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Making Peace in Bosnia Work

Elizabeth M. Cousens*

This symposium asks "what makes peace agreements work" and specifically directs us to explore the degree to which and how "quasi-sovereigns" determine the answer. At a minimum, a peace agreement could be said to "work" when formerly warring parties honor their commitments more than they renege, and when a broader constituency develops within post-war society to support that agreement's basic provisions. Along both dimensions, the peace agreement providing the framework for politics in Bosnia today works haltingly at best.1 The explanation for its inadequacies has very little to do with quasi-sovereignty, however. Rather, it has a great deal to do with the decisions and actions of the all-too-sovereign national governments and major international agencies that enjoy a disproportionate influence over the implementation of the peace agreement's key provisions.

My argument is straightforward. First, the Dayton Agreement that ended Bosnia's war is no more and no less than its formal title suggests, a General Framework Agreement for Peace, with the emphasis on "general" rather than "framework." As soon as the parties and major implementing agencies set up shop on the ground to begin turning the Agreement into reality, they faced an immediate and constant need to make sensitive judgments about events, set priorities among the Agreement's provisions, and develop strategies to make their own work maximally effective. On none of these judgments does the Agreement itself provide any guidance. Second, and by implication, whether the Dayton accord "worked" would be determined by judgments and decisions made during its implementation, with international third parties playing a disproportionate role. Third, the confluence of factors that brought the Bosnian parties to Dayton and enabled them to emerge with a comprehensive peace agreement—even if one laced with unwieldy compromises—desperately needed to be sustained during implementation, both to ensure that agreed-upon provisions were fully implemented and to move toward the final settlement of those issues left unresolved. Instead, the diplomatic and military

* Elizabeth Cousens is an Associate at the International Peace Academy (IPA), where she conducts primary research on Bosnia and Herzegovina and manages the project Peacebuilding: Legacies and Strategies, an ongoing study of international efforts to build long-term peace after internal conflicts in Bosnia, Cambodia, El Salvador, Haiti and Somalia. Before coming to IPA, she spent several years as a Fellow at the Center for International Security and Arms Control at Stanford University and received her D.Phil. in International Relations from the University of Oxford.

1. Although other agreements and texts bear on the peace process in Bosnia, this Article focuses on the Dayton Agreement, the General Framework Agreement for Peace in Bosnia and Herzegovina, Dec. 14, 1995, Bosn.-Herz., 35 I.L.M. 75 [hereinafter Dayton Agreement].

30 CORNELL INT'L L.J. 789 (1997)
formula that produced the Dayton Agreement was abandoned during the first eighteen months of implementation. Now at the end of 1997, Bosnia faces continuing obstacles to peace that arguably derive from mistakes made and opportunities missed which international implementers could have both predicted and avoided. Finally, however, the current task for the international community is not to pull out with minimal gracelessness, as several prominent American observers have recently suggested, but to learn from the record of the past two years and apply international resources more effectively to the consolidation of peace in Bosnia.²

I. Background

Bosnia's war was the third and most destructive stage of the dissolution of Yugoslavia.³ It followed an extremely short “war” over Slovenia, which declared independence from the Yugoslav federal state in June of 1991 but met only half-hearted opposition from the Yugoslav National Army (JNA). It also followed war in Croatia, whose simultaneous declaration of independence met far more serious resistance from the JNA, Serb paramilitary units, and its own autonomy-seeking Serb population.⁴ As the war in Croatia continued through late 1991, mobilization for conflict in Bosnia had already begun. Serb leaders had very vocally declared their intention to remain within the Yugoslav Federation or seek separation from Bosnia. Serb “autonomous areas” were established in the fall, and a plebiscite was held in Serb areas to demonstrate Serbian opposition to Bosnia’s secession.


³. The Yugoslav state comprised six republics (Croatia, Serbia, Bosnia-Herzegovina, Slovenia, Montenegro and Macedonia); two semi-autonomous provinces linked to Serbia (Kosovo and Vojvodina); and six constituent nationalities (Croatian, Serbian, Slovenian, Montenegrin, Macedonian and Muslim, the last having become an official Yugoslav nationality by constitutional amendments in 1974).

Long before it would have seemed plausible that Yugoslavia would literally dissolve, the political center of gravity had shifted significantly from the country’s federation institution to its republics and provinces. Yugoslavia’s third constitution, adopted in 1974, devolved authority along virtually every axis of institutional power: each republic acquired its own central bank, its own communist party, its own educational system, its own judiciary, and, very importantly, its own police. The only institution which still operated exclusively at the federal level was Yugoslavia’s national army, though it now acquired as Commander-in-Chief, an eight-member, rotating federal Presidency. By the late 1980s, the complex balance of powers between Yugoslavia’s federal institutions and its republics and provinces had become unstable and increasingly unsuited to containing the rival agendas of political leaders emerging at the republican level.

⁴. Serb radicals in the Krajina region of Croatia declared their own “independence” as early as August 1990, which they effectively retained until mid-1995 when the Croatian Army, then better armed and trained, retook the region, expelling virtually all of its Serb population.
from Yugoslavia. By early January 1992, Serbian president Slobodan Milosevic had also begun transferring Bosnian Serbs in the JNA back to Bosnia in anticipation of hostilities. Meanwhile, Bosnia's president, Alija Izetbegovic, and the Muslim-led Party of Democratic Action (SDA), grew increasingly committed to Bosnian independence. The successful secession of Slovenia and Croatia, recognized by the international community in January 1992, left Bosnia with a Hobson's choice: remain in a much smaller Yugoslavia which would be overwhelmingly dominated by Serbia and, by implication, by its own large Serb minority; or leave the Yugoslav federation, a prospect that Bosnian Serbs worried would leave them analogously dominated by Bosnia's Muslim plurality. In the event, Bosnia was recognized as an independent state by the European Community on April 6, 1992, one month after barricades were first raised in Sarajevo city streets, two days after President Izetbegovic ordered a general mobilization of Bosnia's territorial defense forces, and one day after Serb paramilitary forces besieged Sarajevo's police academy and the JNA seized its airport. In short, recognition occurred just as the country was being plunged into war.

During the next three and a half years, Bosnian government forces fought to preserve an independent, unitary state that would enjoy the same borders as the former Bosnian republic and, ostensibly, offer the same rights to its Serb and Croat citizens that they had enjoyed when Bosnia was a constituent republic of Yugoslavia. The government found itself at war on at least two fronts. From the beginning, and principally, it battled radical Bosnian Serbs, closely tied to and actively supplied by Serbia, who fought to "cleanse" large portions of Bosnian territory of non-Serbs and declare an independent Serbian Republic (Republika Srpska) which might eventually join Serbia proper. Secondly, it faced Bosnian Croats, closely tied to and actively supplied by their own patron Croatia, who launched their own ethnically driven land grab in central and southern Bosnia in April 1993. The conflict between the Bosnian government and Bosnian...
Croats was resolved, at least tactically, in 1994 after intensive diplomatic efforts by the United States. Finally, on November 20, 1995, a comprehensive settlement was reached among all three warring parties after twenty-one days of proximity talks in Dayton, Ohio. By the time the Dayton Agreement was initialed, over half of Bosnia's pre-war population of 4.4 million had fled their original homes, either to live as refugees outside the country or as internally displaced persons elsewhere in Bosnia; the dead or missing were estimated at 279,000, or close to 7% of the pre-war population; nearly half of the country's housing stock was damaged or destroyed; and most of its economic infrastructure was devastated.

II. Settlement at Dayton

Prior to the Dayton Agreement, different international mediating bodies had developed a series of peace plans, none of which had been sufficiently acceptable to the parties, nor sufficiently backed by major international actors, to become the basis for a comprehensive settlement. Several factors are widely acknowledged to have made the Dayton Agreement possible, where settlement had earlier been elusive.

First, the international community discovered operational coherence sometime in 1995. Since the war began, international mediation, military and humanitarian efforts had worked at cross-purposes; that year, however, they began to function more productively to support a common strategy to end the war. In large part, this coherence was forced upon the international community by the Bosnian Serb Army. Previous calls for more muscular diplomacy in the Balkans had been persistently undermined by the vulnerability of U.N. peacekeepers and other international personnel on the ground—primarily those deployed in six U.N.-designated Safe Areas—should the use of force by NATO invite reprisals. The necessity of resolving this dilemma became shamefully evident when Serb forces took hundreds of U.N. peacekeepers hostage following NATO air strikes in May


1995. It began to look increasingly likely that U.S. troops would have to intervene in Bosnia simply for the unexalted task of safely withdrawing the troops of its allies. In the brutal event, this tension between the vulnerability of U.N. peacekeepers and the need for forceful diplomacy was eased when the enclaves of Srebrenica and Zepa fell to the Bosnian Serbs in July, removing along with the thousands of civilians expelled or killed two of the least tenable deployments of U.N. peacekeepers in the country.

