The Importance of Civil Law in the Transition to Peace: Lessons from the Human Rights Chamber for Bosnia and Herzegovina

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Timothy Cornell† and Lance Salisbury‡

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Introduction

For nine years, Josef Taso had been shut out from his home in Bosnia. Forcible,
he and his family crowded in with relatives on the Muslim side of town, while a
politically-connected Croat squatted in Taso’s home rent-free. But, despite
Taso’s legal right to return to his home after the war, Bosnian authorities—
dominated by Croats who want West Mostar to remain Muslim-free—
ignored his demands and blocked Taso from enforcing his claim. The
municipal court refused to honor his right, as did the higher cantonal
court and the Federal Ministry of Justice. However, during the month that
Taso appealed his case to the Human Rights Chamber for Bosnia and Herzegovina (Chamber), the squatter finally fled Taso’s home and moved to a
house that an international group had built for him. Today, Taso is back
at his home with his family.

Taso is a mere droplet in a river of 2.3 million refugees forcibly driven
from their homes during the bloody ethnic cleansing campaigns of the
wars in the Balkans. While the Taso case found a fortunate ending, hun-
dreds of thousands of refugees remain the victims of ethnic cleansing
through legal and bureaucratic obstruction on the part of local authori-
ties. Yet Taso’s success also symbolizes a rising respect for law in Bosnia
and Herzegovina (Bosnia), brought about in part by increasingly muscular
efforts from the Human Rights Chamber to force local officials to honor

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1. See Brief for Appellant, Taso v. Fed’n of Bosn. & Herz., Human Rights Chamber
for Bosn. & Herz. (June 20, 2000) (on file with author).
2. Id.
3. See Blentic v. Republika Srpska, CH/96/17, Human Rights Chamber for Bosn. &
Herz. (Nov. 5, 1997) (finding a positive obligation on government officials to take effec-
tive measures to ensure the return of homes to their lawful owners).
4. Taso, supra note 1.
5. Id.
6. Report, American Refugee Committee, Legal Aid Office, Mostar, Bosnia (Sept.
12, 2000).
7. Id.
8. Eric Rosand, The Right to Return Under International Law Following Mass Dislo-
9. Id.

The Human Rights Chamber is a unique supranational court of last resort for Bosnian human rights victims. The General Framework Agreement for Peace (GFAP) established the court, which allows human rights claimants to bring their cases only after they have exhausted all effective domestic remedies.\footnote{See Paul C. Szasz, \textit{The Protection of Human Rights Through the Dayton/Paris Peace Agreement on Bosnia}, 90 Am. J. INT'L. L. 301, 309-10 (1996).} Although the Chamber stumbled through years of being undermined and ignored, in the last several years it has grown in power, respect, and effectiveness. By helping instill a sense of the rule of law, the Chamber has become a key instrument in the transition to a more peaceful nation.

This essay argues that the Human Rights Chamber has set an important precedent for future international interventions; the Chamber provides the key to legal accountability when all domestic systems are still bent on vengeance.\footnote{See Timoth\y William Waters, \textit{The Naked Land: The Dayton Accords, Property Disputes, and Bosnia's Real Constitution}, 40 HARV. INT'L. L. J. 517 (1999).} By instituting the rule of law as a counterweight to partisans set on preserving their wartime gains, the Chamber has helped make a start toward civil society in a state that has continually dispensed justice based on ethnic identity.\footnote{See Mark S. Ellis, \textit{Bringing Justice to an Embattled Region - Creating and Implementing the "Rules of the Road" for Bosnia-Herzegovina}, 17 BERKELEY J. INT'L. L. 1 (1999).} Institutions such as the Chamber can play a vital role in transitional justice, easing the movement from an oppressive regime to a rule of law. A long shelf of scholarship endorses transitional justice, yet theorists have focused almost exclusively on the need for criminal justice, nearly ignoring civil justice as a necessary component of the transition to a peaceful society. This oversight is unfortunate. After all, most conflicts are rooted in the struggle for the control of property; this was particularly the case in Bosnia.\footnote{See Waters, supra note 12, at 518.} By enforcing the civil side of human rights law, the Chamber has pushed domestic authorities to respect the rule of law and encouraged the return of refugees. In doing so, the Chamber has reduced the differences between the warring sides. Thus, as the ultimate avatar of civil justice in Bosnia, the Human Rights Chamber serves as an important prerequisite in the transition to civil rule.

