of the Bosnian Presidency, estimates that 15,000 Croats wish to return; 4,541 Serbs had registered to return, and Mirhunisa Komarica, the President of the Union of Displaced Persons and Refugees of Bosnia and Herzegovina, states that 26,650 Serbs in the Federal Republic of Yugoslavia have also expressed their desire to return. This is more than one-third of the 72,117 refugees from Sarajevo Canton in Yugoslavia, as recorded by the Yugoslav census.

In addition, traffic between the Sarajevo Canton and Republika Srpska on the UNHCR bus lines has been enormous, suggesting that a great many displaced Serbs are interested in maintaining contact with the Sarajevo Canton. In October 1996, the bus line between Praca, Pale and Sarajevo and the line between Renovica and Sarajevo were launched and in that year carried approximately 10,500 and 850 passengers respectively in both directions. In 1997 the number of passengers travelling these routes grew to over 52,000 and 5,400, respectively. Additional bus routes were added in 1997. From March 1997 until the end of 1997 the route between Trnovo and Ilidza carried 17,000 passengers; the route between Ilidza and Visegrad, launched in May, carried 2,600 passengers; and the route between Ilidza and Foca carried 2,800 passengers. In 1998, by early August, the bus line between Praca, Pale and Sarajevo carried over 20,000 passengers; the line between Ilidza and Trnovo about 20,000 passengers; and the line between Ilidza and Visegrad about 15,000 passengers. Four more routes have been set up in 1998

¹⁹ UNHCR figures were used in the above charts instead of the more recent figures from the Ministry for Refugees because they included figures on Bosniacs and differentiated between returns and relocations.

²⁰ The actual numbers were 392 Serb families (477 Serbs), 253 Croat families (365 Croats) and 26 families (34 persons) listed as "Others".

²¹ *An Action Plan in Support of the Return of Refugees and Displaced Persons in Bosnia and Herzegovina*, Reconstruction and Return Task Force, March 1998, p. 4.

²² For those families that returned between March and August 1998, the average number of members per family was 1.79 for Croats, 1.51 for Serbs and 2.16 for "Others"; for an average of 1.65 members per family for all minorities. During months when school is in session this is understandable. However, the trend has continued during the peak return period in summer-time. For example, in the second week of August, 59 minority families returned: 32 consisted of only one individual and 13 of two individuals. *Oslobodjenje*, 18 August 1998.

between the Sarajevo Canton and Republika Srpska: the route between Ilidza in Republika Srpska and Sarajevo has so far carried about 400,000 passengers; the route between Zvornik and Ilijas has carried over 2,500; the route between Brcko and Sarajevo about 450; and the line between Bratunac and Hadzici about 350.

IV. PROPERTY LEGISLATION

A. The Passage Of Non-Discriminatory Laws

A significant achievement spurred on by the Sarajevo Declaration was the passage by the Federation Parliament of property legislation consistent with OHR demands. The OHR had called for amendments to the property laws since 1996, and its human rights office had worked tirelessly with Federation authorities to reach acceptable language. The Sarajevo Declaration's warning that "non-compliance" measures would be imposed if the Federation failed to adopt the laws by certain dates²³ finally ensured their passage, although the deadlines were missed and implementation has been partial at best (as discussed in Section B, below). Moreover, several provisions of the new laws -- which the OHR reluctantly accepted as the price of compromise -- unfairly prejudice the rights of pre-war holders of occupancy rights to socially-owned apartments (as discussed in Sub-Section 3 of this Section).

The laws are discussed below in two categories: those concerning socially-owned homes, and those concerning privately owned homes. Some 80,400 of Sarajevo Canton's housing units, or 56 percent, are apartments that are currently socially-owned but are slated to be privatised soon; the remaining 63,000 homes are privately owned, mostly houses. Forty-two percent of the Federation's socially-owned apartments are located in Sarajevo.²⁴ Socially-owned apartments are owned by companies, government bodies or social organisations, which before the war awarded "occupancy rights" to people, usually employees, as an entitlement following a number of years of employment as specified by contract. Occupancy rights were almost as strong as ownership rights: occupancy right holders could pass on the right to their heirs, and could lease the home to others; they could not sell the home, however, and, if they abandoned the home for six months, the owner (company or other body) could reallocate the home to someone else. According to the Sarajevo Canton Housing Department, of the 80,400 socially-owned apartments in Sarajevo since the start of the war, 20,000 (or almost one-fourth) have been declared abandoned, 12,000 permanently and 8,000 temporarily.²⁵

²³ According to the Sarajevo Declaration: "*The Law on the Cessation of the Application of the Law on Temporarily Abandoned Real Property Owned by Citizens* must be finally adopted by 17 February 1998;... the *Law on Taking Over the Law on Housing Relations*...no later than 17 February 1998; and the *Law on the Cessation of the Application of the Law on Abandoned Apartments* must be presented to Parliament no later than 17 February 1998, and must be adopted by 1 March 1998 in a form acceptable to the High Representative."

²⁴ The Federation Ministry of Physical Planning reported in December that there were 191,566 socially-owned apartments in the Federation.

²⁵ The figures released in December 1997 by the Federation Ministry of Physical Planning and Environment were lower: it reported that 17,839 socially-owned apartments had been declared abandoned.

1. Laws Concerning Socially-Owned Apartments

The most controversial property law in the Federation was the *Law on Abandoned Apartments*. According to this law, authorities could declare socially-owned apartments “abandoned” if the pre-war occupants had left, and could grant temporary occupancy rights to someone else. A 22 December 1995 amendment to the law stipulated that if the “abandoned” apartments were not reclaimed and reoccupied by 6 January 1996, they could be declared permanently abandoned and permanent occupancy could be granted to someone else. This measure blocked the return of thousands of displaced persons.

The *Law on the Cessation of the Application of the Law on Abandoned Apartments*, passed on 12 March, supersedes the *Law on Abandoned Apartments*. This law reverses all decisions which terminated the occupancy rights of displaced persons and requires pre-war occupants to file claims to return by 4 October 1998, within six months after the law came into force on 4 April 1998, and to cite an intended date of return within one year of the date of the claim.²⁶ Pre-war occupants who fail to submit a claim within the six-month period or do not return within one year after a decision on their claim is made stand to lose their occupancy rights.

The pre-war occupant may immediately move back into an apartment that is empty or illegally occupied. Concerning apartments legally occupied, the temporary occupant has 90 days to move out (and may stay even longer if the pre-war occupant plans to return at a later date), and authorities are responsible for finding alternate accommodation. In cases where the current occupant was granted permanent occupancy before 7 February 1998, the courts must decide whether the current occupant may stay in the apartment and the pre-war occupant must be found another place to live. Criteria for making this decision are being drafted.

Another pre-war law, the *Law on Housing Relations*, provided that, if occupancy right holders did not live in their apartments for a continuous six months, their occupancy right could be cancelled.²⁷ The amendment to this law, the *Law on Taking Over the Law on Housing Relations*, states that occupancy rights may not be automatically cancelled if the period of abandonment commenced after 30 April 1991 and the pre-war occupant is entitled to return under Annex 7. The amendment also states that people who left their apartments after 30 April 1991 are considered to be displaced persons, and thus entitled to return under Annex 7, unless they left their apartments for reasons that had nothing to do with the war. The law reiterates the 4 October 1998 deadline, set forth in the *Law on the Cessation of the Application of the Law on Abandoned Apartments*.

Another law that needed to be amended was the *Law on the Sale of Apartments with Occupancy Rights*. This law came into force on 6 December 1997 and stated that, as of 6 March 1998, applications to purchase socially-owned apartments could be filed and that occupancy rights holders would be given the first option to purchase. An amendment to the law was adopted on 4 March 1998 which excludes from the right to a first purchase option occupants who gained occupancy rights only after April 1991.

²⁶ Claims are to be filed with municipal housing offices and can be mailed, or the occupancy right holder can file the claim orally at the housing department. Occupancy right holders can also designate individuals to file on their behalf. In the Sarajevo Canton claims are filed with the Cantonal Housing Department, but at its municipal branch offices.

²⁷ This does not apply in cases where the occupant was absent to serve military service or undergo medical treatment.

2. Laws Concerning Privately Owned Homes

The *Law Regulating the Application of the Law on Temporarily Abandoned Real Property*, passed on 3 March 1998, supersedes the *Law on Temporarily Abandoned Real Property Owned by Citizens*, which was passed during the war and stated that authorities could declare private property abandoned and issue temporary occupancy to someone else if the owner left the premises after 30 April 1991. According to this old law, owners had the right to reclaim their property whenever they decided to return. However, the law did not adequately protect the rights of the temporary occupants, who were required to move out within eight days of being notified of the owner's claim. They were not given adequate opportunity to contest the claim, nor were they entitled to alternative shelter. Owing to these problems with the law, owners were rarely able to return to their homes if lawfully occupied.

The new law states that authorities must decide the claims of the owners to return to their property within 30 days. After a claim is decided upon, the owner may move back into the home immediately if it is empty or illegally occupied. If it is legally occupied, the current occupant must vacate the premises within 90 days. In negotiations before the law was passed it was agreed that this time period could be extended for up to one year if authorities could convince the OHR that alternate accommodation for the temporary occupant could not be found. In the version of the law that was published in the Official Gazette and is therefore controlling, however, the requirement of OHR approval was not included.

3. Problems with the Amended Laws

While these amendments constitute improvements over the old laws, they continue to burden unduly people's housing rights, in particular those of occupancy rights holders. First, the 4 October 1998 deadline is unreasonable in that it would extinguish a substantial property right at a time when it is still too early for many displaced persons to assess whether they want and/or are able to return to their pre-war homes. In any event, as discussed below, the deadline is likely to be extended because the Federation authorities have not taken adequate steps to file and process claims, or to notify occupancy right holders of the deadline.

Second, the laws require pre-war occupants to return to live in their apartments within one year of a decision on the claim's being made; if they fail to do so they stand to lose their rights. This is harsh indeed given the pervasive environment of discrimination against minorities throughout the Federation and the low number of minority returns to date.

Third, where the authorities awarded a permanent occupancy right to someone before 7 February 1998, a court may decide to allow that person to remain in the apartment rather than the pre-war occupancy right holder. The fact that the authorities are required to find the pre-war occupant another place to live is by no means an adequate substitute: this solution ignores the fact that the pre-war occupant built up rights to the apartment over years of use, and probably years of employment, and may have also made improvements to the apartment. The OHR must be vigilant in ensuring that the criteria for courts to apply in deciding whether to allow the post-war occupancy right holder to remain in an apartment are extremely limited, permitting the post-war occupant family to remain, for instance, only where it is substantially larger than the pre-war household.

Fourth, the authorities may allow a temporary occupant to remain in an apartment for up to one year after the pre-war occupant has declared his desire to return.

Fifth, under the *Law on the Cessation of the Application of the Law on Abandoned Apartments*, pre-war occupants who left their apartments may not purchase them unless they return and live in them for at least six months, and may not sell them for five years after the date on which they purchase the apartment. These are onerous burdens to impose, given that the occupancy right is a fully vested right.²⁸ Moreover, the law has a discriminatory impact against minorities, who have returned in far smaller numbers than Bosniacs, in part because of measures by the Cantonal and local authorities. At the least, the requirement of return before purchase should be waived for minorities.

Sixth, the law on privately owned homes states that the authorities may decide to allow a temporary occupant to remain in a home for up to one year from the time when the pre-war owner declares his or her intent to return.

The OHR called on the the Federation authorities to include most of the above provisions in their amended laws, but the authorities refused, often linking their opposition to the lack of progress made by Republika Srpska authorities in amending their discriminatory property laws. While in principle, such arguments based on reciprocity should be rejected -- all Bosnian authorities are obliged to implement the Dayton Peace Agreement (DPA) regardless of the failure of others to do so -- there is a practical point that perhaps as many as 80,000 Bosniacs in Sarajevo are displaced from their homes in Republika Srpska, and have no possibility to return at this time.

B. Discriminatory and Other Forms of Inadequate Implementation

Housing problems have long been epidemic in the Sarajevo Canton. 80 percent, or some 900, of the over 1,118 complaints filed with the Federation Ombudsmen's office for Sarajevo in 1997 dealt with the violation of the right to possession of an apartment or private property. This is twice the number of complaints received in 1996.²⁹

Of all the complaints the Federation Ombudsmen received throughout the Federation in 1997, the Sarajevo Canton Ministry for Spatial Planning is one of the parties most frequently cited as the object of a complaint (with 214 cases), behind only the Mostar City Council (326) and the Capljina City Council (226).

Although passage of the amended property legislation removes a major obstacle to return in the Federation, because local authorities and officials have not fully implemented the laws, progress has been limited.

²⁸ It is certainly true that, although the occupancy right is a fully vested right, it is subject to loss if the apartment is abandoned. Equity, however, would require that the right should be lost only if the abandonment and continued absence are voluntary. Under the current political circumstances, it cannot be said that failure to return is a fully voluntary choice, especially for people who would be minorities if they returned.

²⁹ *Report on Human Rights Situation in the Federation of Bosnia and Herzegovina for 1997*, Ombudsmen of the Federation of Bosnia and Herzegovina, March 1998, p. 53.

1. Retroactive Declaration of Abandonment

International monitors and the Federation Ombudsmen suspect that before the amended property legislation was passed some local officials retroactively declared apartments abandoned under Article 10 of the *Law on Abandoned Property*, a move that has been illegal since 6 January 1996.