Involved governments now were ready to align their respective military, humanitarian and political efforts behind a common objective. In partial preparation for the possibility that the remaining U.N. peacekeepers would have to be withdrawn, the U.N. Security Council authorized a military Rapid Reaction Force in mid-June, which deployed around Sarajevo by the end of July (and which would become instrumental in NATO's subsequent air campaign). Meeting in London in July, foreign ministers of the U.N.'s troop-contributing countries ended the onerous "dual key" arrangement that required civilian U.N. approval of NATO action and agreed to use air power to deter an assault on Gorazde, the next safe area likely to be attacked (at the same time, discreetly pulling U.N. peacekeepers out of the enclave). The Clinton Administration also indicated that American troops might now be involved in enforcing whatever peace settlement was reached. Taken together, these decisions signaled a new unity in international diplomacy and a willingness to back it by force to an unprecedented degree.

Second, the United States began to recognize that it actually did "have a dog in this fight," and developed, under the leadership of National Security Adviser Anthony Lake, a serious strategy to bring about an end to the


13. Srebrenica fell on July 12, six days after the Serb assault began. Zepa fell on July 25. The assault on Srebrenica stands as one of the most atrocious events of the war. Between 5,000 and 7,000 Muslim men are estimated to have been slaughtered during the week in July in which the town was taken by Serb forces. Beyond the obvious responsibility borne by Serb authorities for this blood-letting, many others have been accused of contributory culpability: the commander of local Bosnian forces who never arrived to help defend the town, the U.N. authorities who never managed to order the close air support when it was desperately needed, and the U.S. authorities who are alleged to have known in advance but to have done nothing to prevent the assault on the town. On the U.N. role, see generally David Rohde, Endgame: The Betrayal and Fall of Srebrenica, Europe’s Worst Massacre since World War II (1997). On what U.S. authorities may have known, see Charles Lane & Thom Shanker, Bosnia: What the CIA Didn’t Tell Us, N.Y. REV. BOOKS 8, 14 (1996).

14. See Silber & Little, supra note 7, at 360. When defense of Gorazde was discussed in London, there was no mention of Zepa, which was under attack at the time.
war. Until this point, the American response had been weak and vacillating at best. Under President Bush, the United States had been all too willing to allow Europeans to take the lead in a crisis that they claimed as their own but were demonstrably incapable of handling. Under President Clinton, the United States was far too inclined to issue outraged statements that something be done and to blame its European allies for tying American hands when his Administration was unwilling to take any real risks on Bosnia's behalf—indeed, far fewer than those same European allies, who maintained thousands of their own troops on Balkan ground.

The seeds of an American strategy to bring cease-fire to Bosnia began when the United States brokered the tactical re-alliance between Bosniacs and Bosnian Croats. Initially both at the receiving end of the Bosnian Serb campaign, Bosniacs and Bosnian Croats became open adversaries by the spring of 1993, their antagonism heavily shadowed by allegations that Croatian President Franjo Tudjman and Serbian President Milosevic were playing an end-game to divide Bosnia between themselves. When this second front emerged between the government and Bosnian Croats, actively backed by Croatia, it became even more remote that a territorial formula could be found which would simultaneously provide the basis for a viable, unitary Bosnian state and satisfy the separatist objectives of Serbs and Croats both. In March 1994, this Bosniac-Croat split was provisionally resolved with heavy American backing through the "Washington Agreement," which committed Bosnian Croats and Muslims to unite in a post-war "Federation." More critical at the time, it bound the two in a de facto military alliance to roll back Serb territorial gains. While the United States discreetly worked with the Croatian army, Croatia allowed arms and equipment to slip via Croatia to Bosnian forces.

To the Croatian card, Washington added the Serbian, recognizing President Milosevic as the key broker on the Serbian side of the equation. The Americans now worked from the assumption that Bosnia would contain both the Bosniac-Croat Federation and a quasi-independent Republika Srpska, and that both entities would be allowed to establish "special" relationships with neighboring Croatia and Serbia, respectively.

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15. After U.S. Secretary of State James Baker traveled to Belgrade and Zagreb on June 21, 1991 in an eleventh-hour effort to defuse the crisis over Croatia and Slovenia, he explained the absence of U.S. interests in Yugoslavia with the phrase: "We don't have a dog in this fight." See Silber & Little, supra note 7, at 201.

16. The full throttle confrontation that began in April 1993 has been partially attributed to the Bosnian government's rejection of the Vance-Owen Peace Plan, the terms of which were particularly favorable to Bosnian Croats. See, e.g., Misha Glenny, Yugoslavia: The Great Fall, N.Y. Rev. Books 56, 63 (1995). Though a contributing cause, active Bosniac-Croat conflict began months before Vance-Owen was revealed and had in fact been presaged by mutual hostilities from the time Yugoslavia began to disintegrate. Particularly informative on this subject is Chapter 22 in Silber & Little, supra note 7, at 291-302.

17. This was not just about Bosnia, since Serbs in Croatia still held the territory that they had gained in 1991-92 in Krajina and Western Slavonia, where the autonomist Serb rebellion began in 1990, and in Eastern Slavonia.
Third, and largely as a result of U.S. efforts, the military balance on the ground changed dramatically between the spring and fall of 1995, bringing the territorial holdings of the warring parties into remarkably close alignment with the proposed basis for negotiation.\(^{18}\) Starting in May, Serb forces suffered a series of defeats at the hands of the Croatian and Bosnian armies that significantly changed their calculus at the bargaining table and that also represented a new level of U.S. commitment to the Croatian military, which at this stage was being openly trained by un-official American advisers. On May 1, the Croatian Army retook Serb-occupied territory in Western Slavonia, defying resident U.N. forces in this "U.N. Protected Area."\(^{19}\) On August 4, it launched Operation Storm, an offensive that toppled the self-proclaimed "Krajina Serb Republic" in just two days, sending close to 150,000 Serb civilians fleeing into Serb-held Bosnia and Serbia.\(^{20}\) Through the early fall, the Bosnian Army advanced dramatically on Serb positions. As EU negotiator David Owen described the changing situation which began in September: "Thereafter, day by day, the map altered."\(^{21}\) Up until this point, Serb forces had held a commanding position territorially, having seized nearly two-thirds of Bosnian territory within the first month of the Bosnian war—which made it exceedingly difficult to extract concessions on the basis of anything less—and controlling almost one-third of Croatia, in Western Slavonia, Krajina and Eastern Slavonia.

The final factor smoothing the path to Dayton was the international community's new willingness to use force, especially air power, as a partner to diplomacy. Various explanations account for the under-use of armed force to respond to the Yugoslav wars, from the nationally parochial through the bureaucratically predisposed and militarily arcane, to the ontologically confused. Legal authorizations to use force certainly existed, not least the provision for individual and collective self-defense in the U.N. Charter, though this was arguably contravened by the existence of a U.N. arms embargo on the region beginning in September of 1991.\(^{22}\) The U.N. Security Council Resolutions establishing the six Safe Areas in Bosnia had

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\(^{18}\) U.S. and European mediators were advocating as a basis for settlement that Bosniac and Croat forces would hold 51% of Bosnia's territory, and Serb forces the remaining 49%. The 51:49 formula had been floated by Contact Group negotiators in July 1994 but was rejected at the time. See David Owen, Balkan Odyssey 279-86 (1995).

\(^{19}\) The U.N. Protected Areas (UNPAs), all in Croatia, were part of UNPROFOR's original mandate and distinct from the Safe Areas later established in Bosnia.

\(^{20}\) Another 50,000 soldiers fled as well. UNHCR Special Envoy Soren Jessen-Petersen, Remarks at a Joint UNHCR-IPA Conference entitled Healing the Wounds: Refugees, Reconstruction and Reconciliation (June 30-July 1, 1996).

\(^{21}\) Owen, supra note 18, at 335.

authorized the use of all necessary measures to protect them, and NATO had declared that violators of the military exclusion zone surrounding each Safe Area would be subject to air attack. Later authorization for close air support of U.N. peacekeepers also enabled the robust use of force. Finally, even baseline rules of engagement permitted U.N. peacekeepers to resort to force in self-defense, though this has rarely been interpreted to go beyond physical defense of the peacekeeper to protection of the peacekeeper’s mandate.

Not until the end of the summer of 1995, however, did the international community turn seriously to the use of military force to end the Bosnian war. Obstacles to the use of NATO air power had been removed with the repositioning of UNPROFOR troops, both forcibly in the case of Srebrenica and Zepa, and voluntarily in the case of Gorazde. Bosnian Serb forces also provided NATO with a justification for the air strikes, with a mortar attack on August 28 that killed thirty-seven in Sarajevo’s marketplace.