Part I of this essay delves into the background of Bosnia's unique constitution. This section summarizes the causes of the civil war and the diplomatic and political events leading up to the Dayton Accord. It then discusses the effect of the civil war on property rights and why the partisan leaders pursued a policy of ethnic cleansing. Next, the section discusses
the Agreement itself, focusing on the human rights guarantees and the institutions set in place to oversee them, particularly the Human Rights Chamber. Finally, the section explains the Chamber’s developing case law and the safeguards it has established in its decisions. The section concludes that by fostering enforceable legal doctrine in Bosnia, the Chamber has created a reliable rule of law.

Part II explores the factors underlying the Chamber’s efficacy by highlighting both the trends running through its decisions and the nature of the political pressure needed to effectively enforce those decisions. The change in the Chamber’s influence also makes it an excellent laboratory for testing the conditions necessary for a court of this type to be effective.

Part III then places the Chamber into the context of transitional justice and demonstrates the vital role of civil law in the journey forward from a state based on oppression. Finally, with the benefit of hindsight, this section draws lessons from the Human Rights Chamber’s experience that should be kept in mind for future international interventions. Although the Human Rights Chamber has proved critical to accountability in Bosnia, this essay concludes that the Chamber will ultimately encounter difficulty extricating itself from the government. After all, if the Human Rights Chamber has indeed become a vital balance of power in Bosnia, then it cannot disband without causing either a governmental crisis or a relapse into tyranny.

I. Background

A. A Brief History
1. Events Leading Up to the Civil War

Bosnia’s birth was much like its recent rebirth. It broke away from the Kingdom of Serbia in A.D. 960 and then struggled to maintain its independence, fending off competing jurisdictional claims from Orthodox and Latin Christendom. When the Turks conquered the region in the fourteenth and fifteenth centuries, many of the nation’s wealthiest landowners converted to Islam. However, for much of their rule, the Ottomans never forced Islam on their subjects, and tolerated the many Latin and Orthodox Christians in Bosnia. Thus, for five centuries of Ottoman rule, Bosnia was a diverse and complex society of Orthodox (Serb) and Latin (Croat) Christians, dominated politically and socially by Moslems (Bosniaks). Nevertheless, throughout the centuries, the different religious and ethnic communities in Bosnia have tended to live in peace with one another.

16. Noel Malcolm, Bosnia: A Short History, at xix-xxi (1996) (noting that the violence surrounding the 1990s conflict was, like the two world wars in Bosnia, largely the result of external sources). In examining the evolution of modern Bosnia, it is helpful to consider the view of some commentators who have noted that ethnic groups are often “imagined communities” where “boundaries between ethnic groups are often fluid, that their histories are often based on myth as much as fact, and that their members’ belief in a common origin that derives sharply from their neighbors’ may be mistaken.”
Any animosities that did exist in Bosnia were in large part economic and not based on ethnic or religious differences. However, as the Ottoman Empire weakened in the nineteenth century, rival empires began jockeying for power in the region.

At the end of the nineteenth century, leading Bosnian intellectuals, educated in the nationalist ferment of the German universities, returned home with the idea that language and ethnicity should define nationhood. This theory has worked well unifying a largely homogeneous state. But, where ethnicities differ and are historically hostile, ethno-nationalism can pull a country apart. If ethnicity defines the state and there exists no single ethnicity, then there can be no state.

That danger did not stop the nationalist ferment. Fired by nationalist ideals and a declining economy, successive revolts by Bosniaks, Serbs, and Croats in Bosnia led to western intervention. Despite intense diplomatic efforts, the Austria-Hungarian Empire placed Bosnia under its protectorate. When Austria-Hungarian Archduke Franz Ferdinand paraded through Sarajevo in 1914, a Serbian nationalist who wanted to fold Bosnia into Serbia assassinated the empire’s heir apparent and began World War I. After the war, the Allies sided with the Serb nationalists and incorporated Bosnia into a new country called the Kingdom of Serbs, Croats, and Slovenes.