2. Granting of Permanent Occupancy Rights after 7 February 1998

According to international monitors and the Federation Ombudsmen, local officials have granted permanent occupancy rights to people after 7 February 1998, in violation of Article 16 of the *Law on the Cessation of the Law on Abandoned Property*. This practice potentially prevents the pre-war occupancy right holder from returning.

3. Evictions of Temporary Occupants

Sarajevo officials often complain in the media that adherence to the Sarajevo Declaration and minority returns would result in their having to throw vulnerable groups onto the streets. The bulk of evictions appear to have been initiated by SDA-controlled companies that seek to regain apartments for privatisation. Many legal temporary occupants have been evicted so that permanent occupancy rights could be granted to someone else, often reportedly with SDA connections.³⁰ The Ombudsmen have repeatedly brought these cases to the attention of the Governor of the Canton and relevant Ministers, first in a letter dated 23 March 1998, followed by two meetings in which the Cantonal authorities provided assurances that the practice would stop. The practice nevertheless continued, and even increased after the *Law on the Cessation of the Law on Abandoned Apartments* came into force.³¹

4. Delay in Publishing Claim Form

Simply applying to return to one's home has also proved to be highly problematic. When the laws were published in early April 1998, the one-page claim form to return to socially-owned apartments was not yet finalised. One month elapsed before the Federation Minister of Urban Planning and Environment adopted instructions for filing claims on 30 April.³² Several more weeks were then lost because the municipalities throughout the Federation expected the Federation Ministry to provide the forms, while the Federation Ministry claimed that the municipalities were responsible for printing and issuing the forms. Finally, in mid-May 1998, the Federation Ministry printed and issued the forms with the assistance of the OHR.

5. Refusal to Accept Proper Claims

Claim forms were printed in newspapers, for wider distribution, at the expense of the OHR and in co-operation with UNHCR and other organisations, yet some housing officials have illegally refused to accept these copies. Some have, incorrectly, required that occupancy-rights holders

³⁰ Article 2(2) of the *Law* confirms the status of temporary occupants.

³¹ *Newsletter*, The Federation Ombudsmen of Bosnia and Herzegovina, Number 10.

³² The instruction designated the responsibilities of Cantonal and municipal authorities in the implementation of the law.

reclaim their property in person, rejecting claims submitted on behalf of others. Some housing officials have also refused claims unless accompanied by certain documents, even though none are required by law, and potential returnees from Republika Srpska have been required to submit documentation to which they do not have access. This practice has been widespread even though the Ministry for Urban Planning issued instructions binding throughout the Federation clearly stating: "Competent authorities shall accept claims regardless of whether or not the necessary documentation is supplied."

6. Unlawful Fees

According to international monitors, Sarajevostan, the public institution which holds records for socially-owned flats, had charged costly fees, of between 30 to 50 DM, in spring 1998 for copies of occupancy-rights documents and apartment contracts. Not only were the fees groundless, but they also violated Article 11 of the Sarajevo Declaration which states that: "The Sarajevo authorities will ensure free and fair access for all residents to official public records, such as ... housing records." In other parts of the Federation, authorities charged fees merely for filing the claims forms. The Property Working Group -- an inter-agency group including OHR, UNHCR, the Commission for Real Property Claims (CRPC), the Organisation for Security and Cooperation in Europe (OSCE) and the SHC -- pressed the Federation Minister of Urban Planning to issue instructions that fees were not to be charged, which he did on 4 July. Since then, complaints of unlawful fees in Sarajevo have all but stopped.

7. Delays in Issuing Decisions

According to the *Law on the Cessation of the Law on Abandoned Apartments*, authorities must issue a decision on a claim within 35 days after it is filed to confirm pre-war occupancy rights, discontinue current temporary occupancy rights and fix a date by which the current occupant must vacate the premises. Few decisions were made within the requisite time, although decisions have recently been rendered at a quicker pace. As of 7 September 1998, some 5,000 of the 13,000 claims had been decided.³³ Decisions have often failed to include permission for the pre-war occupancy right holder to repossess the apartment and/or the deadline by which the temporary occupant must leave.

Moreover, many decisions issued to date are merely interim decisions in cases where the current occupant is found to have been legally awarded permanent occupancy rights; the "decision" in such cases consists of notice that the dispute will be resolved only once criteria for deciding between the competing claims have been adopted by the Federation Ministry, following guidelines from the OHR (which have yet to be finalised).

8. Intimidating and Unnecessary Hearings

Hearings have been held in cases where current occupants and pre-war occupancy right holders are summoned to appear in court together, a practice which can easily be intimidating and

³³ The start-up for issuing decisions was also very slow. According to the Ministry for Spatial Planning, as of 7 July, only 266 decisions had been issued.

provoke an incident. These hearings stopped in July, in response to complaints from the OHR and other international organisations.

The police and military have also on occasion conducted hearings in military headquarters, though they are not competent to do so, concerning flats owned or occupied by police or military personnel. These hearings, which have not been stopped, often subject claimants who are not police or military to harassment. Moreover, the police and military have not yet transferred their files concerning police and military flats to the municipal housing authorities who are responsible for handling all claims for socially-owned property.

C. The Need to Extend the 4 October 1998 Deadline

Although 20,000 socially-owned apartments in Sarajevo Canton were declared abandoned, by 7 September, only 13,000 claims had been filed. With roughly one more month left to file a claim, a third of the holders of occupancy rights to abandoned apartments in the Sarajevo Canton have yet to file.

A Property Media Group was established to co-ordinate organisations that have launched campaigns to inform occupancy rights holders of their right to reclaim their abandoned apartments. The Group is chaired by the OHR and consists of the Stabilisation Force (SFOR), the United Nations Mission in Bosnia and Herzegovina (UNMIBH), the International Organisation for Migration (IOM), the OSCE and the CRPC. These organisations disseminate information throughout their offices in Bosnia as well as in host countries. The media campaign consists of television spots, radio jingles and newspaper advertisements. Claims forms are made available on UNHCR busses and distributed together with OSCE voter materials, including to out-of-country voters. Bosnian embassies abroad provide information about the amended legislation. Pamphlets explaining the legislation, claims process and recourse mechanisms were distributed beginning in August, and posters should be produced soon. Federation authorities have, however, failed to launch their own information campaign, even though the Steering Board of the Peace Implementation Council has called on them to do so.

In late August, the Property Media Group concluded that the information campaign had not sufficiently reached refugees abroad and internally displaced persons in Republika Srpska. Many were not aware of the amended legislation while others were confused about the claims process. The Group must immediately create and implement strategies to remedy this. A special effort should be made to contact the 50,000 or so pre-war occupancy right holders who registered their claims with the international Human Rights Ombudsperson through January 1998, many of whom incorrectly believe that they are not required to re-register.

The monitoring of the information campaign's implementation and effectiveness has been weak. The Property Media Group expected to complete a comprehensive evaluation of the campaign in the final week of August in order to assist in determining whether, and, if so, for how long, the deadline for filing claims for socially-owned housing should be extended.

Persons displaced in Republika Srpska and outside the country face particular problems in getting information since the Federation media clearly do not reach these people. Moreover, persons in Republika Srpska face difficulties in filing claims, since there is no postal exchange between most parts of the two entities (although exchange does exist between Banja Luka and

Sarajevo) and, thus, most claims must be hand delivered.³⁴ The Coalition for Return is helping to distribute information, and to transport completed claims from Republika Srpska.

Even if informational materials are widely distributed before the 4 October deadline, it is likely that a great many potential returnees will not have received adequate notice of their need to file a claim and/or will not feel sufficiently secure that the benefits of filing outweigh the risks. Potential minority returnees are likely to be disproportionately represented among those who fail to file, because they are more likely to believe that they will not be able to live without discrimination in their homes and many of those in Republika Srpska are likely to fear retribution from Srpska authorities if they file. The Federation Ombudsmen and US Embassy have called for an extension of the deadline. The Steering Board of the Peace Implementation Council also “urge[d] the Federation authorities to take immediate steps to ensure full implementation of the legislation. If this obligation is not met, the Federation authorities must extend the deadline for pre-war residents of socially-owned apartments to apply for the restoration of their occupancy rights.”³⁵ There is little disagreement among the international organisations that the deadline must be extended; the discussion rather now centres on the appropriate length of time of the extension.

V. ABUSES IN ALLOCATION OF AVAILABLE HOUSING

Cantonal officials contend that the main reason for the low number of minority returns is a lack of available housing. This contention is belied by two circumstances. First, Bosniacs are returning in large numbers, and homes are being found for them. In the first seven months of 1998, 5,069 Bosniacs moved into Sarajevo, including 2,519 who had not lived in Sarajevo before the war, compared to only 1,292 minorities, virtually all of whom had lived in Sarajevo previously.³⁶ The differential between minority and Bosniac “returns” in 1997 was even starker: Bosniacs accounted for 94.5 percent of all people who moved into Sarajevo, including 19,623 who had not previously lived there.

Second, because of the decline in Sarajevo’s population, the Canton currently has more living space per capita than before the war: the habitable housing to population ratio is now 1:3.2, a decrease from 1:3.6 before the war.³⁷

According to UNHCR, before the war, Sarajevo Canton had 135,748 dwellings and 160,223 households; 24,475 of these households, or 15.28 percent, did not have their own homes and shared an accommodation with parents or another family.³⁸ The average number of household members ranged from 3 to 3.5. As of the end of 1997, there were 112,296 habitable homes in the Canton (83 per cent of the pre-war total).³⁹ Using the current population figure of 360,935⁴⁰, the

³⁴ Moreover, several municipalities in the Federation do not have a housing office, or claims office, whatsoever.

³⁵ Declaration of the Ministerial Meeting of the Steering Board of the Peace Implementation Council, Luxembourg, 9 June 1998, p. 6.

³⁶ See the charts on pp. 2-3 *supra*.

³⁷ This calculation was made for the post-DPA Sarajevo Canton boundaries. Analysis of the Housing Space (Shelter) in Canton Sarajevo, UNHCR, 17 October 1997.

³⁸ *Ibid.*, p.2 and Annex 1.

³⁹ Canton Ministry of Spatial Planning, Infrastructure and Housing Affairs, and UNHCR Analysis.

UNHCR points out that, assuming an average number of 3.5 members per household, there should actually be a surplus of 9,171 housing units. Assuming an average number of members per household of 3.25, there should be a surplus of 1,293 housing units.

In its February 1998 Cantonal Return Plan, Sarajevo authorities urged that 118,157 homes (almost 6,000 more) are needed to accommodate Sarajevo Canton's population.⁴¹ These additional housing units would be needed only if the average household size were to be reduced to 3 people. Moreover, this calculation assumes that all households are entitled to their own home. Before the war, 15 percent of all Sarajevo households did not have their own home.

Clearly, habitable housing space in Sarajevo is adequate to support greater returns. The claimed housing deficit is, in substantial part, a result of what the international community calls double or multiple occupancies, when one family occupies more than one home. No sufficient analysis has been done in the Canton to determine how many such cases exist.

According to Cantonal figures, 45 percent of the pre-war population no longer lives in the Canton, and of the 272,994 pre-war inhabitants who still do live in the Canton, 47,652, or 17 percent, currently have new addresses. Even granting that a percentage of these people lost their homes, or did not have homes before the war, a conservative estimate is that at least 13,000 people who remained in Sarajevo during the war and currently have a habitable home in Sarajevo are now occupying additional housing to which they have no pre-war claim.⁴² If one calculates that the 24,475 households that did not have their own homes before the war (most of whom lived with relatives) do not have a priority claim to a home now, then the number of double occupancies increases substantially.⁴³ The available figures highlight the need for a thorough investigation to determine the extent of double or multiple occupancy.

The misuse of housing can occur in many forms. One family may occupy more than one home, a classic case of double or multiple occupancy. A family that did not have a home before the war may have moved into the home of someone who fled. Children who lived with their parents before the war may have married, had children and taken up a home that belonged to someone else before the war -- a practice known as dividing families. People with occupancy rights to a home before the war may have moved into a more desirable home, acquired occupancy rights to

⁴⁰ For the purpose of this study UNHCR uses this figure, even though it uses other figures for other purposes.

⁴¹ Ministry of Labour, Social Policy, Displaced Persons and Refugees, *Plan for the Return of Displaced Persons and Refugees to Sarajevo in 1998*, February 1998, p.6.

⁴² With an average number of household members at 3.25 before the war, the 23,452 homes rendered uninhabitable as of the end of 1997 affected 76,219 people who had their own homes before the war (this does not include the 24,475 households who shared accommodation before the war). Estimating that the population that fled and the population that remained in the Canton suffered equally from destroyed housing, this would leave 34,299 people whose homes were destroyed and remained in the Canton without habitable housing, which is 13,353 less than those who currently have new addresses, suggesting that many families are currently occupying more than one home.

⁴³ Before the war the ratio of people to homes was 3.6. According to this figure, roughly 84,000 people were affected by destroyed housing. Proportionately this would be 46,000 of the people who remained in the Canton. This suggests that there is a great number of dividing families. If everyone were to remain where they lived before the war and destruction of housing equally affected both families that remained and families that fled, those that remained would be occupying 61,762 housing units, or 55 percent of the current habitable housing stock. This would leave a great many housing units, 50,533, for the 82,000 displaced persons in the canton.

that home and relinquished occupancy rights to their pre-war home, which often were granted to someone else -- a practice known as upgrading.

A. Double Occupancy

The Sarajevo Declaration only addressed the issue of double/multiple occupancy. The OHR understandably regards upgrading and dividing families as forms of multiple occupancy, and therefore illegal, but local authorities do not. Furthermore, Sarajevo authorities have failed to conduct an adequate investigation into housing abuses of any kind, even multiple occupancies under this limited definition.