The narrative of the last days of war indicate the effectiveness of the subsequent air campaign, in tandem with Bosniac and Croat military gains: NATO and the recently deployed Rapid Reaction Force began heavy air bombardment of Serb positions around Sarajevo on August 29 and 30, which resumed between September 5 to 12. On September 8, talks in Geneva produced a Statement of Agreed Basic Principles which accepted as a basis for settlement a territorial division of 51% under Bosniac-Croat control and 49% under Bosnian Serb control and a political subdivision of Bosnia into two co-equal “Entities.” As the Bosnian Army and Croat forces advanced on Serb positions in western Bosnia, a cease-fire agreement for Sarajevo was reached on September 14, and Further Agreed Basic Principles established on September 26. Renewed Serb offensives in October were met by a resumption of NATO air strikes between October 4 and 10, until a cease-fire came into effect mid-month. On November 1, proximity talks began at Wright-Patterson Air Force Base in Dayton, Ohio; and on November 20, Croatian President Tudjman, Serbian President Milosevic, Bosnian President Izetbegovic, and President Kresimir Zubak for the Bos-

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24. See, for example, Owen, supra note 18, at 331, describing the situation at the end of August 1995:

For the first time since the autumn of 1992 UNPROFOR was no longer spread out across the whole of Bosnia-Herzegovina and vulnerable to Bosnian Serb retaliation and hostage-taking. UNPROFOR was out of Zepa, Srebrenica and Gorazde. Bihac was now safe. There were no significant U.N. forces in Serb controlled areas anywhere in Bosnia-Herzegovina. . . . It was inevitable, therefore, that the U.N. and NATO would take action against the Bosnian Serbs for the mortar bomb attack, which was a flagrant breach of the heavy weapons exclusion zone in Sarajevo.

Id.
niac-Croat Federation initialed the Dayton Agreement. On December 14, the General Framework Agreement for Peace was formally signed in Paris.

III. Dayton’s Essential Elements

The Dayton Agreement effected a compromise between two contending visions of Bosnia: the first, a single state with room and rights for a mix of nationalities; the second, an effective division into three nationally homogenous mini-states. Dayton’s mediators sought to have the first vision trump the second; however, the choices made by its implementers have helped tip the balance the other way. It is worthwhile to review several key provisions of the settlement before moving on to what implementation has and has not accomplished and the reasons why. Virtually every one of these provisions, as might be expected, left significant room for interpretation in implementation, and nowhere in the Agreement proper exists a strategic conception of which provision should take priority over any other.

A. Political Provisions

The political resolution to Bosnia’s conflict was two-fold: first, to establish an institutional balance between those who favored an independent unitary state and those who sought significant degrees of autonomy from it; and second, to begin a process of democratization which had been sidelined when Yugoslavia dissolved in a series of wars.

The institutional formula creates a single Bosnian state that is divided between two “Entities,” the Republika Srpska and the Federation of Bosnia and Herzegovina, the latter being an uneasy truce between Bosniacs and Croats since its formation in 1994. Bosnia’s new constitution is inscribed in the Agreement and establishes an intricate set of power-sharing institutions at the national and entity levels, ironically very similar to those that failed to manage the rivalries which tore apart both Bosnia and Yugoslavia. Under the peace agreement, these joint institutions are the primary mechanisms to manage tension between the pull toward unity and the push toward partition. These were to begin functioning with the first post-war national elections.

National elections, themselves, play a pivotal role in Dayton’s inventory of provisions, with other components of democratization—such as

25. The tension underlying this compromise meant that the final political outcome for Bosnia remained fundamentally uncertain, as it still does. Susan L. Woodward was an early and outspoken commentator on this issue of Dayton’s open-endedness. See Susan L. Woodward, Implementing Peace in Bosnia and Herzegovina: A Post-Dayton Primer and Memorandum of Warning 10-13 (Brookings Discussion Papers, 1996); Susan L. Woodward, America’s Bosnia Policy: The Work Ahead, Policy Brief (Brookings Institution Policy Brief No. 2, 1996).


strengthening the rule of law, protecting basic rights and liberties, and encouraging independent media—scattered through less enforceable parts of the Agreement. Annex 3 commits the Parties to provide basic conditions for free, fair and democratic elections, and further authorizes the Organization for Security and Cooperation in Europe (OSCE) to certify whether these conditions exist and to supervise the preparation and execution of elections themselves.27 A Provisional Electoral Commission comprised of both Bosnian and international representatives was also established, and was given, among its assignments, the critical responsibility of determining rules for voter registration.28 Although conditions for free, fair and democratic elections are itemized in Article 1 and in an attached OSCE document, greater emphasis is placed on the timing of elections than on establishing their necessary conditions.29 Moreover, no specific mechanisms are provided to ensure that the results of elections will be implemented. The holding of national elections, significantly, was the only strictly civilian provision of the Dayton Agreement that had an explicit deadline—in this case, no later than nine months after the Agreement's entry into force.30

B. Military Provisions

The military planks of the Agreement primarily secure the cease-fire line and provide for regional stabilization and confidence-building measures.31 They call for separation of armed forces along either side of an Inter-Entity Boundary Line (IEBL) that divides Serb areas from the Bosniac-Croat Federation. The provisions further lay out a detailed calendar of obligations governing when the parties must cease hostilities, withdraw foreign forces, re-deploy both forces and heavy weapons, exchange prisoners, and establish mechanisms for cooperation.32 They also authorize deployment of a multinational "Implementation Force" (IFOR) under Chapter VII of the U.N. Charter to implement the territorial and military provisions, most of which were scheduled to be in place within six months.33

In general, the military annexes focus on inter-Entity security, leaving un-addressed those frontlines that still existed within the Federation between Bosniac and Croat forces or within Republika Srpska between Serb authorities and any still-resident non-Serb population.34 However, in

28. Id. art. III, ¶ 2(b), 35 I.L.M. at 115.
29. Id. art. I, 35 I.L.M. at 115; Id. Attachment to Annex 3 on Elections, 35 I.L.M. at 117.
33. IFOR was a NATO-led force, under the authority and command of the North Atlantic Council, though it included troops from non-NATO members.
34. Parties are obliged not to "threaten or use force against the other Entity," or engage in "offensive operations," which is defined as "projecting forces or fire forward of a Party's own lines." Dayton Agreement, supra note 1, Annex 1-A, art. I, ¶ 2(a), art. II, ¶ 1, 35 I.L.M. at 92-93.
a section elaborating the *Cessation of Hostilities* to which the Parties must comply, the Agreement includes with its military provisions a broad array of security concerns that go beyond the strictly inter-entity or narrowly military. Here, the text recognizes that non-military actors can have military capability and should therefore be subject to the same obligations: "Each Party shall ensure that all personnel and organizations with military capability under its control or within territory under its control, including armed civilian groups, national guards, army reserves, military police, and the Ministry of Internal Affairs Special Police (MUP) comply with this Annex." It also recognizes that even those without military capability can pose a security problem, thus: "The Parties also commit themselves to disarm and disband all armed civilian groups, except for authorized police forces." Most significantly, it requires that: "The Parties shall provide a safe and secure environment for all persons in their respective jurisdictions, by maintaining civilian law enforcement agencies operating in accordance with internationally recognized standards and with respect for internationally recognized human rights and fundamental freedoms, and by taking such other measures as appropriate." Additionally, the Parties are required to cooperate completely with all international personnel, "including investigators, advisors, monitors, observers, or other personnel in Bosnia pursuant to the General Framework Agreement." Parallel to these obligations placed upon the Parties, are responsibilities assigned to IFOR. Military Annex 1-A enumerates several supporting tasks for the IFOR, which include assistance to other international personnel, specifically naming the United Nations High Commissioner for Refugees (UNHCR). More important, these additional tasks call for IFOR "to observe and prevent interference with the movement of civilian populations, refugees, and displaced persons, and to respond appropriately to deliberate violence to life and person." This item carries enormous significance if realized in practice, particularly if read in conjunction with paragraphs four and five of the same article which respectively allow NATO to use its own judgment to establish any "additional duties and responsibilities for the IFOR in implementing this Annex," and which grant IFOR's Commander, "without interference or permission of any Party, [the authority] to do all that the Commander judges necessary and proper, including the use of military force to protect the IFOR and to carry out the responsibilities listed

35. See id. art. II, 35 I.L.M. at 92-93.
36. Id. ¶ 1, 35 I.L.M. at 93.
37. Id. ¶ 3, 35 I.L.M. at 93.
38. Id. (emphasis added). This phrase repeats identically the language in Bosnia's new Constitution. Id. Annex 4, art. III, ¶ 2(c), 35 I.L.M. at 120.
40. Id. art. VI, ¶ 3(c), 35 I.L.M. at 97.
41. Id. art. VI, ¶ 3(d), 35 I.L.M. at 97 (emphasis added).
42. Id. ¶ 4, 35 I.L.M. at 97.
above in paragraphs 2, 3 and 4."43