As the world fell into depression in the 1930s, external sources of conflict increased the tensions of civil life in Bosnia. During the 1940s, these tensions boiled over. Only the greater atrocity of World War II masked the brutal civil war in Bosnia. Bosnians killed more of themselves in this civil war than they killed in the greater world conflict. Nevertheless, in bringing Yugoslavia into the Cold War era, Marshal Tito papered over this violence in the name of unity.

In doing so, Tito redefined Yugoslavian nationhood as the sum of the Balkan peoples. Tito emphasized the “brotherhood and unity” of the coun-

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David Wippman, *Introduction to International Law and Ethnic Conflict* 4 (David Wippman ed., 1998) (citing Benedict Anderson’s evocation of the term “imagined communities”). Wippman believes that there is a real concrete core of identity in ethnic groups, but this core can be used as a base from which members of groups are mobilized. Ethnic identity thus becomes a somewhat malleable social construct; ethnic division can be created and accentuated based upon the real core of ethnic identity. *Id.*

17. See Malcolm, supra note 16, at xxii (arguing that much of the economic conflict during the Ottoman times was between Muslim landlords and Christian peasants over their economic relationships and the control of property, not over their religious beliefs or practices).


20. *Id.* at 142.

21. *Id.*


23. See id. at 120–23.

24. See id. at 133. See also Malcom, supra note 16, at ch. 12.

try's closely related and economically interdependent people. Tito's logic, the same rationale used by Gandhi and Nehru in India, flipped the old thinking on its head: now a people came to be defined by the state, not the state by its people. On the surface, the effort succeeded. By the end of the Tito regime, the economies of the region were utterly intertwined and mixed marriages were common. The number of people identifying themselves as “Yugoslav,” rather than, for example, “Croat” quadrupled from 1971 to 1981.

Nevertheless, the list of the peoples of Yugoslavia excluded Bosniaks until 1963. And in 1974, the Yugoslav constitution changed the state to a confederation, sowing the seeds for disintegration fifteen years later. Moreover, despite the efforts at building regional unity for Yugoslavia, in the rare instances in the twentieth century that free and open elections were held in Bosnia, the majority of voters still voted as a bloc with their own ethnic groups.

Thus, once the gauze of socialism came off Yugoslavia, the constituent republics quickly reverted to nationalism. But unlike Croatia and Slovenia, the population of Bosnia was exactly splintered in ethnic makeup, and the Bosnian Serbs and Croats had powerful and aggressive siblings to aid them from neighboring nations.

2. Analysis of Events Leading to Civil War

In the early 1990s, one popular theory in the United States held the Balkan war as proof that the new world crises would revolve around the clash of cultures, with Bosnia as the fault line of Islamic, Orthodox and Roman Catholic cultures. Another common view of the Bosnian civil war held that a millennium-old feud had flared anew.

What seems apparent in the former Yugoslavia is that the past continues to torment because it is not the past. These places are not living in a serial order of time but in a simultaneous one, in which the past and present are a continuous, agglutinated mass of fantasies, distortions, myths, and lies. Reporters in the Balkan wars often observed that when they were told atrocity stories, they were occasionally uncertain whether these stories had occurred yesterday or in 1941, or 1841, or 1441.

26. Hayden, supra note 19, at 142.
30. Hayden, supra note 19, at 92.
31. See id. at 93.
Increasingly, however, historians and other writers have come to view the hostilities not as a direct result of history, but rather simply as a heuristic device covering deeper or more venal motives. One of the leading historians of Bosnia, Noel Malcolm, notes that "the history of Bosnia in itself does not explain the origins of this war." These commentators and researchers have come to adopt a new, more critical view of the Bosnian conflict of the 1990s. These writers focus on the actions of a small group of leaders and their political and economic allies, all of whom manipulated the break-up of the former Yugoslavia (Federal Socialist Republic of Yugoslavia or "SFRY") for their own personal, economic, and political gain. Noel Malcolm argues that the killing strategies in Bosnia were not set by average people "nursing grudges about the second world war," but "by young urban gangsters in expensive sunglasses from Serbia, members of the paramilitary forces raised by Arkan and others . . . carry[ing] out a rational strategy dictated by their political leaders—a method carefully calculated to drive out two ethnic populations and radicalize a third."