Before the Sarajevo Conference was held, the Sarajevo Cantonal authorities briefly printed advertisements in the local press urging "[t]he citizens of Sarajevo who know of individuals or families using two or more homes in the Sarajevo Canton to report these cases to the Ministry for Spatial Planning for the Canton of Sarajevo". This gesture, as intended, did not go unnoticed at the Conference, and the Sarajevo Declaration states that: "The Conference welcomed initial efforts by the Sarajevo authorities to catalogue and verify cases of multiple occupancy, through regular public appeals and examination of existing public records, as well as their pledge to intensify these efforts." The compilation of reported cases had not yet been verified by the Ministry, however, and the Declaration set a benchmark stating that, "the Cantonal Ministry for Spatial Planning will provide the Sarajevo Housing Committee with the addresses and names of pre-war residents of 2,000 such illegally occupied dwellings by 30 June 1998, with the first 500 of these by 1 April 1998."

The public appeals continued sporadically after the Declaration, and approximately 800 cases of double occupancy (as narrowly defined) were reported by the 1 April 1998 deadline. According to the Ministry for Spatial Planning, upon review of these reports, slightly more than 200 were deemed to be true instances of double occupancy. This number then dwindled to 148 by July 1998. By late August, all 23 pre-war occupants who had registered to return to these homes had done so. The remaining 125 pre-war occupants have not yet registered to return and have not been located, either by the Coalition for Return or through newspaper advertisements published throughout Bosnia and in the Federal Republic of Yugoslavia.

The Sarajevo Declaration called on the Canton authorities to undertake an overhaul of Sarajevostan records and Canton archives. Three weeks after the Sarajevo Conference, the OHR wrote a letter to the Minister for Spatial Planning reminding him of his obligation; and the 15 April 1998 Federation Forum reiterated the reminder. Nonetheless, Canton authorities have stated that they will only check the files on a case-by-case basis, when they are presented with reason to believe that there might have been abuse. Some members of the international community fear that were the international community to threaten to seize the archives, Canton authorities would destroy or alter the documents.

The only method planned by the Sarajevo authorities to find cases of double occupancy was public appeals. Other avenues for exposing housing misuse remain unexplored. The authorities, should, in particular, investigate the thousands of socially-owned apartments that were declared abandoned to ensure that they are not the objects of housing abuse, and should verify that the temporary and permanent occupancy rights issued to Sarajevo residents for socially-owned apartments were not given to those who are double occupants, dividing families or up-graders.

The authorities should give priority to making determinations concerning homes to which pre-war owners or occupants have registered their desire to return.

The failure of beneficiaries to return to their homes rebuilt by international agencies is another common form of double occupancy. About a third of the 10,000 homes repaired with foreign aid in the Sarajevo Canton remain empty, or occupied by only part of the family. For instance, many beneficiaries of reconstruction programmes in Gorazde also remain in Sarajevo homes. These homes should be freed up for their pre-war occupants or used as "secondary allocation" for displaced persons vacating homes for returnees or returnees awaiting the rehabilitation of their pre-war homes.

B. Resolution Of Priority Housing Cases

The Sarajevo Declaration called on the "Cantonal Ministry for Spatial Planning in co-operation with the Cantonal Ministry for Labour, Social Policy, and Refugees" to resolve "the remaining four cases of identified pre-war tenants prevented from returning to their UNHCR reconstructed apartments, and the 96 pending return requests lodged with Cantonal authorities since the summer of 1997... by 1 April 1998."

Of the four UNHCR cases,⁴⁴ one remains outstanding. The current occupant in this case has invested a considerable amount of money in the home. The Sarajevo Declaration states that "Any expenses associated with the resolution of these cases will be borne by the Canton, unless otherwise established by court proceedings." Cantonal authorities could pay the current occupant a reasonable sum for the repairs, as they have paid compensation in order to resolve two other such cases. Another of these UNHCR cases which has recently been resolved illustrates the Canton's delaying approach. Over two months ago the occupant of one of the homes locked the apartment he was occupying, refused to hand the key over until reimbursed 3,000 DM he invested in the home, and left for an unknown location. The Ministry for Spatial Planning, after attempting to locate him, could have sealed the premises for a week, and the police, three days thereafter could have broken into the home. This procedure should have been undertaken once the occupant disappeared, but instead the Canton waited two months to take action.

The 96 pending return requests from the summer of 1997 are also being resolved sluggishly. At the time of the Sarajevo Conference only four had been resolved. According to the Ministry for Spatial Planning, another 44 pre-war occupants have so far been reinstated into their homes as of last August. Cantonal authorities have also repeatedly provided incorrect information as to the number of cases solved, as confirmed by UNHCR field visits.⁴⁵

⁴⁴ These cases are part of a US\$ 6 million shelter project financed by UNHCR in August 1996 to reconstruct 1,156 homes in cooperation with the Sarajevo City Development Institute (a municipal organ that deals with urban planning and construction) in the municipalities of Ilidza, Novi Grad and Novo Sarajevo on condition that the pre-war occupants return to their rebuilt homes. After the homes were completed in March 1997, the Ministry for Spatial Planning blocked the return of 24 minority pre-war occupants (and one Bosniac) and allowed others to move into the homes.

⁴⁵ *Sarajevo Declaration Quarterly Implementation Review*, Reconstruction and Return Task Force, 6 May 1998, p.6.

The Sarajevo Declaration called for the resolution of cases regarding Jewish homes,⁴⁶ whereby the Ministry for Spatial Planning and the Ministry for Refugees, along with city and municipal authorities, “shall ensure that the 29 priority cases in which members of the Jewish community are already waiting to reoccupy their pre-war homes are resolved by 1 April 1998.” Only four cases were solved by the deadline. According to the Ministry for Spatial Planning, as of mid-August, 19 pre-war occupants had returned to their homes.

The Ombudsmen also presented Cantonal authorities with 41 cases regarding socially-owned apartments, though these cases are not mentioned in the Sarajevo Declaration. A total of 21 pre-war occupants had been able to return to their homes.

C. Bodies Responsible for Housing Matters in Sarajevo

The Cantonal Ministry for Spatial Planning is the Ministry with primary responsibility for sorting out Sarajevo’s housing problems. Minister Munib Buljina thus is the official who, by virtue of his post, should bear the major onus of responsibility for the slow progress in achieving the Sarajevo Declaration’s benchmarks. While he has not been openly obstructive he has failed to act with the determination called for by the crisis. He has failed to adequately mobilise or offer support to build the capacity of the under-resourced Housing Department, nor has he sought funds to do so. Governor Midhat Haracic bears ultimate responsibility.

The Ministry is responsible for setting policies. For instance, the Ministry is responsible for developing a procedure for the secondary allocation of apartments (to which the pre-war occupants have not returned) that fully respects the pre-war occupant’s right to return. This it has yet to do.

The Housing Department of the Ministry is responsible for (a) deciding claims for recovery of abandoned socially-owned apartments by pre-war occupants and owners, (b) allocating temporary occupancy rights, and (c) carrying out evictions and other housing-related orders.

One great weakness of the Housing Department is the field commissions which are supposed to monitor the housing situation on the ground. These commissions, which consist of four or five inspectors in each municipality, have repeatedly reported incomplete or inaccurate information, as demonstrated by UNHCR and other field checks. They are not properly held accountable by either Minister Buljina or Governor Haracic.

Positive developments have, however, occurred in the last several months. In late May, the head of the Housing Department, Haris Trnka -- who outranked Buljina in the SDA (*Stranka demokratske akcije*, the ruling Bosniac nationalist party) and was well-known for obstructing minority returns -- resigned, reportedly under pressure from the international community. His replacement, Aida Haznadarevic, is performing her duties with greater professionalism, has

⁴⁶ In 1992, in an effort to secure the possibility of return, the Jewish community signed a contract with the Mayor of Sarajevo agreeing that the socially-owned apartments belonging to the Jewish community would be protected and would not be declared abandoned for however long the occupancy right holder remained away. The contract allowed the City to grant temporary occupancy to others during the pre-war occupant’s absence. Nevertheless, the City Secretariat for Housing declared the apartments abandoned and, until recently, most temporary occupants have refused to leave.

personally intervened to resolve housing cases and has hired 20 new employees, some ten of whom are minorities. These hires bring the number of staff up to 98, all of whom are Bosniacs except for the recent hires. While very few claims for socially-owned apartments had been decided by the end of June, by 7 September, claims were being decided at the rate of more than 400 a week (although, as noted above, many of these were interim orders).⁴⁷

The Sarajevo Housing Committee (SHC) was established after the Sarajevo Conference to monitor and help implement the laws concerning socially-owned apartments. Its Secretariat is, in particular, tasked with overseeing the appropriate allocation of apartments, and working with Sarajevo authorities to reduce multiple occupancies.⁴⁸ It follows different procedures for dealing with returns to (a) vacant apartments to be reconstructed, (b) apartments that are temporarily occupied but will be freed up by eliminating multiple occupancy, and (c) apartments temporarily occupied by displaced persons with no immediately available alternative accommodation.

The SHC Secretariat is headed by an international Executive Secretary seconded by UNHCR, who has two Bosnian support staff. The SHC is supposed to receive funds from the EC for four more staff members, who will form joint teams with Housing Department staff to monitor the Department's field commissions and verify returns to repaired homes.

Cantonal authorities have not fully co-operated with the SHC: Governor Haracic delayed in signing the SHC's Memorandum of Understanding with the result that the SHC could not begin operating until May (three months later than planned), and the Ministry has been slow in presenting it with cases of multiple occupancy.

With regard to rebuilt homes that remain empty, the Canton has claimed that the municipalities bear responsibility for evicting double occupants, pointing to, among other things, the fact that reconstruction agencies have used tripartite agreements for the repair of homes signed by the agency, the municipality and the beneficiary. Under international pressure, however, the Canton has become more involved and the Governor has promised that, upon being informed of beneficiaries who have not returned to their homes, he will ensure that they do vacate the homes they currently occupy within two weeks. The US Bureau for Population, Refugees and Migration has already taken advantage of this promise and secured the return of some two dozen families to their rebuilt homes. The UNHCR has now drafted model tripartite agreements to be signed by the Sarajevo Canton instead of the municipalities to formally shift the onus of responsibility, and reconstruction agencies are encouraged to use these agreements.

The Cantonal Ministry of the Interior and, ultimately, the Governor are responsible for ensuring that the Cantonal police offer the necessary assistance to the Housing Department and courts in

⁴⁷ According to the Ministry for Spatial Planning, only 266 claims had been decided by 7 July. By 20 July, the number had risen to 1,451; by 24 August, to about 3,500; and by 7 September, to about 5,000.

⁴⁸ The Steering Board is chaired by the Personal Representative of the Chairman of the Presidency of Bosnia and Herzegovina and members consist of personal representatives of the Co-Chair of the Council of Ministers, the Governor of the Sarajevo Canton, the Cantonal Ministry for Refugees, the Cantonal Ministry for Spatial Planning, the Cantonal Ministry of Interior, the Cantonal Ministry of Justice and Administration, UNHCR and OHR. The CRPC, UNMIBH, EC and Coalition for Return hold permanent observer status. The Secretariat is chaired by the UNHCR and consists of most of the members of the Steering Board, other than representatives of the Bosnian Presidency and Council of Ministers.

carrying out eviction orders. According to international monitors, about 99 percent of successful evictions benefit Bosniacs. Moreover, the police fail to prevent many lawful occupants, particularly minorities, from being forcibly expelled from their homes by other people.⁴⁹ For this discriminatory treatment and other derelictions of duty, Minister Ismet Dahic and Governor Haracic must be held accountable.

A municipality may enlist police protection or assistance in carrying out an eviction. The police are required by the Law on Preventing Official Persons from Performing their Official Duties to arrest anyone who obstructs a legal eviction, whether or not they use or threaten violence. Moreover, the Sarajevo Declaration requires the police to enforce “duly authorised housing related orders”. According to international monitors, the police have failed to carry out these duties. In particular, from early August to early September, police officers have failed to attend evictions even when requested. According to a judicial authority and several field monitors, it is believed that the Minister of Interior issued a memo instructing police not to attend evictions unless 14 criteria, which virtually never occur, are met. The Minister denies having issued such an order.

The mayors of some municipalities also bear some responsibility for obstructing evictions. In July 1998, according to international observers, the mayors of Novo Sarajevo, Stari Grad, and Novi Grad (all of which are split, with some territory in Republika Srpska) declared that illegal occupants would not be evicted unless alternate accommodation could be found. Such a policy flies in the face of the current law which provides that pre-war home owners and occupancy right holders have the right to reclaim their homes immediately if illegally occupied; they are required to wait for the occupants to find alternate accommodation only if the occupants had been lawfully granted occupancy rights.

VI. PUBLIC ORDER AND SECURITY

A. Police Strategy to Support Return

The Sarajevo Declaration called for the Sarajevo Cantonal police to develop a strategy by 1 March 1998 detailing how they will (a) guarantee the security of all citizens, with a focus on returnees, (b) incorporate more minorities into the force, (c) respond to public disorder, and (d) enforce authorised housing-related orders. The Declaration called on the police to engage in public relations and launch information campaigns.

The Minister of Interior, several days after the deadline had passed, instructed the police departments in the Canton to draw up plans. On 13 March 1998 these plans were presented to UNMIBH, which includes the International Police Task Force (IPTF). The various plans were not uniform and failed to address key components set forth in the Sarajevo Declaration. IPTF then drew up a generic plan the police departments were instructed to follow and adapt to their particular needs. The Ministry finally completed a Cantonal strategy in early May.