Left for future resolution among the territorial provisions was author-
ity over Brcko, the town that sits astride the narrow Posavina corridor con-
necting northern and eastern Republika Srpska, and to which both Serbs
and Bosniacs lay primary claim. The Parties are required to settle its fate
by "final and binding" arbitration within one year of the Dayton Agree-
ment's signing.44

Standing in ambiguous relationship to the military provisions are
those relating to Bosnia's police. On the one hand, the military Annexes
oblige the Parties to ensure civilian security and maintain professional
standards of civilian law enforcement, and ask IFOR to respond to deliber-
ate violence and prevent interference with civilian movement. On the other
hand, the only explicit mechanism to ensure that police respect basic
human rights and professional standards is the presence of a U.N. Interna-
tional Police Task Force, authorized under Annex 11.45

C. Human Rights, Refugees and Displaced Persons

Since the war began, and since its end, a pitched debate has taken place
among international observers as to whether stability in Bosnia rests on a
partitioned country or a united one. Frequently, this debate revolves
around speculation about what the popular traffic will bear: in its most
simplistic form, one side argues that Bosnians have been implacable ene-
mies for centuries and prefer ethnic separation, while the other argues that
Bosnians have lived in a multinational idyll for centuries and want now to
recreate it. Yet, the only way to gain purchase on what people genuinely
want—and are therefore likely to sustain—is to enable them to choose
under conditions of genuine openness and security, which Dayton prin-
cipally addresses in its provisions on human rights and voluntary return.

Human rights and fundamental freedoms are addressed in Annex 4,
Bosnia's new constitution, and Annex 6.46 Although more ink is expended
on the institutional balance of power among Bosniacs, Croats, and Serbs,
the post-war constitution outlines a full array of rights and freedoms.47 An
annex to the constitution also lists fifteen international human rights
agreements to which Bosnia's government must conform.48 The constitu-
tion itself says little about implementation, though there are provisions for
international monitoring and, in the context of the Agreement as a whole,
there is ample room for external efforts to strenuously encourage
compliance.

Annex 6 expands on the constitutional guarantees, pledging the Par-
ties to abide by international standards of human rights, to respect the

43. Id. ¶ 5, 35 I.L.M. at 97 (emphasis added).
45. Id. Annex 11, 35 I.L.M. at 149-52.
47. See generally id. Annex 4, art. II, 35 I.L.M. at 119-20 (covering "Human Rights
   and Fundamental Freedoms").
series of conventions designed to protect these rights, and to fully cooperate with international human rights efforts, including the work of the International Criminal Tribunal for the Former Yugoslavia. The Parties also commit themselves to establishing a joint Commission on Human Rights, comprised of an Ombudsman and a Human Rights Chamber, designed to evolve over the course of five years from an office supported by significant international involvement to a regular, functioning and fully Bosnian institution.

The Agreement on Refugees and Displaced Persons is possibly the most radical provision in the entire accord, since full implementation could amount to a flat-out reversal of the course of the war.

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

Fulfilling these two sentences alone would dramatically affect all other elements of the Dayton package, especially those related to power-sharing and elections. In order to realize this right of voluntary return for Bosnia's 2.5 million refugees and displaced persons, the Parties commit to an extraordinarily progressive course of action. They promise to refrain from harassment, intimidation, persecution, and discrimination; prevent others from engaging in such acts; repeal legislation and end administrative practices that discriminate against minorities either in intent or effect; prevent or suppress hate speech whether committed by public officials of private citizens; protect minority populations; and prosecute and punish anyone with public responsibilities (specifically listing all security institutions) who violates the rights of minorities. Annex 7 also establishes a commission comprised of Bosnian and international members to deal with property claims and their just compensation.

D. The Role of the International Community

The Dayton Accord not only pledges Bosnia's warring parties and their most influential neighbors to a settlement, it also commits various members of the international community to an unprecedented level of involvement in helping those parties implement its military and civilian provisions. Dayton offers a model of third-party implementation in which international military and civilian efforts are assigned to "lead agencies" by sector. Military provisions, as described, would be supervised by the 60,000-strong IFOR, which was followed in December of 1996 by a 31,000-troop NATO Stabilization Force (SFOR) whose mandate is set to expire on

49. Id. Annex 6, 35 I.L.M. at 130-36.
50. Id. arts. II-XIV, 35 I.L.M. at 131-35.
52. Id. art. 1, ¶ 1, 35 I.L.M. at 137.
53. See id. ¶ 1-3, 35 I.L.M. at 137 (covering the basic obligations described).
54. See also id. art. VII, 35 I.L.M. at 138 (establishing the Commission for Displaced Persons and Refugees).
Among the wide range of civilian activities, police monitoring and training would be handled by the U.N. Mission in Bosnia and Herzegovina (UNMIBH) and an International Police Task Force (IPTF), whose peak strength reached 2,027 unarmed personnel by the summer of 1997. Elections were to be managed by the OSCE, which also oversees regional stabilization and confidence-building measures. Dayton assigned the return of refugees and displaced persons to the UNHCR, with invited assistance from the International Committee of the Red Cross (ICRC), the U.N. Development Programme (UNDP), and other humanitarian organizations. An independent international arbitrator would preside over the Brcko process. Finally, human rights issues involved several implementing organizations, including the OSCE, the Council of Europe, the U.N. Commission on Human Rights, and the European Court of Human Rights.

Additional major responsibilities, not detailed in the Dayton Agreement proper, included: EU administration of the city of Mostar, which was heavily damaged by Croat-Bosniac fighting in 1993 and which remains divided between its Croat west and its Bosniac east; and the management of reconstruction by a combination of multilateral and bilateral financial institutions, prominently led by the World Bank.

The panoply of civilian efforts are to be monitored and coordinated by an international High Representative—a position filled from January 1996 to April 1997 by former Swedish prime minister Carl Bildt, and since April 1997, by the Spanish diplomat Carlos Westendorp. The High Representative is given minimal operational authority with which to exercise his responsibility for coordinating international activities, particularly if coordination is viewed as extending beyond information-sharing to developing common strategies and implementing common plans. However, the High Representative has authority as the interpreter of last resort of the Dayton Agreement’s civilian provisions and a capacity to establish new mechanisms (such as commissions or task forces) to help him execute his mandate. In addition, an inter-governmental Peace Implementation Council


58. “The High Representative is the final authority in theater regarding interpretation of this Agreement on the civilian implementation of the peace settlement.” Dayton Agreement, supra note 1, Annex 10, art. V, 35 I.L.M. at 148, which is analogous to the IFOR Commander’s being named the “final authority in theatre regarding interpretation of this agreement on the military aspects of the peace settlement.” Id. Annex 1-A, art. XII, 35 I.L.M. at 100.
(PIC) was created to oversee the whole process and "to mobilize international support behind Dayton implementation." The five-nation Contact Group also provides an ongoing opportunity to harmonize the diplomatic efforts of its members and exert appropriate leverage on the Parties.

All told, at least seven major international organizations—NATO, U.N., OSCE, EU, UNHCR, ICRC and the World Bank—possess principal responsibilities for peace implementation in Bosnia, not counting the active involvement of interested national governments, various special envoys, bilateral initiatives and hundreds of nongovernmental organizations (NGO's) operating on the scene.

E. What Has Been Missing
Notwithstanding the Dayton Agreement's comprehensiveness, several critical elements are missing from its 130 pages of detailed text. In their collective absence, Dayton has no strategy for implementing its own numerous provisions, let alone for moving beyond them to address issues that its text leaves unresolved. First, it provides no effective mechanism for dealing with continued conflict between the Bosniac and Croat communities that make up the Federation. Should joint institutions be less than fully functioning, and complete cooperation from these parties less than forthcoming, it is left to international implementers to develop strategies and instruments for dealing with any obstruction. The beleaguered experience of the European Union (EU) in Mostar, and of the U.N. and Office of the High Representative since they took over from the EU late in 1996, reveals the weight of this burden. The lack of attention to intra-Federation conflict is also symbolically problematic: when the ostensible goal is to strengthen a unitary state and to work to diminish mutual distrust among its three communities, it does not send a helpful message to devote most international attention to only one of Bosnia's dividing lines.