Control of property might have been one root of the conflict—whoever controlled the property controlled its resources and the economy. From this standpoint, the demagogues, corrupt politicians, and organized criminals who contrived the brutal human rights abuses and ethnic cleansing campaigns of the civil war were fundamentally driven by their desire to control property, and thus achieve wealth and power. By creating the "ethnically pure" states of the Republika Srpska and Bosnian Croat Republic of "Herzeg-Bosna" these leaders could secure their gains. As one close observer of the conflict remarked, ethnic identity seemed to be "simply the raison d'etre for these nationalist leaders to hold onto power, like animals who cling to their turf." Accepting the return of minorities into these areas, then, would require the nationalists to deny freely one of the rationales for the conflict itself.


34. See RICHARD HOLBROOKE, TO END A WAR 22-23 (1998); Yaacov Y.I. Vertzberger, Foreign Policy Decisionmakers as Practical-intuitive Historians: Applied History and Its Shortcomings, 30 INT'L STUD. Q. 223, 242-43 (1986).

35. MALCOLM, supra note 16, at xix.

36. Id. at 252. Malcolm also notes that much of the millennial-feud theory was based upon poor and biased writing which relied upon "fragments of historical misinformation." Id. at xix-xxiv.

37. See Waters, supra note 12, at 520.

38. Id. at 517-593.


By any of these explanations, the conflict could never be quelled—short of total victory by one side—unless outside forces intervened. And if the *raison d'être* for Bosnia’s leaders was the economic and political rewards of power, then it followed that they would not adhere to the rule of law without effective, external oversight and pressure. That outside control came with the Dayton Accord that ended the war.

3. **Diplomatic Efforts Leading to the Dayton Accord**

The Human Rights Chamber and the international conventions it enforces have their roots well before Dayton. In Bosnia’s last gasp as a state before plunging into full-scale civil war, a compromise constitution negotiated in March 1992 held Bosnia to the highest standard of human rights as defined in international human rights conventions.\(^1\) At the first peace conference nine months later, the Vance-Owen Peace Plan proposed creating an ombudsperson and a human rights court, both controlled internationally and charged with enforcing international human rights norms.\(^2\)

The next proposal for a constitution for the State of Bosnia and Herzegovina, written in Washington, D.C. in 1994, sketched an outline for these institutions.\(^3\) Now the mandate for the ombudsman and human rights court would extend to “all legal provisions relating to human rights or fundamental freedoms” involving cases since January 1, 1991.\(^4\) In turn, “all organs of government shall carry out and assist in implementing judgments and orders of all courts.”\(^5\) The proposed constitution also established Judicial Police to assist the ombudsperson and courts in enforcing decisions.\(^6\) Most striking is that fifteen major human rights conventions\(^7\) carry a direct legal effect, giving Bosnia, on paper, one of the most comprehensive systems for the enforcement of human rights in the

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\(^1\) See Hayden, * supra* note 19, at 100.


\(^3\) For highlights of the proposal, see *Documents: Overview of the Federal Constitution of Bosnia and Herzegovina*, 2 *Balkan Forum* 33 (1994).


\(^5\) See id. at art. IV.C.2.

\(^6\) See id. at art. IV.C.8[4].

\(^7\) Id. at Annex 6, app. The treaties are: the Convention on the Prevention and Punishment of Genocide, the 1949 Geneva Conventions and the 1977 Geneva Protocols, European Convention for the Protection of Human Rights and Fundamental Freedoms, the 1951 Convention Relating to the Status of Refugees, the Convention on the Nationality of Married Women, the Convention on the Reduction of Statelessness, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment, the Convention on the Rights of the Child, the International Covenant on the Protection of the Rights of All Migrant Workers and Their Families, the European Charter for Regional or Minority Languages, the Framework Convention for the Protection of National Minorities. Most signatory states regard conventions such as the International Covenant on Economic, Social, and
The United States prodded Bosnia, Croatia, and Serbia into the General Framework Agreement for Peace in Bosnia and Herzegovina, initialed in Dayton, Ohio on November 21, 1995 and entered into force on December 14, 1995. The agreement incorporated the proposed constitution, and established a Human Rights Commission comprised of an Ombudsperson and a Human Rights Chamber. The Human Rights Chamber was closely modeled on the European Court of Human Rights, which is governed by the European Convention on Human Rights (ECHR).