⁴⁹ For instance, In Vogosca (in Sarajevo Canton), which was declared an Open City by the UNHCR in July 1997, over a dozen Serbs are currently displaced within the municipality because they were expelled from their homes by people threatening violence.

The 1996 Bonn-Petersberg Agreement called for a Sarajevo Cantonal Police Force of 1,702 officers: 846 (50 percent) Bosniacs, 485 (28 percent) Serbs, 117 (7 percent) Croats and 254 (15 percent) "Others". The force currently consists of 1,244 officers: 1,121 Bosniacs (90 percent), 101 Croats (8 percent) and 22 "Others" (2 percent), which includes Serbs. Not only is there a shortfall of at least 460 Serbs (even assuming that all of the 22 "Others" are Serbs) and 254 "Others," but there is an overall shortfall of 458 officers. IPTF has called on Minister Dahic to propose a plan for "moving towards this multi-ethnic goal during 1998 and 1999." Simply to increase the percentages of minorities to reflect their current representation in the population would require the immediate recruitment of 65 Serbs and 39 Others. Nevertheless, the Minister has not taken any serious steps to make these recruitments. Instead, in early 1998, the force recruited 156 candidates as short-term police officers, most of whom are Bosniacs, without the direct involvement of IPTF, and hopes to merge them into the force.

Moreover, far from "guarantee[ing] the safety of returnees" as required by the Sarajevo Declaration, the Cantonal police have actively discouraged returns by erecting illegal checkpoints on the main roads into Sarajevo from Pale in Republika Srpska. Between 30 October 1997 and 29 March 1998, IPTF dismantled 50 illegal police checkpoints on or near this road, and issued non-compliance reports in 43 of these cases.

B. De-mining

The Sarajevo Declaration called for the Federation Mine Action Centre (MAC), with the support of the United Nations, to develop a detailed plan for increased de-mining in support of returns by 15 March 1998. The Federation MAC was recently established and, with the help of UNMIBH, has produced a plan. International organisations have begun de-mining projects in Sarajevo but a lack of funds jeopardises the realisation of the Federation MAC plan.

C. Confidence Building

The Sarajevo Declaration asserts that "Free and responsible media [are] essential in the creation of the necessary conditions for return. The Federation, cantonal, city and municipal authorities will accelerate their efforts to implement the confidence-building spelled out in Annex 7 of the Peace Agreement, and inform the Office of the High Representative of their plans to develop an appropriate media plan to this effect."

According to the OHR, authorities have more often engaged in confidence destruction than in confidence building. Authorities have not to any significant extent used the media to welcome minorities back, or publicise the *Law on Amnesty*.⁵⁰ Rather, authorities have often stated in the media that Serbs cannot return to Sarajevo until non-Serbs can return to Republika Srpska, and

⁵⁰ The Sarajevo Declaration called on "relevant authorities to take immediate steps through mass media and other channels to ensure that returnees, and all citizens, are made aware of the existence of the Federation *Law on Amnesty* and that this law is fully implemented and applied without discrimination" and to "ensure that returnees shall be exempted from military service for a minimum period of five years...[and] to "respond favourably to requests for exemption from military service for persons who are in the minority where they live and conscious objectors." The Ministry of Defence has since the existence of the Sarajevo Declaration issued a conscription notice to a Serb returnee to Sarajevo and against the wishes of another minority who remained in Sarajevo during the war.

accuse minorities of returning to Sarajevo only to sell or rent their homes.⁵¹ Authorities exaggerate the costs of minority returns and claim that such returns would result in the eviction of vulnerable groups such as displaced persons and families of fallen soldiers. Newspaper articles often juxtapose stories of minority returns to Sarajevo with those of displaced persons in Sarajevo unable to return to their homes in Republika Srpska. A wide range of Federation, cantonal and municipal authorities have also falsely accused the international community of thwarting minority returns by not providing enough assistance for housing reconstruction.

VII. EMPLOYMENT

The Employment Working Group was established by the Cantonal Ministry for Refugees by 30 June as stipulated in the Sarajevo Declaration. The Working Group is considering compiling lists from various sources of highly-qualified minorities who wish to return. The group plans to organise seminars held by international and local organisations on micro-credit and assist the Cantonal Ministry for Interior in the recruitment of minority police officers. The Group is also examining credit opportunities for businesses owned by minorities. The Group has not yet developed an anti-discrimination code of employment practice.

VIII. EDUCATION

The Sarajevo Education Working Group was formed on time, by 1 March 1998, as stipulated in the Sarajevo Declaration. The Group has exhibited excellent cooperation among Bosnians and international experts and organisations. Four sub-groups are functioning. The Sub-Group on Textbooks has identified passages in books and teaching materials deemed to be offensive to any ethnic group, and agreed that all accounts of the recent war should be deleted. An outline on points to be made concerning the war is to be drafted in consultation with all parties for use by teachers. The plan was that the Cantonal Ministry for Education, working in conduction with an expert team led by UNESCO, would remove materials and black out offending passages by the start of this school year in early September. This has not yet happened.

The Sub-Group on Discrimination has distributed information to all schools and several non-governmental organisations about impermissible forms of discrimination and has invited them to bring to the Sub-Group's attention cases of possible discrimination against students or teachers. SFOR has assisted by creating posters and pamphlets, which it will begin distributing in September. The Sub-Group on Democracy and Tolerance-Building has so far received 90 proposals for projects, three of which have been funded. The Sub-Group on Resources is awaiting the outcome of a World Bank project to analyse the financial needs of the entire education sector.

⁵¹ Indeed, a number of unscrupulous people try to persuade minorities to sell their homes, often at "fire sale" prices. For instance, one lawyer in Vogosca and member of the municipal council encourages minority returnees who seek his help in reclaiming their homes to instead sell their homes.

VIII. SANCTIONS

Because the Sarajevo Canton failed to meet most of the main benchmarks in the Sarajevo Declaration, the US Agency for International Development (USAID) froze US\$ 5 million (9 million DM) of reconstruction aid in early July. The European Commission inserted a clause in three reconstruction contracts with non-governmental organisations for a total of some 9 million ECU (18 million DM) stating that commencement of the projects would be delayed pending advice from the OHR. These moves were initiated independently; the OHR has not formally called on donors to impose sanctions against the Canton.

Cantonal officials quickly condemned the sanctions in the local media, arguing that reconstruction financed by international assistance is required to facilitate additional returns and that, in the end, potential returnees will suffer most. They made no mention of their failure to fulfil obligations set forth in the Sarajevo Declaration, nor the shortfall in the number of minority returnees. Other local groups, such as the Alternative Ministerial Council of Bosnia and Herzegovina and the Association of Independent Intellectuals "Circle 99", also disapproved of the sanctions, stating that they render Sarajevo citizens the victims of nationalist politics, and suggested that individual obstructive officials should be punished rather than the city and its people as a whole.

The 27 million DM of frozen or "delayed" assistance constitutes a proportionate reaction to the Canton's non-compliance in implementing the Declaration, especially given that the Sarajevo Canton has already received 500 million DM in aid since the end of the war, including 80 million DM for the repair of 10,000 homes. With a 1998 budget of more than 500 million DM, the Canton is capable of assuming greater responsibility for financing return projects itself.⁵² Moreover, given that the Canton does not suffer from a housing crunch, but rather dire mismanagement, further assistance for housing reconstruction without the identification and resolution of housing abuse would allow such problems to persist.

The limited sanctions and conditioning of aid on compliance appear to have had some positive effect although, predictably, authorities claim that they had already initiated the improved measures. The number of minority returnees has increased in recent weeks, Governor Haracic has promised to ensure that beneficiaries return to their rebuilt homes and that evictions will proceed at an accelerated pace, and 62 out of 125 priority housing cases mentioned in the Sarajevo Declaration or raised by the Federation Ombudsmen, have been resolved after many months of little or no progress. The Canton spent 4.5 million DM in July 1998 to rehabilitate 169 apartments in Dobrinja, including 60 owned or occupied pre-war by non-Bosniacs.

Unofficial sanctions have been successful in the past as well. The four UNHCR priority housing cases specified in the Sarajevo Declaration actually belonged to a group of 25 disputed cases that the Ministry for Spatial Planning made no move to solve until UNHCR threatened to withhold US \$4 million for a reconstruction project near the airport if the cases were not resolved by 20 December 1997. The Cantonal Ministry for Spatial Planning then solved almost all of the cases by the deadline, but since others remained problematic UNHCR did not proceed with the project.

⁵² According to the World Bank, the 1998 budget of the Sarajevo Canton is greater than the budget of Republika Srpska, which is 365.2 million DM. The 1998 budget of the Federation is 822 million DM.

IX. CONCLUSIONS AND RECOMMENDATIONS

A. Property

1. **The deadline for re-claiming socially-owned apartments should be extended by at least 12 months**

The current deadline for pre-war occupants to file claims for their socially-owned apartments throughout the Federation is 4 October. There is general agreement among the international community that the deadline should be extended, owing to several factors: the authorities were slow to start the claims process and claims continue to be processed slowly; some offices charged unlawful fees or required unnecessary documents before they would accept claims; some required hearings which often were intimidating and in any event caused further delays; and the information campaign has not yet reached all pre-war occupancy right holders, especially those in Republika Srpska and outside the country.

The main issue now under discussion is the length of time the deadline should be extended. Most Federation authorities want a short extension, claiming that it is important to promote durable solutions as speedily as possible. ICG fundamentally disagrees and calls for a 12-month extension for several reasons:

First, the six-month deadline was initially set based on the expectation that Republika Srpska would adopt property legislation fairly rapidly. The failure of Republika Srpska to do so has prevented any progress on returns there. The failure reflects the tenacity of, and has helped reinforce, the “fortress” mentality: no one moves into Republika Srpska, and no one moves out. This mentality has discouraged pre-war Federation residents, especially those now living in eastern Republika Srpska, from filing to reclaim their homes, for fear that even the act of filing will result in harassment. Owing to the obduracy of Srpska’s authorities, the deadline should be extended for at least 12-months, with the possibility of further extension if Srpska has not made adequate progress towards adopting and implementing non-discriminatory property laws.

Second, an extended deadline will strengthen the position of the international community in pressing Republika Srpska to include an equally long deadline in its law, which will certainly be warranted in light of that entity’s more adamant obstruction to minority returns over the past almost three years since the DPA’s signing.

Third, a short deadline serves the interests of the nationalist parties, all of which want to freeze the status quo, and basically keep people where they are now, with their own majority groups in territories that are substantially ethnically homogenous.

Fourth, the six-month deadline from the start did not give fair acknowledgement to the weightiness of the occupancy right. The private ownership right can not (and should not) be extinguished simply because of failure to return within a given time; there is no legal justification for according occupancy rights such radically different treatment.

- *The international community initially accepted the six-month deadline as a compromise; owing to the slowness of progress on property issues in both entities, and for all of the above reasons, it should now press for at least a 12-month extension.*

2. Reform of property laws in Republika Srpska must be made a high priority, and provides an opportunity for further reform of the Federation laws

The Federation authorities link their slow progress in reforming and implementing the property laws to the even greater recalcitrance of the Republika Srpska authorities. While arguments based on reciprocity should be rejected (all Bosnian authorities are obliged to implement the DPA regardless of the failure of others to do so), there is a practical point that as many as 80,000 Bosniacs in Sarajevo are displaced from their homes in Republika Srpska and have no possibility to return under the current political and legal conditions.

The OHR has called on Republika Srpska authorities to amend their property laws along the lines of the Federation laws. Given that the Srpska authorities have delayed so long in adopting the laws and have been so obdurate in obstructing minority returns, a strong argument can be made that the OHR should press them to adopt laws without the problematic provisions. Adoption of laws in Republika Srpska with the problematic provisions would provide major loopholes by which Srpska authorities could continue to block returns and prevent the purchase of apartments by non-Serbs. On the other hand, adoption of laws that better implement the right to return would send a welcome signal to the international community in general and donors in particular that the new Republika Srpska National Assembly is willing to cooperate with the international community in implementing the DPA's return-related provisions.

- *The international community should condition further aid to Republika Srpska on adoption of non-discriminatory property laws.*
- *The OHR should urge the Srpska authorities to adopt property laws that do not suffer from the defects from which the Federation laws suffer, enumerated below.*
- *The OHR should urge the Federation authorities to adopt the following reforms. It would then be in a stronger position to press for the reforms with Srpska authorities. Once the Srpska authorities amend their laws, the OHR should work to persuade both sets of authorities to make the following reforms, if they have not yet done so.*

Regarding both private homes and socially-owned apartments:

Once the pre-war owner or occupant declares his or her firm desire to return, if the home is legally occupied, the current Federation laws require the temporary occupant to vacate within 90 days, although this period may be extended by up to one year.

- *The laws should be amended to allow such an extension only in clearly defined, exceptional cases, and pursuant to a court order.*

Regarding socially-owned apartments:

- *Given that 1998 has fallen far short of expectations as "the year of minority returns," the requirement that pre-war occupants must return within one year of their claim's being decided or else stand to lose their apartment should be dropped, or at least extended.*

The new laws authorise the courts to allow a family granted permanent occupancy rights post-war to remain in an apartment to which a pre-war occupancy right holder has filed a claim to return. The authorities then are obliged to find another home for the pre-war occupant. The

Federation Ministry of Urban Planning and the Environment is to adopt criteria, consistent with criteria drafted by the OHR, to guide the courts' decisions.