Second, the Agreement provides no direction to the Parties or to the implementers on the relative importance of its various provisions or the need to prioritize them, and no hint of the consequences should those priorities remain unestablished or unwisely set. On the strictly military side, the Agreement contains implicit priorities with its highly detailed calendar to which the Parties must adhere. On the political and civilian side, however, the Agreement seriously imposes an explicit timetable on only two obligations: reaching an arbitration decision on the status of Brcko, and holding national elections. Aside from these provisions, the peace agreement amounts to a laundry list of critical issues—demobilization and


60. Other civilian provisions have deadlines but, in practice, have been much less consequential, largely because they are more technical or more easily obstructed. One example is the obligation to bring existing constitutions into conformity with the Dayton Constitution. See Dayton Agreement, *supra* note 1, Annex 4, art. XII, ¶ 2, 35 I.L.M. at 125.
police reform, elections, constitutional reform, human rights guarantees, refugee return, and so on—without any light shed on the relationship among them. What effect are elections likely to have, for instance, if held in the absence of basic civilian security or confidence among Bosnia’s displaced that they will be able to return? What is the impact of pushing the issue of return in an economic and security context which only plausibly allows them to return to majority areas? Can one talk seriously about police reform and human rights should NATO choose not to focus on that part of its mandate that involves armed civilian groups, reservists or paramilitaries? The Dayton Agreement need not have been expected to make such judgments, but its international implementers could not avoid them.

Third, the Agreement provides no guidance on how to manage its chief contradiction: namely, it both stabilizes the lines of confrontation between Serb and Federation areas and within the Federation, and derives political rights from this division; at the same time, it obligates Parties to respect a right of return which could amount to reversing those lines entirely. Here, especially, the international community would have an opportunity to show whether it has overcome the ambivalence it manifested during the Bosnian war, or whether it is still of mixed minds about the nature and level of its commitment to an independent, multi-national Bosnia.

For these lacunae, the Dayton Agreement should not be faulted so much as supplemented. Like other peace agreements arrived at by compromise and heavy third-party arm-twisting, it contains ambiguity and tension among its provisions. This need not make it fatally flawed, as some critics have argued, only typical. As a typical negotiated settlement, however, the Dayton Agreement places a unique burden on the period of implementation, which will unavoidably be treated by Parties as an opportunity to obstruct, revise and sabotage the Agreement to which they have committed themselves. As Bosnia’s experience demonstrates all too clearly, implementing a complex peace agreement is a highly creative enterprise, in which interpretations and decisions have enormous practical consequence. The judgments and actions of third parties will be decisive in such a setting, either enabling spoilers or curbing them, either giving robust support to those genuinely committed to peace or weakening them with inadequate assistance.

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61. Most scholars of civil war and its termination agree that ending such conflicts by negotiated compromise instead of victory by one side is harder both to accomplish—of 57 civil wars begun and ended between 1945 and 1993, one-quarter ended with negotiated settlement, or fourteen compared to the forty-three wars which ended with military victory—and to sustain—civil war resumed in 50% of the cases where war ended via negotiation, compared to only 15% where war ended in one side’s victory. See Roy Licklider, The Consequences of Negotiated Settlements in Civil Wars, 1945-1993, 89 Am. Pol. Sci. Rev. 681, 684-85 (1995).

62. Hutchison, for instance, calls on Clinton to “reconvene the Dayton parties to reassess the accords.” Hutchison, supra note 2, at A31.

63. On the challenge of implementing peace agreements after civil wars, see Stephen John Stedman & Donald Rothchild, Peace Operations: From Short-Term to Long-Term Commitment, Int’l Peacekeeping, Summer 1996, at 17 (Jeremy Ginifer ed.).
IV. The Progress and Impact of Implementation

This Article’s main claim is that decisions made by international implementers have had a decisive impact on whether and what kind of peace works in Bosnia.64 The Dayton Agreement, as described, offered neither a clear political outcome nor a strategy for building peace. What it offered was a cease-fire amid a daunting set of challenges: parties whose objectives had not changed and who remained in power; plans for power-sharing which threatened to consolidate national exclusion rather than mitigate it; and social wounds from a war fought with extraordinary cruelty. While international implementers can hardly be asked to build peace in such a context on their own, they can legitimately be asked to put their efforts coherently and effectively behind a well-conceived course of action. In short, they can be asked to define a set of objectives that will guide their work with Bosnia’s parties and peoples, and to design a strategy to achieve those goals.

Generally, there is some merit in the conventional view that military implementation has been a success while civilian implementation has flagged. Certainly, those military provisions to which NATO leadership devoted their resources have been efficiently implemented according to the agreed-upon timetable. The IEBL has been stabilized (with the important exception of Brcko) and multiple small adjustments to it have been made peacefully; troops and heavy weapons have been re-deployed as required and submit to regular inspections by NATO-led troops; foreign forces have basically been removed; and there has not been a single military-on-military clash since the war ended. This is no minor accomplishment, and no subsequent criticism should eclipse NATO’s tremendous achievement in stabilizing Bosnia’s cease-fire.

On the civilian side, progress has been much more uneven. National elections were held on schedule, in mid-September 1996, although with serious problems as will be discussed below.65 Bosnia’s joint power-sharing institutions also began to function by late 1996.66 Although these structures have been slow to accomplish much substantively, and have been characterized as much by backsliding and recalcitrance as by active cooperation, this was to be expected. After all, they represent an institutional attempt to reconcile parties whose aims never changed, but who were convinced by circumstance that the battlefield was not the best place to pursue them. Their slow and frustrated progress does not make them a

64. This is not the place to offer a full review of Dayton implementation, and several first-rate assessments already exist. Some of the best work has been done by the International Crisis Group (ICG) in Sarajevo, which has produced over thirty substantial reports on major aspects of implementation since its work in Bosnia began in early 1996. See generally ICG Crisis web (visited Nov. 6, 1997) <http://www.intl-crisis-group.org>.
65. See infra Part IV, Section B.
66. Their functioning has been repeatedly obstructed from different sides, particularly Serb and Croat, over everything from timing of meetings to location. Just recently in October 1997, the Council of Ministers stalled over the question of a permanent location for their meetings.
failure; both the Parties and their international interlocutors deserve credit that they work at all. In addition, there have been some positive steps on returning Bosnia's refugees and displaced persons, particularly to majority areas. A fair amount of reconstruction has occurred as well, though little has translated into widespread job creation because of a greater emphasis on infrastructure.

More troublesome, the conditions that have pertained throughout Bosnia and Herzegovina since the war stopped, especially in Serb and Croat-controlled areas, still work actively against the resumption of "normal conditions of life" called for in the Dayton Agreement. Residents face what UNHCR has characterized as a "climate of fear and intimidation," especially in minority areas; the power of nationalist authorities remains essentially unbroken; and dynamics pushing toward effective partition are still stronger than those pulling toward integration. Perhaps worse, choices made and priorities set by international parties during implementation have contributed powerfully to the bleaker side of the picture.

A. Interpreting the Military Mandate

Since the war ended, minority residents and opposition political figures have been targets of systematic intimidation and harassment, which is often attributed to popular gangs but which demonstrably enjoy acquiescence or active support from authorities. Many incidents occur at night, when international observers are the most remote. Empty houses are destroyed so that refugees cannot return to them; returnees are harassed and driven out shortly after they arrive; minority residents are forcibly expelled; minorities are detained at roadside checkpoints, threatened with arrest as suspected war criminals and sometimes beaten while in police custody; mosques and churches continue to be vandalized; haystacks have been burned, agricultural property damaged and livestock and pets poisoned.

Dozens of incidents worthy of public report have occurred between Dayton's signing and June 1997, not counting the burning of Sarajevo's suburbs and exodus of approximately 60,000 Serbs in early 1996.

67. The Office of the High Representative especially deserves credit, as it has worked particularly hard on the issue of getting joint institutions up and running.
68. The phrases "majority/minority areas" or "majority/minority return" are shorthand to describe return of individuals to areas where they belong to the majority national group or where they are in the minority.
70. Interview with U.N. Civil Affairs Officer, in Sarajevo (Nov. 1996).
Most incidents involve the prospect of return. The following are sadly representative. Between May and July of 1996, hundreds of Bosniacs were expelled from Serb-controlled Teslic after a steady wave of verbal intimidation, bombings, beatings and threats;\textsuperscript{72} Croats who remained in Bosniac-controlled Bugojno were forcibly evicted in July 1996;\textsuperscript{73} in October, 150 demonstrators stoned a commercial bus making an inaugural run across Croat-controlled territory to East Mostar while police stood by;\textsuperscript{74} also in October, 250 displaced Serbs were prevented from visiting their pre-war homes in Croat-controlled Drvar, and thirty-five homes were subsequently set on fire;\textsuperscript{75} and ninety-six homes and two mosques were destroyed in Prijedor after UNHCR gave Serb authorities a list of Bosniacs who wished to visit their property.\textsuperscript{76} All such incidents are paralleled by a pattern of arbitrary arrests, detentions and harassment by authorities. Moreover, every episode carries a double punch: the event itself and the fear that similar attacks will follow.