Unfortunately, the Dayton Accord also incorporated a glaring weakness. The Accord holds human rights to the highest international standard, yet because the extremist nationalist groups had gained power over their political entities through ethnic cleansing campaigns, the Accord drew the political boundaries of the country and created separate entities (and the division of the Federation of Bosnia and Herzegovina into cantons) according to ethnicity. Thus, Bosnian Serbs now control the Republika Srpska; Bosniaks dominate Sarajevo and parts of central Bosnia; and Bosnian Croats secured West Mostar and western Bosnia. By giving the ethnic groups political sway over the regions and yet outlawing discrimination based on ethnicity, the effects of ethnic cleansing are both outlawed and written into the law. The result has been that a "serious commitment by the State [of Bosnia and Herzegovina] to provide support to the institutions that protect these human rights . . . is lacking." This dilemma would give the Human Rights Chamber a nearly impossible task to reconcile.

Cultural Rights as aspirational, but Bosnia has incorporated the treaty as law, and so is legally responsible for guaranteeing, for instance, food and shelter to all of its citizens.


49. See Dayton Accord, supra note 44.


51. Eur. Conv. On H.R. The treaty guarantees the right to life, the right to property, the right to a fair hearing, the right not to be discriminated against, the right to education, the right to freedom of movement and freedom of residence and others. The fourteen other human rights treaties in Bosnia's constitution also govern the Chamber.

52. See Art. I of the Agreement ("The Republic of Bosnia and Herzegovina . . . shall continue its legal existence under international law as a state, with its internal structure as modified herein. . . .") Dividing the country into two entities, with the Republika Srpska controlled by the Serbs [Art i(3)] and Bosniaks and Croats sharing the Federation of Bosnia and Herzegovina. See also Zoran Pajic, A Critical Appraisal of the Dayton Constitution, in HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA: FROM THEORY TO PRACTICE (Wolfgang Benedek et al., 1998) 1, 34 ("Inter-entity boundaries follow, by and large, the frontline established by the war; the current ethnic map of Bosnia and Herzegovina accurately illustrates the policy of enforced expulsion and displacement of people, carried out on ethnic criterium.")


54. This problem would be worsened by the fact that the international community saw the Dayton Accord as the blueprint for the final settlement of the war, while many of the competing parties in the war saw the Dayton process as merely a "way station, a
The eight international members, who are selected by the Committee of Ministers of the Council of Europe, dominate the fourteen-judge chamber. The Council also selects the president of the Chamber, who has been Michele Picard, a French jurist. The other six members are domestic—four from the Federation of Bosnia and Herzegovina and two from the Republika Srpska. The judges are appointed for five-year terms and may be re-appointed.

Although the members are selected according to their nationality, the Chamber is intended to be independent. The international judges are not answerable to the Council of Europe and the domestic jurists do not answer to their respective governments. The judges are obliged to recuse themselves from a case if they have previously participated or have a personal interest in the case. However, a judge who participates in the consideration of a case is obliged to vote on the judgment and may not abstain. When the Chamber was set up under the Dayton Accord, its mandate lasted for five years, until the end of 2000. However, the parties to the Accord agreed in June 2000 to extend its mandate for another year.