- *The OHR must ensure that the grounds for allowing post-war occupants to remain in apartments to which the pre-war occupants seek to return are extremely limited, permitting the post-war occupant family to remain, for instance, only where it is substantially larger than the pre-war household.*

The current Federation law provides that pre-war occupants who left their apartments may not purchase them unless they return and live in them for at least six months and may not sell them for five years after the date of purchase. These are onerous burdens to impose.

- *Pre-war occupants should be allowed to purchase their apartments without having to meet any further conditions.*
- *At the least, people who would be minorities if they returned to their apartments, should not be required to do so in order to resell them. More should be done to enable minorities to return to their homes in security and without discrimination; however, given the current political realities, they should be given the option to obtain some value for their homes if they choose to start a life elsewhere.*
- *The minimum period of ownership necessary before pre-war occupants may resell their apartments should be reduced to two, or at most three years (as initially urged by the OHR).*

3. The Sarajevo Canton must make substantial progress in resolving double occupancy and other priority housing cases

Conservative estimates suggest that at least 13,000 people who stayed in Sarajevo during the war are now occupying two or more homes. In addition, some 3,000 homes repaired with foreign aid (including some outside of Sarajevo) remain unoccupied, while many of their pre-war owners occupy other, more desirable homes in Sarajevo. These are the easiest housing cases to resolve, as homes can be freed up for their pre-war occupants or owners without needing to move current occupants into temporary accommodation. The Sarajevo Declaration called on the Cantonal authorities to identify at least 2,000 cases of double occupancy by 30 June 1998. In fact, the Canton has identified only 148 such cases. There are several reasons for this failure including that: (a) the Canton defines "double occupancy" more narrowly than does the international community; (b) the Canton has not taken any measures to identify double occupancies other than launching public appeals for information; (c) Cantonal authorities lack the political will to take action concerning most kinds of cases of double occupancy, especially where the persons benefiting from the abuse are people with connections and/or who remained in Sarajevo throughout the war; and (d) the Cantonal Ministry of Spatial Planning lacks an adequate number of properly trained and motivated staff.

The Canton, in particular the Governor and the Ministry of Spatial Planning, must be pressed, as a matter of high priority, to take the following measures:

- *They must accept the international community's definition of double occupancy, which includes "divided families" and "up-graders" as well as families which are occupying two or more homes.*
- *They must undertake a systematic investigation of the Canton's property records. They should begin by checking each of the homes of the 12,000 families that have registered to return, giving priority to the homes of the 7,100 families that are non-Bosniac, in light of the low number of minority returns to date. They should work to make these homes available, by (a) promptly evicting "double occupants" who have other homes to which they can move; (b) making a list for donors of vacant homes that require repairs; and (c) finding alternative accommodation for occupants who have no alternative accommodation of their own, even if they were never granted legal occupancy rights.*
- *They must resolve the 80 or so remaining priority cases (out of 166) brought to their attention by UNHCR, the Federation Ombudsmen and the Jewish community.*
- *They must verify, through an overhaul of the housing records, that people who have received occupancy rights to a home do not have another one at their disposal.*
- *They must cancel permanent occupancy rights granted after 7 February 1998, and should compensate those people who relied on the rights in good faith (who had no reason to know that the rights were illegal) for any improvements that they made to the homes.*
- *They must substantially increase their efforts to notify pre-war occupants or owners of homes that are found to be doubly occupied that their homes will be made available as soon as they give notice of their intent to return on a date certain.*
- *They must process claims for socially-owned apartments expeditiously, without discrimination and consistent with the law. They must ensure that the Cantonal Ministry of the Interior turns over records on police apartments to the Cantonal Ministry of Spatial Planning.*
- *They must ensure that the Cantonal Ministry of Spatial Planning, in particular, the Housing Department, has an adequate number of properly trained and qualified staff, including substantially more minorities.*

4. Limited sanctions should be maintained until substantial, concrete steps are taken

Since the end of the war, Sarajevo Canton has received 500 million DM in foreign assistance, including 80 million DM for reconstruction. Because the Canton failed to meet most of the Sarajevo Declaration's benchmarks, in July USAID suspended 9 million DM of assistance intended for reconstruction. The European Commission introduced clauses in its reconstruction contracts that have been signed but not started stating that the projects are to be delayed pending advice from the OHR. While there clearly are substantial difficulties in resolving housing issues in Sarajevo, the Canton has not taken the minimum good faith steps necessary to move the process forward.

- *Until the eight steps outlined in Recommendation 3 above have been taken, USAID should continue to suspend aid to Sarajevo Canton.*
- *The European Commission should continue to include "trigger" clauses in reconstruction contracts, conditioning the start of projects on OHR advice regarding the Canton's level of compliance. Other donors should follow suit by including similar clauses.*
- *The OHR should recommend that donors refrain from starting new reconstruction projects until the eight steps outlined in Recommendation 3 above have been taken.*

Many Sarajevans condemned the sanctions, claiming that they hinder minority returns and render Sarajevans the victims of nationalist politics. The reality, however, is that the aid, as currently misapplied, has done little to benefit minority returns.

5. Obstructive officials at all levels should be held accountable

Sarajevans rightfully have urged that officials -- including officials of the ruling SDA -- who are responsible for obstruction and are profiting from double occupancies should be punished. The difficulty with implementing this suggestion is that no organisation has taken on the task of documenting who the obstructive officials are. The Sarajevo RRTF, charged with assisting implementation of the Sarajevo Declaration, met only two or three times since the Declaration's adoption, and devoted an inordinate amount of time to procedural matters. This summer, a new chairperson was appointed.

- *The RRTF should set up a team to investigate claims of housing abuse; and should identify the officials who are responsible for the failure to meet the benchmarks set forth in the Sarajevo Declaration and/or who are benefiting from double occupancies. This task should be made a top priority, and High Representative Carlos Westendorp should ensure that the investigatory team has the resources and political support to follow the evidence wherever it may lead.*

One model for the composition of such a team is the Election Appeals Sub-Commission of the OSCE which is comprised of Bosnian judges, an international judge and a small team of international investigators.

6. The SHC must collect information on evictions.

Enforcement of duly authorised eviction orders is a key component of freeing housing space for minority returns, and careful monitoring by the international community clearly is necessary to ensure proper enforcement. However, no international organisation knows even roughly the number of eviction orders that have been issued or successfully enforced. Compiling data is complicated by the fact that both the courts and the Cantonal Ministry for Spatial Planning issue eviction orders.

- *The SHC must collect information on the number of eviction orders issued, the number successfully executed, and the number of these that enable minorities to return.*

7. The Coalition for Return should be funded to help notify displaced persons about their property rights

The Coalition for Return is the most effective mechanism for notifying persons displaced from Sarajevo of their rights, including property rights and their need to file claims for socially-owned property.

- *The Coalition should be provided with increased funds, from UNHCR or the Canton, to assist them in notifying displaced persons of their rights.*

- *The Serb Civic Council, a member of the Coalition, should be helped to open offices in Brcko and Banja Luka in order, among other things, to be able to provide legal advice to displaced persons wishing to return to Sarajevo and elsewhere.*

B. Security and Confidence Building Measures

1. The Sarajevo Canton Police Force should hire more Serbs immediately and establish a long-term plan for further hires

The Canton police force currently is comprised of 1,244 officers, more than 450 short of the target set in the April 1996 Bonn-Petersberg Agreement. While an adequate percentage are Croats, only 22 (2 percent) are Serbs and others, far short of the Bonn-Petersberg target of 712 (43 percent). The current population of Sarajevo is 5 percent Serb and 3 percent others. Far from making efforts to recruit more Serbs, the police force, in early 1998, hired 156 officers, most of whom are Bosniacs, as short term officers, without any IPTF involvement.

- *The Cantonal Ministry of the Interior should work out a plan, together with IPTF, for the immediate recruitment of 65 Serb police and 39 others, in order to bring their numbers up to the current population figures. The next phase could involve the hiring of additional recruits, including those of the already recruited officers whom IPTF certifies, so long as the minority numbers are adequate to raise the percentage of Serbs to at least 10 percent.*
- *The international community should make clear to the Ministry that aid to the police force will be suspended if these steps are not taken within a time frame established by IPTF.*

2. Police officers should enforce duly authorised eviction orders

The Sarajevo Declaration calls on the police to “enforc[e] duly authorised housing-related orders.”⁵³ While there have been successful evictions, virtually all of them benefit Bosniacs. Until August, the police at least attended evictions, although they rarely intervened, even when violence was threatened, in cases where the person trying to reclaim the home was a minority. From early August until early September, police officers did not attend evictions. As a result, fewer people who were served with eviction orders actually left their homes.

- *Given the Sarajevo Declaration's call for police enforcement of housing related orders, the poor enforcement record of orders that would benefit minorities, and the possibilities for violence, Minister of the Interior Ismet Dahic must issue instructions that police are to attend all evictions.*
- *Where “duly authorised housing-related orders” have been issued, the police must ensure that they are carried out without discrimination.*

3. Authorities should use the media to welcome minorities back to the Sarajevo Canton

- *Authorities should stop making statements that mislead the public into believing that non-Bosniacs are able to return only if the Canton's most vulnerable residents -- persons*

⁵³ Sarajevo Declaration, para. 29.

displaced from homes to which they cannot return or who have no homes -- are thrown out on the street. Authorities should make clear that evictions will not result in anyone's being rendered homeless.

C. EDUCATION AND EMPLOYMENT

1. Cantonal authorities must implement the decisions of the Working Group

The initial progress made by the Education Working Group in identifying offensive passages in textbooks and other school materials has been among the most positive developments prompted by the Sarajevo Declaration. Steps have also been made to put in place a process by which students and teachers may lodge discrimination complaints. However, Cantonal authorities have failed to implement some of the Working Group's decisions, such as that offensive passages were to be blacked out of textbooks before the start of this school year.

- *Cantonal authorities must fully implement the decisions of the Education Working Group.*

Ninety proposals have been submitted for school projects to foster democracy and tolerance. So far only three have been funded.

- *More donors should support projects to foster democracy and tolerance, and the RRTF should help find funding for priority projects.*

2. The Bosnian Constitution's prohibition of discrimination should be enforced

The Constitution of Bosnia, which forms Annex 4 of the DPA, states that "Bosniacs, Croats and Serbs are constituent peoples (along with others) of Bosnia." The Bosnian Constitution supersedes the Federation Constitution, which recognises only Croats and Bosniacs as constituent nations within the Federation. There has been no study of the extent of employment discrimination in Sarajevo, or the Federation.

- *Chairman of the Bosnian Presidency, Alija Izetbegovic, should remind all levels of government throughout the country that the Bosnian Constitution, and in particular the provision regarding constituent peoples, supersedes all other inconsistent laws. He should take the necessary steps, as head of state as well as head of the SDA and the Coalition which governs most of the Federation, to ensure that the provision is enforced and that inconsistent laws are repealed.*
- *The Governor of Sarajevo Canton must issue instructions to the various ministries that they are not to discriminate, and are to employ minorities, including at the top levels, at least at a rate that reflects their current numbers in the population.*

Sarajevo, 9 September 1998

ABOUT THE INTERNATIONAL CRISIS GROUP

**We want to head off crises before they develop,
rather than react to crises after they happen.**

Senator George Mitchell, ICG Board of Trustees Chair

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Whither Bosnia?

September 1998

Sarajevo

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WHITHER BOSNIA?

I. INTRODUCTION

Despite considerable progress since the signing of the Dayton Peace Agreement (DPA) in November 1995 in consolidating the peace and rebuilding normal life in Bosnia and Herzegovina (Bosnia), international efforts do not appear to be achieving the goal of establishing Bosnia as a stable, functioning state, able at some point to run its own affairs without the need for continued international help. Peace, in the narrow sense of an absence of war, has been maintained; progress has been made in establishing freedom of movement throughout the country; joint institutions, including the state presidency, parliamentary assemblies and ministries, as well as a joint command for the armed forces of the Federation of Bosnia and Herzegovina (Federation), have been established.

However, the return of refugees and displaced persons (DPs), one of the key planks of the DPA, has been disappointingly slow, despite considerable international attention to this issue and the application of considerable resources. While joint institutions have been set up, at the state level they barely function, if at all, with the international high representative, Carlos Westendorp, having to intervene and impose decisions in a number of key areas. Institutions in the Federation frequently do not function properly. Bosniac and Croat parallel institutions continue, de facto, to operate, while in cases where joint institutions have begun to function, Bosniac and Croat officials often behave more as representatives of their ethnic groups and political parties than as professional public servants. And while a joint command for the Federation Army notionally exists, in practice separate Bosniac and Croat military formations remain, so that Bosnia still effectively has three military forces representing the three recent wartime protagonists.

In general, mutually-suspicious ethnic parties representing the three principal ethnic groups are dominant. They hold very different perspectives about how the country should look. If they do co-operate at all in implementing the DPA it is usually only grudgingly and under intense international pressure. The political system, which requires consensus among ethnic representatives, does not function effectively. In a system infused with corruption and cronyism, the one major respect in which many in power share a united purpose across the ethnic divide is in their determination to take advantage of the numerous opportunities for personal enrichment. In this situation economic reforms, such as privatisation, which numerous western advisers and consultants have tried to steer towards a western-style market orientation, are more likely further to entrench cronyism.