While the Parties are primarily responsible for the range and frequency of these incidents, significant responsibility also belongs to NATO's political leadership which decided at an early stage that this arena of confrontation was outside the bounds of its mandate, even though there was every reason to include it.\textsuperscript{77} The military annexes of the Dayton Agreement detail a security agenda extending beyond the strictly military, which is reflected in the broad mandate assigned to IFOR and SFOR. As earlier described, the military provisions recognize that a "cessation of hostilities" includes providing safety and security for all civilians living in areas under either Party's control, and that an array of actors beyond the military can undermine that security. Thus NATO-led forces are asked to head the security of civilian populations and are given robust means for fulfilling


\textsuperscript{75} The Drvar incident was repeated almost identically in May 1997, when twenty-four houses were set ablaze following a visit from an international mediator who called for Serbs to be able to return. See, e.g., Patrick Moore, Croats Block Serb Refugees from Returning Home, OMRI Daily Digest, (Open Media Research Institute, Prague, Czech Republic), Oct. 15, 1996, at 1. See also House Burnings: Obstruction of the Right to Return to Drvar, ICG Bosnia Rep. No. 24 (Int'l Crisis Group, London, U.K.), June 16, 1997, at 1.


\textsuperscript{77} It should be made plain that all criticism of the NATO-led forces in Bosnia is directed at NATO's political leadership, not at the force commanders or troops on the ground who operate within a particularly tight chain of command that gives them little interpretive leeway in fulfilling their mandate.
the full range of their responsibilities.\textsuperscript{78}

IFOR's, then SFOR's, primary responsibility has been to ensure that the Parties meet their military obligations, which clearly include these extra-military components. The loophole is that the NATO-led force is permitted but not \textit{obligated} to carry out these responsibilities: "the IFOR shall have the right to fulfill its supporting tasks, within the limits of its assigned principal tasks and available resources."\textsuperscript{79} At the time of its deployment, IFOR was heavily shadowed by the U.N.'s experience in Somalia and therefore determined to refrain from anything that looked like "nation-building" or "mission-creeping."\textsuperscript{80} This specter encouraged not only a strict segregation of IFOR's operation from civilian implementation, but also an unjustifiably minimalist reading of its own military responsibilities. In the event, NATO's political leadership chose to restrict its focus to the most narrowly military components of its mandate, with the upshot that a heavily armed multi-national force of close to 60,000 troops (under SFOR, 31,000 troops) has presided over a protracted "security gap" through which Bosnian civilians have fallen by the day. With them, have fallen opportunities to rebuild a state with room for multiple nationalities.

Moreover, although this pattern of violence is not strictly military, it is not non-military either. Targeting civilians to move them forcibly from one part of the country to another closely resembles the coercive instruments used for the same purpose during the war. That it is not soldiers, \textit{per se}, who are targeting civilians is also less significant a distinction than it might appear. Recall that throughout the wars of the former Yugoslavia, belligerents had at their disposal paramilitary groups as well as regular and special police which they developed and used with extreme ferocity. Civilians and their property were primary targets of military campaigns, the campaigns themselves waged by a combination of paramilitary, police and reserve forces along with regular military units.

Nor is there evidence that this post-Dayton violence is beyond the control of political authorities. Just the opposite: in almost all incidents, local authorities have been involved, either directly—as in February of this year, when Croatian police in West Mostar fired into a crowd of unarmed Bosnian civilians attempting to visit a cemetery on a Muslim holiday, killing one and injuring 20 more\textsuperscript{81}—or indirectly, when local police fail to protect

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\textsuperscript{78} Having been established under Chapter VII of the U.N. Charter, the Dayton Agreement reiterates on several counts IFOR's authority to use any means necessary to implement their mandate. \textit{See supra} notes 41-43 and accompanying text.

\textsuperscript{79} Dayton Agreement, \textit{supra} note 1, Annex 1-A, art. VI, \textsect 3, 35 I.L.M. at 97.

\textsuperscript{80} Among other things, this led NATO governments to create the awkward distinction between "mission creep" and "mission evolution," in order to explain the extension of their mandate under SFOR.

civilians or their property when either have been targeted by armed groups. As expressed in a statement of the PIC Steering Board in June 1997, "[t]he police not only frequently condone violence on ethnic and political grounds, they are often responsible for the violations themselves."

Since summer 1997, sporadic incidents have hinted that NATO's approach might be changing. In July, British troops moved against two major figures indicted for war crimes, apprehending one and killing the other after he resisted arrest, marked the first use of NATO force for this purpose. In early August, SFOR began inspecting and confiscating weapons from paramilitary special police units, making these units subject for the first time to NATO oversight; and at month's end, NATO authorized SFOR to take all necessary measures against inflammatory radio and television broadcasters whenever requested by the High Representative. SFOR has also been working more closely with the IPTF and taken some initiatives to provide greater protection to returning refugees.

The question now is whether NATO will learn the right lesson from its nearly two years of conservatism to deploy its resources more productively behind a strategy of peacebuilding in Bosnia. Unfortunately, it is not yet clear whether these recent incidents amount to more than ad hoc responses to issues of particular concern to SFOR. SFOR's new attention to the special police, for instance, seems uniquely designed to weaken the forces protecting Dr. Karadzic and other hard-line Serb leaders, especially

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[It has become apparent that most of the violations of human rights which occur in Bosnia and Herzegovina (by some estimates as many as 70 per cent) are the work of the police forces of the Entities themselves. This creates the need for independent investigation of such cases. It was therefore proposed by the United Nations at the second Peace Implementation Conference that this responsibility should be entrusted to IPTF, a proposal which attracted widespread support and was incorporated in the Conclusions of the London Conference.


83. Both men were based in the northwestern town of Prijedor and had been members of the town's "Crisis Committee," established in 1992 to facilitate takeover by Serb forces. Milan Kovacevic, Director of Prijedor Hospital at the time of his arrest, and Simo Drljaca, who was killed in the British operation, are both accused of genocide, an indictment so far leveled at only five others. Some of the most notorious crimes of the war occurred in Prijedor, where over 52,000 non-Serbs were either killed or expelled. See Mirko Klarin, Kovacevic's Arrest and Indictment, TRIBUNAL UPDATE 36: LAST WEEK IN THE HAGUE (JULY 7-12, 1997), (Institute for War and Peace Reporting, Brussels, Belgium), July 16, 1997, at 1-3. For coverage of Prijedor's key figures, see also Bosnia and Herzegovina, The Unindicted Reaping the Rewards of "Ethnic Cleansing," 9 HUM. RTS. WATCH/HELSINKI 17-22 (1997), and the extensive documentation in the Report of the U.N. Commission of Experts.
considering that SFOR has also committed troops to protecting Biljana Plavsic, the President of Republika Srpska who broke with Karadzic loyalists and has been openly supported by the international community ever since. In turn, the timing and manner of SFOR's challenge to hard-line Serb media suggests a greater interest in shutting down broadcasts that might incite violence against NATO and other international personnel, than in contributing to a comprehensive policy to support independent media in Bosnia as a whole. Most critically, the apprehension of indicted war criminals, while a critical objective, must be nested within a broader set of policies to address civilian security, particularly in the context of return, and to put the peace process in Bosnia on a firmer political and social foundation. Weakening the hold of extremists is closely linked to protecting civilians and strengthening the peace process. Standing alone, however, it will not redress the institutionalized problems of security forces who answer only to hardline and deeply entrenched political authorities, none of whom yet have shown a serious commitment to a common and democratic peace.

B. Holding National Elections

According to the Dayton Agreement, national elections were to be held no later than nine months after the treaty's entry into force, which they were, in mid-September 1996. Furious debate attended the lead-up to the elections, concerning the wisdom of holding them on schedule, the readiness of the international community (specifically, the OSCE) to preside over them, and the longevity of a multinational military commitment to Bosnia in their aftermath.84 There were two primary arguments in favor of holding elections that September. First, most European and American diplomats expressed the view that elections were the essential first step in getting Bosnia's new joint institutions off the ground, which themselves were crucial to knitting the country's fractured communities back together. This view was strengthened by a tendency among American policymakers to equate democracy with elections and neglect a wider array of preconditions necessary for democratic success. Second, and arguably decisive, was the stark pressure to hold elections before IFOR's mandate came to an end. The year 1996 was also a presidential election year in the United States, and the Clinton Administration had promised that American troops would be out of Bosnia by December. Along these lines, supporters argued that the Dayton timetable had to be strictly observed in order to keep pressure on the Parties to meet their obligations.