In establishing the Human Rights Chamber, the drafters of the Dayton Accord gave it a limited mandate. The Chamber may only decide issues brought before it by a person within Bosnia's physical jurisdiction who is a bona fide victim of a human rights abuse. Before the Chamber can hear the petitioner's case, however, the claimant must first exhaust all effective domestic remedies. Nor may the Chamber hear the case unless the party alleges violations of the international human rights agreements incorporated in the Dayton Accord that occurred after the Accord was signed.
For instance, if someone has lost his job, he has no recourse to the Chamber unless he can prove illegal discrimination.67

While limiting the reach of the Chamber, however, the Dayton Accord incorporated means for the Chamber to be able to deal pragmatically with the political realities on the ground in Bosnia. The Chamber gets around the time restraints if violations occurred before the Accord, but continued after December 14, 1995.68 In addition, in establishing the Chamber, the Dayton Accord included the word "effective" in the requirement for exhaustion of all domestic remedies by an applicant bringing a claim before the Chamber. The inclusion of this key term has allowed the Chamber to respond to claims by applicants that have been mired in administrative and legal obstruction for years with no clear resolution.69

3. Remedies

If the situation requires, the Chamber has the power to issue an injunction before reaching its ultimate judgment.70 If the Chamber finds in favor of the claimant, it can issue a cease and desist order, award monetary damage, order a domestic court or police to take action and even overturn legislation.71 If the Chamber issues such an order and the Federation or some other defendant ignores its obligation, the Chamber then informs the Office of the High Representative (OHR).72 The OHR is responsible for


68. See, e.g., O.R. v. Fed'n of Bosn. & Herz., CH/98/411, Human Rights Chamber for Bosn. & Herz. (Apr. 5, 1999) (decision on admissibility) compiled in HUMAN RIGHTS CHAMBER FOR BOSNIA AND HERZEGOVINA, DECISIONS JANUARY-JULY 1999, 286, 287 (1999) (declining jurisdiction, but ruling that a case would be admissible where the alleged wrongdoing occurred before the cut-off date, but where the court decision from which the applicant appealed was decided after December 14, 1997); Bastijanovic v. Fed'n of Bosn. & Herz., CH/96/8, Human Rights Chamber for Bosn. & Herz. (Feb. 4, 1997) compiled in HUMAN RIGHTS CHAMBER FOR BOSNIA AND HERZEGOVINA, DECISIONS 1996-1997 (1997) (finding the Chamber competent to try the case where the alleged property taking occurred before December 14, 1995, but where “the continuing absence of an effective remedy” continued past that date).

69. Interview with Therese Nelson, Executive Officer, Human Rights Chamber, in Sarajevo, Bosn. & Herz. (Sept. 25, 2001). If the Chamber required all domestic remedies to be completely exhausted prior to filing a claim then a party located in the Federation might have to file claims and appeals with a municipal administrative body, a municipal court, a cantonal court, the Supreme Court, the Human Rights Court, the Constitutional Court of the Federation, and the Ombudsman’s Office of the Federation before the party could file an appeal with the Human Rights Chamber. Thus, requiring the exhaustion of all these administrative processes would delay the resolution of any single case for years. See INTERNATIONAL CRISIS GROUP, DENIED JUSTICE: INDIVIDUALS LOST IN A LEGAL MAZE, supra note 40.

70. See Berg, supra note 55, at 17.


monitoring the domestic government and coordinating the international groups. However, the Dayton Agreement never provided the Chamber with enforcement power of its own. As such, the Human Rights Chamber must rely on other institutions to enforce its decisions, and the Parties have proved puissant at subverting the Chamber's decisions.

II. The Human Rights Chamber in Practice

A. Overview

Dominated by foreign jurists, the Human Rights Chamber rarely sides with the government, and yet domestic authorities in Bosnia and Herzegovina are obliged to obey its rulings. The Chamber's legal ability to enforce a rule of law in the face of anarchy or ethnic warfare has attracted the attention of diplomats and other international law experts who regard the Human Rights Chamber as a global precedent for future international humanitarian interventions. Yet its critics have accused the Chamber either of exercising heavy-handed neo-colonial rule, or, on the other hand, of possessing broad powers to achieve justice and fearing to use them.

Indeed, for the first three years of the Chamber's operation, its example was unimpressive. International peacekeeping groups declined to back up the Chamber's rulings with legal or police action. At the same time, Federation and domestic authorities routinely skirted their obligation to obey Chamber rulings, while an increasing flood of claimants backlogged the Chamber's docket. Worse, minorities continued to suffer human rights violations in the form of property theft, education and employment.