This paper weighs up the chances of current efforts to rebuild Bosnia ever producing a stable, functioning Bosnian state. It considers the outlook for Bosnia in present circumstances, and it considers whether there is any alternative to the present pattern of antagonistic ethnic parties

failing to govern effectively and depending upon international pressure and intervention for decisions to be taken.

II. THE POLITICS OF IRRESPONSIBILITY

There have been significant positive developments over the past year on the political front, as the monolithic control of hardline nationalist parties has been broken:

- Among the Serbs, the Serb Democratic Party (SDS), which dominated in Serb-controlled areas throughout the war, was defeated in a parliamentary election in Republika Srpska in November 1997, and in January 1998 a relatively moderate coalition government under Milorad Dodik was formed, relying on the support of Bosniac and Croat representatives in the Republika Srpska assembly. This ruling coalition has since consolidated its control in Republika Srpska, although often through far from democratic means, and appears set to strengthen its position in the forthcoming Bosnian elections (although whether it will continue to look for support to Bosniac and Croat deputies is far from certain).
- Among the Croats, while the Croat Democratic Union of Bosnia and Herzegovina (HDZBiH) remains dominant, its virtual monopoly of Bosnian Croat political life has been broken. A split in the party in May 1998 led to the formation of the relatively moderate and pro-Bosnian New Croat Initiative (NHI).
- And among the Bosniacs too, the forthcoming elections hold out the prospect of greater pluralism developing, as non-ethnically based parties stand to increase their share of the Bosniac vote.

Nevertheless, while the development of greater political pluralism and the advance of relatively more moderate parties are welcome and will aid the implementation of the DPA in key respects, the overall effect is not likely to bring Bosnia towards the goal of a functioning state, able to run its own affairs without the need for international intervention. As elaborated in detail in a recent ICG discussion paper on electoral reform entitled *Changing the Logic of Bosnian Politics* (10 March 1998), the current electoral system is fundamentally inappropriate for a multi-ethnic state such as Bosnia, in which mistrust and fear among the different ethnic groups are the defining features of political life.

The current electoral system favours ethnically-based parties. Most voters, fearful and mistrustful of other ethnic groups, cast their votes primarily on the basis of which party is perceived as being the staunchest defender of the narrow interests of their own ethnic group. In such a situation, electoral candidates of ethnically-based parties are concerned only with appealing to and attracting the votes of their own ethnic group. With their eyes on the next election, they need to demonstrate that they are indeed stout defenders of the narrow ethnic interest. Thus on many

issues, politics turns into a zero-sum game, as ethnic leaders strike postures designed to show their nationalist credentials, to the detriment of responsible government.

The success of more moderate ethnically-based parties will result in greater co-operation among representatives of the three main ethnic groups, and is thus welcome. But essentially, these still ethnically-based parties will continue to be constrained by the need to be seen to be defending the causes of their narrow ethnic constituencies. In a system which relies on consensus among mistrustful ethnic leaders, as is the case in Bosnia now, it will thus on many sensitive issues be impossible to reach necessary decisions. In many ways the present situation is reminiscent of former Yugoslavia in the 1980s, after the death of Tito in 1980 and before the seizure of power in Serbia by Slobodan Milosevic in 1987.

The political system bequeathed by Tito depended on the reaching of consensus among the communist leaders (effectively ethnic leaders) of Yugoslavia's eight republics and autonomous provinces. Yugoslavia in the 1980s faced severe and worsening economic ills. The nature of these ills was examined and approaches for dealing with them were devised. Yet the country's leaders were unable to reach the consensus needed to implement the type of far-reaching reforms that were needed to tackle the mounting crisis; at each turn one or other republican (ethnic) leadership blocked action, citing particularly deleterious consequences for their own people. Thus the common good of all Yugoslavs was sacrificed on the alter of the narrowly perceived interests of individual republics, and the result was deadlock.

By the late 1980s Yugoslavia had become a dysfunctional state, unable to cope with its problems, slipping deeper and deeper into crisis. It was in this situation, with the frustration that it engendered, that Milosevic found in the appeal to Serb nationalism a particularly potent rallying cry. The consequences for Yugoslavia were utterly destructive, as the leaders of the country's other ethnic groups were themselves obliged to respond to the nationalist challenge in kind. As each ethnic group placed the blame for their common ills on the sins of the others, responsible government, and with it effective solutions to those ills, was the first victim.

If the republican leaders of single-party communist Yugoslavia were unable to operate a system dependent on the reaching of consensus, how much less are the ethnic leaders in present-day Bosnia, who are directly accountable to their ethnic constituencies? It was not that the republican leaders in pre-Milosevic Yugoslavia were nationalist extremists -- far from it. Yet constrained to defend the perceived, narrow interests of their republics and ethnic groups, they proved unable to reach the consensus needed for responsible government. Similarly, neither will even relatively moderate ethnic leaders in Bosnia be able to govern responsibly in a system which requires them to rule by consensus, but which also requires them to be responsive to the demands of their narrow constituencies. Thus tinkering with an electoral law which retains the same logic that leads to repeated victories for ethnically-based parties -- even if there is political pluralism among the parties representing each ethnic group -- will not solve Bosnia's basic political problems, and is a wasted effort.

III. INTERNATIONAL PROTECTORATE

The increasingly interventionist role of the international community in Bosnia's political life significantly contributes to the tendency towards political irresponsibility among Bosnia's domestic leaders. At a meeting of the Peace Implementation Council in Bonn in December 1997, the international High Representative was given considerable powers to impose decisions when the Bosnian authorities proved incapable. At the state level, these powers have been used on several occasions, for example to impose citizenship and passport laws, and the design of a common currency. The threat of intervention has also been used to push the authorities into reaching decisions, such as on common vehicle licence plates. Such imposed decisions have been very useful in breaking the log-jam in establishing the attributes and institutions of a functioning state.

At the entity levels, rather than directly imposing decisions, the international community has frequently placed intense pressure on local authorities to frame laws in line with its views of how Bosnia should develop. For example, legislation in the economic sphere, designed to establish the basis for a sustainable recovery and a market economy, has been drawn up with detailed help from international advisors and consultants, and often with pressure on the authorities to take the path desired by the international community. At the cantonal and municipal levels too, strong international pressure has had to be applied to persuade recalcitrant leaders to fulfil their obligations under the DPA on such matters as establishing joint administrations and police forces and enabling the return of refugees and DPs; and these efforts to twist the arms of unwilling local leaders have tended to have only limited success.

Such tactics by the international community may be useful in securing the passing of legislation necessary to establish Bosnia as a functioning state, and in promoting implementation of the DPA. However, that they are needed merely serves to emphasise how far Bosnia is from having an institutional framework and a political system in which Bosnians can themselves take decisions responsibly. Indeed, that the international community is present and able to put forward, or even impose, solutions, actually discourages responsible government by the Bosnian leaders. The country's ethnic leaderships are able to devote themselves to striking postures as defenders of the narrow ethnic causes of their ethnic constituencies, safe in the knowledge that they will not have to take responsibility for the serious business of getting Bosnia on its feet and running the country effectively. Ethnic leaders have the power to wreck and spoil efforts to get institutions functioning, laws passed, refugees returned etc., but they do not have to take responsibility for the consequences, as the international community carries on the thankless task of micro-managing the country.

As long as Bosnia has a political system which favours ethnically-based parties, and which requires them to govern on the basis of a consensus that they can rarely reach, then the international presence will be required indefinitely. The alternative? An international withdrawal; a period of hapless efforts to make an unworkable system work; frustration; the search for scapegoats, to be found among the country's other ethnic groups as well as among the international community which had failed the country. Amid this frustration and disappointment, the resort to a nationalist alternative would be as obvious as it was in 1987 when Milosevic

claimed to offer Serbs a solution to their frustrations in former Yugoslavia. It is unlikely that Bosnia could survive such a scenario a second time.

IV. CRONY CAPITALISM

International micro-managing of the country leaves the ruling ethnic parties and their friends plenty of scope to pursue their own self-enrichment. In a sense, this should not be surprising, as the experience of several other former communist countries in transition has shown the tendency for political influence to be a means for business figures ("tycoons" in the popular parlance of many East European countries from Croatia to Russia) to build their empires. Privatisation of former state or, in the case of former Yugoslavia, socially-owned assets, has often resulted in politically well-connected individuals gaining control of enterprises. Privatisation is a vital component of the transition to the free market. However, a change in the structure of ownership does not necessarily lead to improvements in management or to the injection of much-needed new investment. Privatisation does not of itself lead to deep restructuring of enterprises.

As has often been the case, and as the aftermath of the recent Dubrovacka banka scandal has revealed in Croatia, what happens is that cronies of the political elite gain control of assets, which they exploit for their own aggrandisement, in a web of political influence and favours, docile banks and corrupt business practices. It would be naive to expect it to be otherwise in Bosnia, where corruption is endemic and even expected, and where some members of the political elite and their cronies have long been exploiting their positions for their own economic gain. Given the political risk associated with Bosnia, foreign investment is likely to remain limited for some time, while the voucher privatisation method adopted in the initial phase of privatisation will afford plenty of opportunities to local tycoons to gain control of assets, to the benefit of themselves, but not of the economy.

In some ways the situation is especially bleak in Bosnia, as the breakdown in the rule of law during the war led to the criminalisation of a substantial part of economic activity. Numerous politically connected business figures, in some cases simply Mafia gangs, have already made fortunes out of the wartime opportunities for smuggling, arms trading etc. It is just such people, with their political and business connections who are likely to be best placed to take advantage of the privatisation process to gain control of those assets which still offer the prospect of profit. Since the end of the war the habit of paying taxes and customs duties has yet to take root. The sterling efforts of the EU's Customs and Fiscal Assistance Office to Bosnia and Herzegovina (CAFAO) in this regard could bring results if given adequate support.

V. CONCLUSIONS

As long as a large international presence in Bosnia is retained, peace and a semblance of normal life can be maintained. The forthcoming elections will probably result in a greater pluralism within the political life of the three main ethnic groups. However, neither these elections nor future elections under an electoral system resembling the present one, with the overwhelming advantage it gives to mutually suspicious ethnically-based parties, are likely to produce authorities capable of governing responsibly without the need for international arbitration, pressure and intervention. It is a system which relies on consensus, but which ensures the election of mutually-suspicious ethnic leaders who will rarely be able to reach a consensus. While more moderate ethnically-based parties might be able to co-operate somewhat more effectively, on sensitive issues the same basic problem would remain, leading to the same kind of paralysis that afflicted Yugoslavia in the 1980s.

For the time-being, while further modest advances in normalising Bosnian life and in implementing the DPA are likely, these advances and effective government in general will continue to depend on a significant, active international presence and involvement. Bosnia will continue, in certain key respects, to resemble an international protectorate. The local authorities, relieved of the need to govern responsibly, will be able to continue concentrating on defending the narrow interests of their ethnic groups, fighting a rear guard action against the implementation of the DPA and spoiling efforts to establish Bosnia as a functioning state. Meanwhile, some among them, together with their cronies in the business and criminal worlds, will continue to take advantage of the opportunities afforded by political power to enrich themselves, abusing the economic reform process along the way so as further to increase their corrupt economic might. Necessary economic restructuring will in the process be stunted, as will Bosnia's long-term economic recovery. But a dissatisfied, still impoverished and frustrated population will continue to vote for the ethnically-based parties which are responsible for their problems, as the fear of other ethnic groups will remain the overriding concern.

VI. RECOMMENDATIONS

In order for Bosnia to avoid developing along the lines described above, so that the international community can at some stage withdraw from Bosnia, leaving a stable, functioning state, ICG recommends the following key changes:

- For the time-being a heavy international presence and involvement in Bosnia will continue to be necessary, to underpin the peace, promote the reintegration of the country, and build a stable, law-governed state. However, the primary goal of this continued international involvement must be to prepare Bosnia for the time when Bosnians themselves will take over the reins and run their own country. This means including Bosnians in deliberations on all

aspects of the rebuilding of the country; it means allowing and encouraging Bosnians to take the initiative in building structures conducive to their needs. Above all, Bosnians must be required to take responsibility for building their own future, rather than being spectators as structures and systems are built which might look impressive in other countries, but which do not meet Bosnian needs at all.

- As argued in the ICG paper on electoral reform, entitled *Changing the Logic of Bosnian Politics*, it is essential that an electoral system be devised which encourages voters not to vote purely on ethnic lines, and which requires candidates to seek support from the entire electorate, and not just from their individual communities. Such a system needs to acknowledge the desire of Bosnia's three main ethnic groups for ethnic security. As long as authorities at entity, cantonal and municipal level continue to be primarily ethnic authorities, under the control of representatives of the majority ethnic community in each particular area, members of minority communities will continue to feel insecure; even with the massive international presence in the country, relatively few refugees or DPs have been willing to brave the return to areas in which they would be in a minority. Living under the rule of the ethnic leadership of another ethnic community, minorities are uncomfortable even when the ethnic leadership concerned is relatively enlightened.
- ICG proposes an electoral system in which the proportions of elected representatives from each ethnic group are fixed in advance. This idea of building the ethnic key into elections should not be disturbing; after all, under the present system elections resemble a census. With the proportions of representatives of each ethnic group thus fixed, each voter would then have multiple votes, for representatives of each ethnic community. Thus a Bosniac candidate would need to be responsive to the wishes of Serb and Croat voters as well as Bosniac voters, and so on. Elected representatives would have to change their pattern of behaviour, needing to look for support from the entire electorate, and not just from their own ethnic segment of it. Such a system would provide an enormous boost to responsible governance for the benefit of the whole country.