The arguments against holding elections pointed to the social and political conditions on the ground and the manifest under-preparation of the OSCE. Critics predicted, accurately as it turned out, that the national elections would restore to power the war-time leaders least likely to commit

themselves to building peace, only this time with democratic legitimacy. The ex post facto debate, has tended to focus on whether the elections had been technically free and fair: how many registrations were botched, what number of ballots might have been miscounted, and so on. While not insignificant, such technical issues were marginal to the more central concern about the conditions in which the elections were held. The greater problem was the prevailing climate of fear and uncertainty. Especially in the absence of any confidence that NATO or the United States would stay a course longer than December 1996, the elections could be counted upon to produce a victory for nationalist parties.

Technical problems did exist, though their magnitude remains a subject of controversy. The independent International Crisis Group, which has been one of the tougher critics of the 1996 elections, identified the following problems: a higher number of voters than was technically possible, poor handling of refugee registration and out-of-country voting, a shortfall of between 5% and 15% of registered votes from official lists, the decision to locate several polling stations at sites of major war-time violence, technical decisions made without full disclosure to candidates and voters, ballots that were not in the custody of accountable parties when moved from polling stations to counting centers, and the mystifying OSCE decision to destroy all ballots one week after votes were certified based on a regulation adopted the day before elections were held. Of singular destructive impact was a technical judgment made by the OSCE and the Provisional Electoral Commission which allowed voters to register where they intended to live, as opposed to where they currently resided or where they had lived before the war. While undoubtedly motivated by sensitivity to the circumstances of the uprooted, the impact of this now notorious "P-2" form was to create a legitimate mechanism, and an open invitation, for parties to manipulate further the ethnic balance of power within communities.

More fundamental problems existed at the time of the elections, however: indicted war criminals still dominated political life, opposition pol-

85. See Glenny, supra note 84, at D2. Glenny writes:
Editorial writers have joined forces with such influential commentators as the financier and philanthropist George Soros and former Prime Minister Haris Silajdzic of Bosnia. All say roughly the same thing: that holding the elections will guarantee that Humpty remains dismembered and that the results of ethnic cleansing will be sanctioned by what is a bogus democratic gesture.

Id.

86. This is not terribly surprising since registration for over 800,000 refugees living in dozens of host countries began just three months before the elections.

87. See generally Elections in Bosnia and Herzegovina, ICG Bosnia REP. No. 16 (Int'l Crisis Group, London, U.K.), Sept. 22, 1996 (documenting these and other flaws in the elections).

88. U.S. Special Envoy Richard Holbrooke brokered a deal on July 18, 1996, in which Radovan Karadzic agreed to step down as President of the Republika Srpska and refrain from public political activities. He nonetheless remained an active figure behind the scenes, as he does in a more beleaguered form today.
ician figures had been targets of attack.\(^8^9\) Freedom of media and movement were minimal, civilians from minority communities were subject to systematic violence and intimidation from authorities, and brute uncertainty prevailed among Bosnia's residents and its refugees about whether their country could be rebuilt as one or would be split into three. In short, Bosnia's climate was one of such manifest insecurity that the rational vote for people to cast was for the nationalist parties, which most reliably, if narrowly, had always promised to protect their interests.

C. Human Rights, Freedom of Movement, and Return

Questions of human rights and freedom of movement, which centrally affect the possibility of return, have commanded a much lower priority than they should have in the first eighteen months of Dayton implementation. Such issues are inherently difficult to address. Their lesser priority is also attributable in no small measure to NATO's unwillingness to treat a broader array of security issues, to the extraordinary pressure to hold national elections, and to a hoary disinclination among international actors to intrude upon the intimate relations between political authorities and their citizens. This disinclination is unfortunate, particularly in the context of third-party peace implementation, which already intrudes upon domestic jurisdiction in multiple ways. In the context of Bosnia, according a lesser priority to human and civil rights represents a persistently missed opportunity by the international community to reinforce its commitment to a unitary Bosnian state and to strengthen popular constituencies for peace.

Further impediments to the resumption of normal living conditions must be added to the pattern of overt violence previously described.\(^9^0\) Bosnians have faced enormous obstacles to their freedom of movement across Entity or intra-Federation lines since the Dayton Agreement was signed. Literal impediments are posed, in the form of roadside checkpoints. Despite initial progress in early 1996 when illegal checkpoints were banned and the Parties generally complied, roadside checks began to proliferate again over the course of the year, occasioning a second crackdown by IPTF and SFOR in the spring of 1997.\(^9^1\) Bureaucratic obstacles are also common. Taxes and "visa" fees have been routinely imposed on people trying to move around what is intended to be one country. Wartime property laws actively discourage return and any mobility dependent

\(^8^9\). The most widely reported incident was the physical attack on Haris Silajdzic, Bosnia's war-time Foreign Minister (then Prime Minister). As candidate for a multinational party, he was attacked on June 15, 1996, by a gang carrying SDA flags in Cazin. See Jovan Kovacic, Assault on Bosnian Leader Highlights Tension, Reuters World Service, June 16, 1996, available in LEXIS, News Library, Reuwald File.

\(^9^0\). See supra Part IV, Section A.

\(^9^1\). "Vehicles bearing the license plates of the other entity, or the other party in the Federation, are regularly stopped and harassed by the local police, thereby preventing the population from exercising its right to move freely around the country." Report of the Secretary-General on the UNMIBH, U.N. SCOR, 52d Sess., ¶ 5-6, U.N. Doc. S/1997/468 (1997).
on fair compensation for property. Access is often denied to personal and official records, to reconstruction and business loans, and to basic services, like education and medical care. As in the former Yugoslavia, jobs, pensions, social services, housing and education remain largely a state prerogative; and administrative authorities enjoy a still unchecked capacity to deny a range of civil and economic rights to minority populations or opposition figures.

Equally daunting, each national community in Bosnia has effectively created its own symbolic exclusion zone with very practical consequences for freedom of movement and normal living conditions. For close to two years after the war ended, Bosnia has operated with three sets of license plates; three international telephone exchanges; three currencies; two alphabets; increasingly, three languages; and especially disturbing, three school systems.

The persistence of such conditions has directly militated against Dayton's specific guarantees that Bosnia's residents could return voluntarily to their pre-war homes, that they could have their basic human rights protected, and that they could have confidence in a future increasingly respectful of democratic participation and the rule of law. The figures on the return of displaced persons tell the statistical tale. In 1996, roughly 252,000 refugees and internally displaced persons returned to Bosnia. During the same period, approximately 90,000 left. Of the former, most returned to areas where they belonged to the national majority; most of the latter were leaving areas where they belonged to the minority. Since the beginning of 1997, over 80,000 have returned to Bosnia from European

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92. Still, license plates display the red-checkered Croatian shield in Croat areas, the blue-and-gold fleur-de-lis in Bosniac areas, and Cyrillic letters and the orthodox cross in Serb territory.

93. Until late September 1997, one could not call across Entity lines. Even from outside the country, one had to dial Republika Srpska via Serbia and Croat parts of the Federation via Croatia.

94. The Croatian kuna, the Yugoslav dinar, and the Bosnian dinar, although deutsche marks were welcome most everywhere.

95. Latin and Cyrillic.

96. Serbo-Croatian always had a Serbian and a Croatian variant and two alphabets. Croatia's early reassertion of national enthusiasm—pre-independence—involved resurrecting old Croatian vocabulary to distinguish its language from its more Balkan cousin. Serbs have similarly reinforced historical differences that distinguish the variants. Bosniacs, in turn, who could hardly be expected to speak "Serbian" or "Croatian," have begun to incorporate Turkic and Arabic vocabulary.


98. Of this total, 88,039 persons were refugees, see UNCHR REPORT, supra note 69, Annex I, and 164,217 persons were internally displaced, see id. at 11, tbl. 6.


100. Among internally displaced persons, for example, 94% returned to majority areas. See UNCHR REPORT, supra note 69, at 11, tbl. 6.
host countries, though most "to so-called majority areas . . . because of continued political, security and administrative obstacles." Pressure from host governments to send Bosnian refugees back coupled with the inadequacy of local conditions, have placed UNHCR and other humanitarian groups working on return in a difficult position such that they can only responsibly facilitate returns to majority areas.

Recently, international implementers began focusing serious attention on these issues, which most directly affect the prospects for normal life among Bosnia's citizens. When the Peace Implementation Council met in Sintra, Portugal in May 1997, it reiterated the international commitment to a united, multi-ethnic Bosnia, and took an especially tough stance on issues of practical concern to Bosnia's current and would-be residents: moving toward a uniform system of car registration, integrating the country's telephone systems, opening regional airports, and amending property laws that "place insurmountable legal barriers in the path of return." Sintra also called for international aid to be made conditional upon the willingness of local authorities to accept minority return. One of Sintra's more dramatic innovations was to give the High Representative the authority to curb or suspend inflammatory media, which he has actively put into effect in recent months against Serb broadcasts.