73. Annex 10, Article I extends the OHR's mandate only to monitoring and discussion with international and domestic authorities. It strictly prevents the OHR from ordering international troops into action. Annex 6, Article V provides that when the OHR learns of a human rights violation, "appropriate steps" include calling the matter to the attention of the Parties and reporting to the United Nations.


78. Id. at 368.


80. UNITED NATIONS HIGH COMMISSIONER ON REFUGEES, UNHCR GLOBAL REPORT 2000 388 (2000) (reporting that the Chamber now has more than 2,000 cases on its docket).


ment discrimination, and often outright violence. However, with the end of the international presence in Bosnia now on the horizon, the last two years have seen a dramatic shift in both the pace of Chamber decisions, and the international, domestic, and popular responses to them.

B. The Early Years of Impotence

The first years after a peace agreement ending a civil war is signed are usually fraught with improvisation and tension; the parties to the agreement tend to seize any opportunity to "obstruct, revise and sabotage" the agreement. The Dayton Accord was no exception. The local and national authorities resisted implementation of the Accord where they could—blocking minority returns and seeking to solidify the gains made during the civil conflict. As a result, the Chamber found itself beset on every side with obstacles to establishing a rule of law. Property crimes and bureaucratic sabotage formed the major challenge.

If the "rule of law" includes both legal process and legal content, then Bosnia is lacking, particularly in the former. Bosnia—like many of the states of the former Yugoslavia—has had no experience with a democratic legal system or an independent judiciary. As a result, Bosnia suffers from having a large gap between the modern legislation contained within the Dayton Accord and the implementation of these laws. Instead, the legal system in postwar Bosnia allows judicial and administrative authorities to "wantonly victimize and abuse citizens." The legal system in postwar Bosnia fails to meet the norms recognized in other industrialized countries, including other post-communist countries of Europe. Particularly lacking is a form of rule of law that enshrines the rights of the individual to enjoy procedural notions of fair, consistent treatment and predictability.

The discrimination in some regions of Bosnia was so entrenched that reports found that courts were created and maintained not only to protect those of the same ethnicity, but also to serve as a wall of prejudice to block the rights of those of a differing ethnicity—a process of discrimination that has formed a component of Bosnian justice since the war years. Extremist authorities in some areas had openly refused to accept the jurisdiction of the Federation Supreme Court, meaning in effect that there was no effective legal appeal or rule of law beyond these same hard-line officials.

85. See Nelson, supra note 69.
86. See Cousens, supra note 75, at 804.
87. See Waters, supra note 12, at 562.
89. International Crisis Group, Denied Justice, supra note 40, at 1.
90. Waters, supra note 12, at 561.
92. Id.
93. Id. at 19.
and their policy decisions.\textsuperscript{94}

The obstruction and refusal to accept the rule of law extended beyond the court system. "Administrative silence" has, in the words of one report, "become normal in the daily work of public administration at all levels."\textsuperscript{95} Municipal officials have used administrative silence to obstruct the return of minority refugees and to block them from filing their property claims.\textsuperscript{96} To obstruct refugees further, local officials have intentionally manipulated or misread laws and regulations. For instance, although Article 1, Section 4 of Chapter 1 of the Dayton Accord expressly enshrines refugees' right of return, local officials argued that the section nonetheless allowed them to give primacy to displaced persons of their own ethnicity over the rights of refugees of another ethnicity.\textsuperscript{97} The officials made this argument despite the fact that the right of return of all citizens is clearly delineated elsewhere in the Dayton Accords—and is one of the basic tenets of the agreement—and forms part of the Bosnian Constitution.