Bearing in mind that the experience of corruption and political cronyism has been a prominent feature of the transition of most former communist countries, it is probably unrealistic to expect to stamp it out altogether in Bosnia. Nevertheless, Bosnia should be able to learn from the experiences of other countries which have embarked on economic transition earlier, and thus limit at least some of their mistakes.

- Strenuous efforts need to be taken to crack down on criminal elements in the economy. This means, where necessary, arrests and legal proceedings. It means that efforts need to be stepped up to ensure the independence of police and judiciary. It also means undermining the sources of criminal wealth, especially through measures to ensure payment of taxes and customs duties, and to crack down on smuggling. In this regard strong support needs to be given to CAFAO, including the provision of security by SFOR, to enable CAFAO and the local authorities to go about their work effectively and without fear.

- While the framing of laws on privatisation and the financial sector are vital elements in the transition process, it needs to be acknowledged that of themselves these do not amount to a deep restructuring of the economy. In order to limit the development of the type of crony capitalism which has been revealed in several other transition countries, it is vital that laws on banking regulation are applied strictly, so as to prevent politically-connected business tycoons from using their connections to abuse banks in their efforts to finance the building of their business empires. Ensuring that banks operate correctly is not just a matter of passing good laws; it is about a culture of professionalism and sound business practices, and ultimately it is about officials, especially in the central bank, having the will to ensure that regulations are adhered to, even if it means standing up to political pressure.
- Privatisation needs to be accompanied by real restructuring of enterprises if Bosnia's economic recovery is to be sustainable. This involves more than changing ownership structures; management techniques need to be changed, up-dated and improved; and new investment is required. The consultancy role of the international community needs to go well beyond the privatisation process itself, in order to train and equip Bosnian managers to face the challenges of a market economy. As much as possible, direct, private sector involvement needs to be encouraged. The extension of existing guarantees to potential foreign investors, to counter the perception of Bosnia's high political risk, would thus have great benefits, both in building a healthy economy, and in limiting the development of the type of crony capitalism which has brought such discredit to economic reform elsewhere in Eastern Europe.

Sarajevo, 9 September 1998

ABOUT THE INTERNATIONAL CRISIS GROUP

We want to head off crises before they develop,
rather than react to crises after they happen.

Senator George Mitchell, ICG Board of Trustees Chair

The International Crisis Group (ICG) is a private, multinational organisation committed to strengthening the capacity of the international community to understand and respond to impending crises. Teams of political analysts based on the ground in countries at risk of crisis, gather information from a wide range of sources, assess local conditions and produce regular analytical reports containing practical policy recommendations targeted at key international decision-makers.

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**KOSOVO'S LONG HOT SUMMER:
Briefing on military, humanitarian and
political developments in Kosovo**

**2 September 1998
ICG Sarajevo**

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C. Balance of Forces

While the UCK claimed to hold some 40 percent of Kosovo in mid-July 1998 -- a claim which was impossible to verify since observers were denied access to many areas -- the Serbian security forces' summer offensive has successfully rolled back the insurrection's early gains. NATO manoeuvres in neighbouring Albania in June and August 1998 and Western posturing have failed to persuade either side of the necessary resolve to intervene and thus deter further violence. This leaves Kosovo in much the same position as before the beginning of the fighting, with Serbian police controlling territory inhabited by an alienated population. Meanwhile, the UCK is licking its wounds and regrouping for what it considers an inevitable further round of fighting.

The UCK's attack against the town of Orahovac on 18 July 1998 was the turning point in the insurrection's fortunes. After initial UCK successes, the Serbian police re-established control of Orahovac on 22 July and then pushed on capturing the UCK's headquarters in Malisevo on 29 July, Likovac on 6 August and Junik on 15 August. The scale and speed of the reversals led Demaci to suggest at the end of August 1998 with the benefit of hindsight that the UCK had committed a "fatal mistake" of trying to defend territory against superior Serb firepower. Moreover, he announced that in future the UCK will adopt "classic guerrilla warfare tactics".¹³

Militarily, the UCK retains two key advantages: it benefits from intimate knowledge of the terrain and, with more than 90 percent of Kosovo's population ethnic Albanian, it has an abundant supply of manpower. The Serbian security forces, by contrast, largely consist of police and soldiers from outside the province, many suffering from low morale. Desertions and demands for transfer are common among units serving in or earmarked for Kosovo. For reasons that are not entirely clear Yugoslav president Slobodan Milosevic has not imposed a state of emergency in the province. Also, unlike in Croatia and Bosnia and Herzegovina paramilitaries do not appear to be operating.

With the exception of the barricade erected by the UCK on the Pristina-Pec road which remained in place from early May until late July 1998, it is fair to say that the asphalt belongs to the Serbian security forces and the forest paths to the UCK. Indeed, an extensive network of back roads enables the UCK to move around freely everywhere. Some checkpoints are movable: here today, gone tomorrow, or Serb today, Albanian tomorrow. For instance, in the beginning of July the Stimlje-Pristina road was one day fully UCK-controlled, but the next day (without any major fighting in the vicinity) the checkpoints disappeared. By August the road had six huge craters around one point and Serbian tanks could be seen under camouflage on the hills, but no Serbian soldiers circulated on the road, not even in armoured cars.

The military hardware which the UCK has at its disposal is limited more or less to what a mule can carry, since all its weaponry has entered the country illegally, most probably from Albania, sometimes via Montenegro or Macedonia. The Albanian government firmly denies the participation in or knowledge of this traffic. The former may be true, but the latter is difficult to believe given that every little incursion by the Serbian police or military into Albanian territory is meticulously measured and immediately reported and denounced.

The Yugoslav Army is able to draw on all the weaponry of a modern army including helicopters and tanks. At the end of July 1998 *Jane's Defence Weekly* estimated the number of Kalashnikovs in the hands of ethnic Albanians to have been about 25,000 before the spring upsurge in fighting,

13 Vienna weekly *Profil*, 24 August 1998.

and that it has probably doubled since then. According to the same source, the Kalashnikov tally for the Serbian side was as follows: between 25,000 and 40,000 in the hands of local Serbs, 12,000 with the Yugoslav Army, and 15,000 with the Serbian police (forces of the Interior Ministry or MUP), with the potential supply from Serbia proper being practically unlimited. That so many weapons should already be in the hands of civilians virtually guarantees that, irrespective of any cease-fire or peace talks, a low-intensity conflict will drag on.

During his 15 June 1998 visit to Moscow Yugoslav President Slobodan Milosevic agreed to the presence of an international "observation mission" in Kosovo. The mission, which was formally launched on 6 July 1998 in Pristina under the name Kosovo Diplomatic Observation Mission (KDOM), is composed of diplomats accredited in Belgrade to whom Milosevic promised unimpeded access to the zones of unrest.

To date, Pristina, the provincial capital, has been spared the fighting. An isolated bomb exploded on 3 July 1998 and a Molotov cocktail was thrown at the United States Information Centre on 26 August 1998. However, both incidents only resulted in material damage. In the beginning of the year, when the two ethnic groups were staging daily street protests, it often seemed that the antagonistic crowds might come to blows, but this too was avoided. Nevertheless, the danger of ethnic violence within the city of 300,000 remains real.

III. HUMANITARIAN CONCERNS

A. Refugee Flow

Refugees have from the very beginning of the fighting in Kosovo featured prominently in media reports. The February/March Drenica crack-down by Serbian security forces, which cost the life of some 80 people including 25 women and children, provoked the mass exodus of unarmed, ethnic Albanians from the affected areas. Images of their plight -- the most harrowing scenes have been of the large-scale exodus in July 1998 over the Prokletije (Damned) mountains into Albania and of homeless ethnic Albanians living in the open within Kosovo in August -- have to date generated the greatest international response, including discussion of various forms of military intervention, much posturing and a frenzy of robust warnings. That said, NATO officials privately admit that the current numbers of refugees are simply not sufficient to trigger any intervention.

After the Drenica crackdown some foreign leaders employed the term "ethnic cleansing". The term has, however, since been dropped, possibly because if it was deemed that ethnic cleansing was indeed taking place, then the international community would be obliged to react more forcefully. In any case, Serbian tactics did shift in early spring to those of a "scorched earth" policy. This sanitised version of ethnic cleansing has largely consisted of the destruction of real estate with relatively low collateral civilian deaths. The burning and looting of houses happens most often once the civilian population has left the region, often scared of the shelling from the distance. In addition, Serbian forces have started burning the bushes along the roads to prevent the UCK from ambushing them. Ironically, Serbian attempts to smoke out ethnic Albanians have been in part assisted by the UCK which has often encouraged the civilian population to flee in advance of an offensive so as to avoid reprisals.¹⁴

14 *Time*, 3 August 1998, Reuters, 6 August 1998.

B. Scale of the Crisis

As of 1 September 1998 the office of the United Nations High Commissioner for Refugees (UNHCR) was reporting a total of 241,700 displaced persons with the following breakdown:¹⁵

Displaced within Kosovo	170,000
Displaced into Montenegro	35,000
Displaced into other parts of Serbia	20,000
Refugees in Bosnia and Herzegovina	4,700
Refugees into Albania	14,000
Visitors into Macedonia	1,000

Total	241,700
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The number of displaced persons jumped as the Serbian security forces reversed the UCK's early gains in the course of July and August 1998. For instance, Malisevo, which had a population of 12,000 before the war, stretched to accommodate 40,000 when displaced ethnic Albanians from Orahovac sought refuge there after the UCK was chased out in a Serb counter-attack. And now, following further Serbian advances, it is a ghost town. This means that 40,000 ethnic Albanians, who had been in Malisevo, many already displaced two or three times over, are currently living in the open. Moreover, although it is difficult to imagine winter conditions in the heat of the summer, every torched house will require plastic sheeting at the very least.

In total, an estimated 15,000 houses have been destroyed¹⁶ and about 50,000 internally displaced persons are trying to survive in the open in Kosovo.¹⁷ Even if those people could return to their homes before the onset of winter, their fields have not been tended, their crops have not been harvested and their livestock is scattered or dead, so they will not be able to look after their own food needs until spring in the most optimistic scenario.

Humanitarian convoys which supposedly have unrestricted access find themselves in practice fighting their way through UCK checkpoints. On 22 August 1998 the head of the UNHCR in Pristina, Eduardo Arboleda told the BBC that hostile and nervous rebels fired shots in the air and harassed one of the UNHCR convoy drivers who was a Serb.¹⁸ Arboleda said that insurgents now posed a security risk to aid workers and were creating more problems than Serbian forces for those trying to deliver aid. A few days later, however, Serbian police in Slatina (20 km west of Pristina) turned back a UNHCR convoy of eight trucks carrying food and supplies for thousands of refugees near Lipijane,¹⁹ possibly to prevent international aid workers from seeing trucks carrying anti-aircraft missiles.²⁰

15 UN Inter-Agency Situation report 59, YUGBE/MSD/HCR/1341.

16 Reuters, 26 August 1998.

17 Associated Press, 25 August 1998.

18 BBC World Service, 22 August 1998.

19 VIP, 28 August 1998.

20 Associated Press, 28 August 1998.

Aid agencies also complain about blocked supplies, unreasonable delays in obtaining entry visas for additional staff members, and of violence against their staff and vehicles.²¹ Humanitarian workers of one agency which preferred to remain anonymous suggested that Serbian government troops have attacked the civilian beneficiaries of their aid. Three ethnic Albanian aid workers from the Mother Teresa Society (a local relief agency which distributes international humanitarian supplies) were killed on 24 August 1998 when gunfire hit their tractors. The Serbian government statement explained that the police in the armoured personnel carrier could not see what was on the wagons and became suspicious, although *The New York Times* reported that the wagons of the tractor were piled with food and white boxes clearly marked with the name of the donor "Doctors of the World".

The United Nations human rights observers who monitor the situation in Kosovo have expressed concern over human rights violations.²² That said, exaggerated stories of atrocities have also appeared which threaten to discredit genuine accounts. Reuters news agency reported in late July 1998 that many supposed witnesses recounting that Orahovac was "80 percent destroyed" have proved to be untrustworthy, and other "accounts of bodies hanging from electricity poles or tied to streetlamps, mutilated corpses, people being mowed down by machine-guns as they tried to surrender, and hand grenades thrown into a basement of cowering civilians" could not be independently confirmed.²³

Two weeks later German and Austrian media reported the existence of mass graves in Orahovac. Upon closer scrutiny, it turned out that the reports could all be traced to one witness whose story could not be corroborated.²⁴ A European Union delegation later went to Orahovac but failed to confirm the existence of mass graves. On 28 August 1998 the Yugoslav state news agency Tanjug reported that Serbian police discovered in the town of Klecka what Serbian police said was a furnace, part of a crematorium where bodies of 22 Serbs had allegedly been burnt. Foreign journalists were escorted to the site and shown charred bones and scattered clothes, and a captured photograph of a UCK soldier with a bloodstained knife between his teeth.²⁵ There has been no independent confirmation of the Tanjug story, it remains but the latest of a long list of mutual accusations of atrocities by Serbs and ethnic Albanians in Kosovo.

IV. POLITICS

A. New Political Activism

Paradoxically, the upsurge in violence in Kosovo since February 1998 has brought ethnic Albanian politics in the province to life. In the process, Rugova's once unchallenged position as leader of ethnic Albanian in Kosovo, which has enabled him to virtually monopolise visiting diplomats, foreign trips and the various perks of being a Kosovo Albanian dissident, has come under sustained pressure. Although Rugova's pacifist message is that which international mediators

21 *The New York Times*, 27 August 1998.

22 *The Financial Times*, 27 August 1998.