Sintra represented a breakthrough, but an ironic one. Its tough language, its assertion of a different mix of international priorities, and its accord of new operational authority to the High Representative, was desperately welcome and has proved to be instrumental in pushing the Parties to act on particular issues. There was nothing in the Sintra Declaration, however, not one item, that could not have happened a year and a half earlier.


102. The numbers of Bosnians still without a durable solution are daunting: 815,000 refugees outside the country, and roughly 866,000 displaced internally within it. Among the refugees, UNHCR estimates that over half originate from areas where they would now be a minority, underscoring the importance "for rapid progress in minority returns." See UNHCR Report, supra note 69, ¶¶ 17, 22.

103. See generally Office of the High Representative, Political Declaration from Ministerial Meeting of the Steering Board of Peace Implementation Council, U.N. SCOR, 52d Sess., Annex, U.N. Doc. S/1997/434 (1997). The deadline for car registration was set at January 1998. The deadline for telephones, set at mid-July 1997, passed without progress; however, by September, some telephone communication across entity lines became possible for the first time since the war had ended. It is extremely limited, however, allowing only for Sarajevo to place calls to Banja Luka, not reliably vice versa, and not broadened beyond these major cities.

104. "The High Representative has the right to curtail or suspect any media network or programme whose output is in persistent and blatant contravention of either the spirit or letter of the Peace Agreement." Id. ¶ 70.
V. Lessons for the Future

In the summer of 1997, almost two years after war formally ended in Bosnia, a new energy surfaced among international actors helping to implement the Dayton peace accord. The United States in particular—which has played a definitive role in Balkan events—appeared to be reinvigorating its own engagement in Bosnia, perhaps recognizing that some turn around of conditions would be necessary either to guarantee the exit of American troops by June 1998 or to find a persuasive rationale for keeping them there. For this energy to have maximum effect upon the peace process in Bosnia, the international community will have to learn from the previous twenty-four months of peace implementation and newly focus its efforts on strengthening the popular stratum of Bosnian society where peace can best be built.

First, the integration of international efforts that made Dayton possible was lost during the process of implementation. Political resources were squandered during the first eighteen months after Dayton by divergent strategies among agencies and involved governments. Through the end of 1996, senior officials at most major implementing agencies described a chaotic blend of different mandates, incompatible timetables, and divided leadership among their respective executive bodies. Doubts about the effectiveness of the High Representative's office, for example, discouraged investment of material and diplomatic resources in that agency, which proved the doubts accurate but for the wrong reason. From the very beginning, the Office could have attained the capacity it has only recently acquired. Competing agendas of international actors also created a field day for the Bosnian parties who had skillfully manipulated such divisions during the war. The predictable obstruction from local parties and the clear need for ongoing negotiation made it crucial from the outset that international efforts be internally unified and organizationally coherent. One lesson emerging from the Bosnian experience is that the Dayton model of decentralized peace implementation is singularly counter-productive after a negotiated and significantly open-ended settlement.

Second, not integrating military and civilian implementation created a particularly destructive vacuum. Just as it took a serious partnership between military force and diplomacy to bring the Bosnian war to an end, the success of the civilian components of peace implementation depends upon their having integrally available the military capital of SFOR, or any successor mission. To date, the impact of IFOR and SFOR's inattention to the extra-military components of their mandate has been corrosive.

106. The counter-example is the U.N. Transitional Administration for Eastern Slavonia (UNTAES), which fully integrated its military and civilian components under a single command and which used this leverage repeatedly to positive effect. Interview with Mr. Jacques Paul Klein, former Transitional Administrator, in Vukovar, Croatia (Nov. 25, 1997).
Allowing a period of almost two years to pass during which civilians are regularly and predictably targeted, and throughout which they have diminishing expectations that basic security of their persons and property can be assured, has strengthened the hands of nationalist authorities and dampened faith that a non-nationalist Bosnia might be possible.

Importantly, this period of what was widely perceived as IFOR and SFOR’s relative inaction also deprived civilian negotiators of the leverage that could come from having NATO resources support their efforts. Negotiation does not end with a settlement, after all, particularly when the Parties can be expected to try end-runs around it.

Third and most critically, there lingers the question of partition. Even if international efforts had been coordinated on the ground and civilian activities bolstered with appropriate military resources, a profound ambivalence exists among international actors about the shape of post-war Bosnia. The Dayton Agreement leaves this question open, effecting a compromise between unity and division that is unwieldy at best. Dynamics on the ground pull in alternate directions, and over all hangs an aura of deep uncertainty about which way the country will go.

It is not always easy to make the case against partition, as some of the best evidence that many Bosnians do not want it exists at the community level, where resources are scarce and media and inter-governmental attention low. It is also tempting to embrace the argument for partition, which could help justify the inadequacy of the first two years of multi-billion dollar international implementation. The argument for partition further offers a convenient logic for the exit of SFOR in June 1998, which some American commentators so aggressively demand. Whatever one’s initial instincts, the debate needs to be had and to be had well, with empirical accuracy and a sober assessment of the impact of international efforts to date.

Many international observers are inclined to argue that the decision is best left to Bosnians. A fine position, but one which begs the question, “which Bosnians?” Hard-line leaders are happy to decide themselves, since they still control most instruments for steering the population, and therefore the outcome, their way. More moderate leaders and representatives of many citizens’ groups also welcome the opportunity to decide but need a good deal of international support in order to do so. American Senator Kay Bailey Hutchison rightly rejects a political solution for Bosnia that is imposed from outside; but equally, one should reject a political solution that is imposed by authoritarian politics from the inside. The objective of international efforts should be to establish and stabilize those conditions in which Bosnians can securely and democratically choose. Importantly, the sheer fact of uncertainty strengthens the position of Bosnia’s partitionists. Under current conditions, who would expect that Bosnia’s citizens,

107. “The United States is trying to re-create Bosnia in the American multi-ethnic, multicultural image—an Americanization of the Balkans, if you will.” Hutchison, supra note 2, at A31.
who have every reason to doubt the international community's commitment, would not fulfill the prophecy that the only way for them to live is to live apart?

For many, living side-by-side would take time, and some may never seek it. Yet, others clearly do, if only because living multi-nationally will allow them to return to the areas from which they were driven during the war. In 1996, three-quarters of the refugees returning did so spontaneously. In the recently-held municipal elections, parties representing displaced persons won a majority of council seats in six municipalities (five in the Federation, one in the Republika Srpska). In eighty-nine municipalities, displaced voters cast ballots in their pre-war municipalities and elected representatives to those councils: forty-two municipalities now have between 20% and 49% of their seats occupied by representatives of the displaced, and forty-seven municipalities have up to 20% of their seats so occupied. Whether these results can be implemented will depend heavily on the seriousness of international commitment to seeing them realized.

Significantly, few of the international voices calling for partition have ever spent significant time in Bosnia or among Bosnians, whereas many of those arguing against partition have. Among international opponents to partition, the most persuasive are those who have contact with Bosnia at the community level. They do not describe a population ideologically committed to multi-ethnicity, but they do see a serious and widespread interest in resuming normal, safe and productive lives where questions of nationality are marginal.

The Dayton settlement was reached in large part because the balance of forces on the ground changed. Building peace in Bosnia also demands that the balance on the ground shifts, but instead of rearranging the hold-

109. The Republika Srpska municipality is Srebrenica, where they won 52% of the seats.
110. See International Crisis Group, ICG Analysis of 1997 Municipal Election Results (14 October 1997) <http://www.intl-crisis-group.org/report/bhxxprlo.htm>. The total number of municipalities electing councils was 135, with a total of 4,789 seats. Total voter turnout was estimated at 87%. Id.
111. Another indicator of such sentiment even before the municipal elections has been the success of the “Coalition for Return,” the network of Bosnian and international organizations representing returnees and the right to return independent of nationality. The Coalition was formed in 1996 at the initiative of then Deputy High Representative Michael Steiner, who believed that displaced persons and refugees had common interests that could unite them as a political movement. Information about the coalition can be found at the website of the Office of the High Representative <http://www.ohr.int>.

ings of Serbs, Croats and Bosniacs, it requires a transfer of power from existing political and administrative authorities to more democratic institutions and constituencies. Although typical of the work of diplomats and large organizations, one of the more disheartening aspects of international activity in Bosnia has been its disproportionate focus on Bosnia's ruling élites. While working with political leaderships is essential to implementing a peace agreement to which they are signatories, and while it is élites who enjoy the greater capacity to obstruct that process, the international community has chronically missed opportunities to engage directly with those segments of Bosnia's population that could provide the most powerful opposition to the nationalism which tore the country apart. Today, amid renewed debate over the purpose of international engagement in Bosnia, the challenge is not just to sustain the current level of involvement but to redirect it, and to channel international resources strategically to those constituencies in Bosnia most committed to a common peace.