23 "Lurid atrocity tales fuel Albanian fears", Reuters, 24 July 1998.

24 VIP, 6 August 1998.

25 Reuters and Associated Press, 28 and 29 August 1998.

wish to hear, he has increasingly alienated himself from ordinary Kosovo Albanians. Moreover, as the UCK has gained ground, Rugova's influence has decreased proportionately.²⁶

Despite the outbreak of fighting, Rugova insisted on holding thrice-postponed parliamentary and twice-postponed presidential elections on 22 March 1998. The polls were not monitored by independent observers and are not recognised in Serbia. Moreover, the main opposition parties, including Demaci's Parliamentary Party of Kosovo boycotted the vote arguing that the elections should not be held because of the security situation. In the event, Rugova was the only presidential candidate and therefore also the winner. While the results of the vote are obviously beyond doubt, the scale of the turn-out is contested.

The first time anyone dared openly to defy Rugova's leadership was on 1 October 1997 when students decided to go ahead with planned demonstrations in spite of an LDK²⁷ statement advising them to postpone the protest, a statement issued after Rugova met with a 13-member delegation of ambassadors and high-ranking diplomats representing the United States, Russia, the European Union, the Organisation for Security and Co-operation in Europe and the Office of the High Representative.²⁸ Since then Rugova's credibility has been further compromised by his refusal to acknowledge properly the existence of the UCK. He came closest on 19 June 1998 when he said: "They are groups of ordinary citizens, who are trying to defend their homes. But we will see to it to ensure that those groups be under control and bear responsibility for the situation."²⁹ Clearly Rugova is conscious that the emergence of the UCK poses a serious challenge to his non-violent strategy. Moreover, if he were fully to acknowledge the existence of the UCK, he would have to take a position on it: either condemn it and thus effectively commit political suicide or support it and lose much of his supposed backing in the West. Rugova's ultra cautious approach contrasted with that of Demaci who publicly announced in June 1998 that he was ready to represent the UCK politically, a position which the UCK bestowed on him two months later.

B. Negotiating Teams

In response to the carnage in Drenica at the end of February 1998, the Contact Group met on 9 March 1998 in London and called on Belgrade to begin negotiations with Kosovo's ethnic Albanians. The Serbian government promptly issued an invitation for dialogue but rejected foreign mediation. On 24 March 1998, after prodding by US special envoy Robert Gelbard, Rugova formed a negotiating group (which to the disappointment of the members, who viewed themselves as negotiators, he called "an advisory group") later to be known as G-15. It included many prominent ethnic Albanian opinion-makers, including LDK politicians, former Communist leaders,

26 Here, on the subject of Rugova's lost credibility with the young people, is a fragment from *Bota i Re*, a Albanian paper for youth: "However painful this fact might be for Rugova, for the man who turned Kosova into his private estate, he must in the end realise that there is no escaping reality. He can hold on as president of the Republic of Kosova for a few more days, but not for long, because the flames of war have now drawn near to Pristina, and detonations are audible in the city itself... Rugova's statement that he represents all the citizens of Kosova shows nothing but his unwillingness to confront the reality that has arisen in Kosova with the UCK, because he is aware that in any such confrontation he will be the loser."

27 The LDK is an acronym for Lidhjes Demokratike te Kosoves or Democratic League of Kosovo, which is Rugova's political party.

28 Reuters, 29 September 1997.

29 Kosova Daily Report #1465, 19 June 1998.

journalists and heads of minor political parties. Despite the name, the G-15 was from the outset effectively a G-13, since Kosovo's Prime Minister-in-exile Bujar Bukoshi could not participate in the meetings and Demaci refused to have anything to do with any group or body headed by Rugova.

The G-15 group met on a few occasions in April 1998, but, according to many testimonies given to ICG by the participants of those meetings, Rugova never had the slightest intention to consult with or listen to anyone from that group. Indeed, members of the G-15 complain that meetings were often humiliating and, worse still, unproductive. Meanwhile, on 23 April 1998 Milosevic called a national referendum on foreign mediation in Kosovo -- the question posed "Do you accept foreign participation in finding a solution for the Kosovo problem?" -- which, predictably, 97 percent of voters rejected.

On 14 May 1998, following pressure from US envoy Richard Holbrooke, Rugova met with Milosevic. He took the crucial decision to do it alone without consulting or even informing the majority of the G-15 group, who learned about the trip to Belgrade from the newspapers. In protest, Hydajet Hyseni, Rugova's former deputy in the LDK and Bujar Dugolli, the students' representative walked out, effectively dealing the final blow to the G-15. In the rest of the group, nobody had contacts with the UCK so that talk of cease-fires or demobilisation could be academic at best.

While US diplomats attempted to present the Rugova-Milosevic meeting (in which four members of the G-15 also took part) as a concession from the Yugoslav President, it was actually Rugova who was obliged to give ground.³⁰ Having repeatedly refused to meet with Milosevic in the absence of an international mediator, Rugova did precisely this. He may have had little choice, but he made no effort to explain this decision to the G-15, let alone ordinary Kosovo Albanians whom he could have addressed in a TV or radio interview. Although uneventful politically, the meeting proved a public relations disaster.³¹

The one concrete outcome of the 14 May 1998 meeting was a decision to have further talks, at least every week. The first such meeting took place on 22 May 1998, the second was cancelled because Rugova and two other prominent G-15 members left on 26 May 1998 for Washington to meet with US President Bill Clinton. If the White House photo-op was designed to increase Rugova's credibility at home, it achieved the opposite, confirming to Rugova's critics that he is no more than a "puppet of America".

The timing of the Washington visit was especially damaging since on 19 May 1998 the Contact Group and on 26 May 1998 the European Union suspended an earlier investment ban on Yugoslavia, as a reward to Milosevic for entering into dialogue with Kosovo's ethnic Albanians. Moreover, as the Serbian security forces' offensive continued within Kosovo, Rugova extended his diplomatic tour to take in key European capitals, increasing further his alienation from ordinary

30 See ICG Report *Inventory of a Windfall: Milosevic's Gains from the Kosovo Dialogue*, 28 May 1998.

31 Rugova was shown by the Yugoslav state television laughing when seated with Milosevic, something that provoked outrage among ordinary ethnic Albanians, some of whom complained to ICG about the manner in which he managed to get on with the man who was simultaneously responsible for the carnage. He was also photographed in an unflattering position when putting down a cigarette by bending all the way to the ground. The picture was reproduced in the Belgrade daily *Nasa Borba* as well as in the Pristina daily *Koha Ditore*.

ethnic Albanians.³² Meanwhile, journalists and opinion-makers complain that Rugova has failed to visit Drenica.³³

C. UCK Enters the Political Scene

As the fighting has evolved, the political power of the UCK has been impossible to ignore. US mediators have met up with UCK representatives and attempted to bring the movement into some form of dialogue. The emergence of the UCK as a political player further undermines Rugova's position and has led to mutual recriminations and name-calling. It has thus far failed to contribute to the formation of a common ethnic Albanian front for negotiations with Belgrade.

The US administration made its first high-profile contacts with the UCK at the end of June 1998. Richard Holbrooke had what was presented as a "chance encounter" with the Kalashnikov-totting, bespectacled fighters in the "liberated" village of Junik on 24 June 1998, and special envoy Robert Gelbard talked with unidentified persons in an undisclosed place in western Europe trying to convince them to accept the leadership of Rugova in exchange for participation in negotiations.³⁴

At the same time, on 29 June 1998 a new party, *Levizja Demokratike Shqiptare*, the Albanian Democratic Movement or LDSH was created in Pristina. Its president is Rexhep Qosja, vice-president Hydajet Hyseni and Mehmet Hajrizi, secretary-general. Hyseni and Hajrizi are both former Rugova allies who served long prison sentences as political prisoners after leading ethnic Albanian demonstrations in Kosovo in 1981.

Against the above background, Rugova invited Demaci and Qosja to the LDK headquarters on 1 July 1998, having earlier expressed his agreement for some form of power-sharing. The subsequent talks focused on whether, as Rugova desired, to convene the parliament, (i.e. a body mostly made up of Rugova supporters, since the majority of opposition parties boycotted the 22 March 1998 elections), then create a government and other institutions of the self-proclaimed "Republic of Kosovo"; or whether, as Demaci and Qosja demanded, to form a National Salvation Council of all political forces, including the UCK which was to be under its control. Though Demaci and Qosja agreed that Rugova be the Council's president, Rugova rejected the offer.³⁵ In response to this meeting UCK spokesman Krasniqi said that the UCK would not be placed under Rugova's political control because his policy of non-violent resistance had failed to produce any results.

On 16 July 1998 Rugova forged ahead with his own plan: he convened the Kosovo parallel parliament in the LDK headquarters, which was later raided by the Serbian police. The parliament is not recognised either by the opposition parties (who argue that the elections were invalid), or by

32 For example, the LDK Information Centre at the time reported: "'Important moments in the modern history of Kosova,' the President of the Republic of Kosova Dr. Ibrahim Rugova called today (Friday) his recent visits to Washington, New York, London, and Paris and the reception he was accorded by President Clinton, Secretary-General Kofi Annan, Prime Minister Blair and President Chirac. (Kosova Daily Report #1465, 19 June 1998).

33 ICG interviews with editors of *Koha Ditore* and *Zeri*.

34 VIP, 2 July 1998.

35 VIP, 6 July 1998.

the UCK which said³⁶ that both the parliament and the National Council are forms of organisation of Kosovo Albanians that have been superseded.³⁷

As the tide of battle turned against the UCK, Rugova has been able to recover some standing with the result that, according to testimonies gathered by ICG from those whom he consulted, by the first week of August 1998, he had dropped the idea of forming a government. Moreover, on 13 August 1998 Rugova presented a new group of five negotiators (a team to talk with Milosevic) to which US mediator Chris Hill gave his "full support".

All members of this new negotiating team are staunch Rugova supporters, many were former communist *apparatchiks* and, with the exception of Fehmi Agani, political lightweights. Meanwhile, just hours after Rugova announced his G-5 group, a "Political Declaration No 7" signed by six UCK members was made public naming Demaci as their representative for the creation of institutions in Kosovo (see above II B).³⁸ It is difficult to find anyone more critical of Rugova's policy than Demaci who immediately launched a media offensive against Rugova.³⁹

Even though it is clear that as currently structured the Rugova-led negotiations will fail to lead to any breakthrough, Western capitals are placing an excessive degree of hope in the talks. For instance, French Foreign Minister Hubert Vedrine said on 27 August 1998 in an interview with *Le Figaro* that the United States, as well as some other powers, were ready for military intervention in Kosovo, but that at the moment they were waiting for the results of Chris Hill's on-the-ground mediation.⁴⁰ Given the multi-layered polarisation and divisions in ethnic Albanian politics in Kosovo (politicians are at loggerheads in Pristina, fighters dispersed and largely beyond political control in the field), the prospects of the formation of any united and representative negotiating front appear extremely remote.

V. CONCLUSION

The Kosovo powder keg, whose explosion had so often been predicted during the 1990s, is clearly now igniting with consequences which are already extending beyond the province's borders. Given the scale of the humanitarian catastrophe, it is inevitable that international efforts

36 Interview with Zeri #1670, 18 July 1998.

37 The reaction from LDSH was equally harsh. In a statement printed by the daily *Bujku* on 18 July 1998 it said: "The leadership of the Democratic League of Kosova took this damaging step in an attempt to recover the role it lost in the national movement after the appearance of the UCK, which does not recognise it, and to prevent the evaporation of the party... The LDSH expresses the conviction that the Albanian people will not accept the fraudulent policy of forming these so-called state institutions under the sway of Serbia, because the price they will be forced to pay for this policy will become increasingly steep!"

38 Kosova Daily Report #1520, 13 August 1998.

39 Demaci told the Belgrade daily *Blic* on 26 August 1998 that: "Rugova was created by God only to create rifts." Demaci told the Vienna weekly *Profil* on 24 August 1998 that: "He [Rugova] is president of a fiction. All he has is the support of the Americans. They like working with him because he is weak and obeys them." Demaci told the Munich daily *Suddeutsche Zeitung* that Rugova is "a soft man, lacking in courage, talent and knowledge"; And Demaci told the Zagreb daily *Jutarnji List* that: "Rugova claims that he is a president, but he cannot do the most minimal thing for Kosovo Albanians, he cannot defend them... Europe and the international community and of course the United States only heat up the Rugova fiction. But what kind of president is he without a state and what kind of state is it without the army and the police?"

40 "La Crise Financiere Court Comme un Fouret", *Le Figaro*, 27 August 1998.

will focus on this aspect of the conflict in order to keep people alive in the coming months and through winter. That said, there is no humanitarian solution in Kosovo. The only lasting solution is a political settlement reconciling legitimate Serb and ethnic Albanian interests in the province. But serious talks towards such an agreement have yet to begin. For a fruitful dialogue, it is critical to choose the right interlocutors. Whereas before the conflict had escalated into a war, most Kosovo Albanians were united behind Rugova's pacifism, the fighting is creating new political realities. Despite recent setbacks, the UCK is gaining credibility and that credibility is likely to grow the longer the fighting drags on. Meanwhile, Rugova's position is increasingly weak. The time when international mediators could have looked to Rugova alone to deliver a solution on behalf of Kosovo's Albanians has passed.

Pristina-Sarajevo
2 September 1998

Note: ICG is currently preparing a further report on Kosovo examining possible scenarios for the development of the crisis and assessing the advantages and disadvantages of key policy options facing western decision-takers.

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