The United Nations Mission for Bosnia and Herzegovina noted that the failure of municipal authorities to apply property laws,\textsuperscript{98} as well as their tendency to discriminate against minorities within the judicial process, resulted in a denial of justice and lack of execution of court orders.\textsuperscript{99} In fact, courts throughout Bosnia have obstructed citizens in the exercise of their rights through a variety of means, including the failure to schedule hearings on cases, or to hand down decisions in cases, as well as through the issuing of illegal rulings and decisions to delay cases involving the rights of minority parties.\textsuperscript{100} In some areas, courts have acted in concert

\textsuperscript{94} {INTERNATIONAL CRISIS GROUP, supra note 79, at 3; EUROPEAN STABILITY INITIATIVE (ESI), RESHAPING INTERNATIONAL PRIORITIES IN BOSNIA AND HERZEGOVINA PART ONE: BOSNIAN POWER STRUCTURES 8 (Oct. 14, 1999) available at www.esiweb.org/pages/reports.html [hereinafter “ESI”].}

\textsuperscript{95} See ESI, supra note 94. Commentators use the term “administrative silence” in Bosnia to refer to what is known in American legal practice as administrative nonfeasance. In Bosnia, administrative silence has many aspects. In particular, the term encompasses the practice by authorities and administrative organs of not denying claims, but rather merely refusing to answer or acknowledge a claim or appeal. This results in an inability of the applicant to have his or her case or claim reviewed by other officials.

\textsuperscript{96} {UNITED NATIONS MISSION IN BOSNIA AND HERZEGOVINA (UNMIBH), REPORT OF THE SECRETARY-GENERAL ON THE UNITED NATIONS MISSION IN BOSNIA AND HERZEGOVINA (September 16, 1998).}

\textsuperscript{97} Local officials often employ this rationale to explain why they cannot evict displaced persons from the property of minority refugees who legally own the apartments and houses.


\textsuperscript{99} Id. See ESI, supra note 94, at 6.

\textsuperscript{100} See INTERNATIONAL CRISIS GROUP, RULE OVER LAW: OBSTACLES TO THE DEVELOPMENT OF AN INDEPENDENT JUDICIARY IN BiH 13 (July 5, 1999). The Deputy Program Manager of the ARC Legal Aid Program, Bayro Avdic, noted in an interview that of all the cases the organization had filed with local courts in 2000 and 2001 not a single hearing had been scheduled by judges in any of the cases. All of the cases involved representation of minority parties seeking to reclaim pre-war property expropriated and denied to them during the conflict and post-conflict period. Interview with Bayro Avdic, Deputy
with extremist elements, handing down decisions that stripped individuals of their property rights in violation of both the facts on the ground and the ECHR.101

If the underlying goal of those behind the conflict was the accumulation of resources and property, then it could be expected that these same actors would resist efforts to return control of these resources to their lawful owners. Indeed, this has been the case in Bosnia since the signing of the Dayton Accord. Minorities seeking to reclaim property, jobs, and social benefits lost during the war have faced a wall of obstruction by local officials. During the war, all sides to the conflict enacted sets of property laws that at their core were designed to exclude minorities and block the return of other ethnic groups.102 Thus, politics, and not the rule of law, governs the return process.103

1. Property Rights Violations
(a) Background

When workers' housing went up in the 1960s and 1970s, socialist Yugoslavia gave tenants a guarantee of lifetime tenancy—a property right that tenants could then pass to their children. This guarantee became a contract during the post-Cold War effort to privatize.104 Such a right amounts to a legal possession and is protected under the ECHR.105 However, during the ethnic cleansing and violence of the civil war, millions fled their homes. Many escaped to regions controlled by their ethnicity and moved into apartments that minorities of that region had abandoned.106 With half of Bosnia's capital stock damaged or destroyed during the war,107 the refugees made the abandoned apartments their permanent resi-

Program Manager, ARC Legal Aid Office, Mostar, Bosnia and Herzegovina (Sept. 21, 2001). In one Chamber case, a government agency explained that it did not provide information critical to settling an employment discrimination claim filed by a former employee for over five years because the agency's building was undergoing renovation and the agency supposedly did not have access to the needed documents. The Chamber noted that despite national law requiring all employment cases to be handled with urgency, the lower court had accepted this excuse for more than five years. See Cuturic v. Republika Srpska, CH/98/1171, Human Rights Chamber for Bosn. & Herz., para. 11, 35 (Oct. 8, 1999) compiled in HUMAN RIGHTS CHAMBER FOR BOSNIA AND HERZEGOVINA, DECISIONS AUG.-DEC. 1999.

101. See INTERNATIONAL CRISIS GROUP, RULE OVER LAW, supra note 100, at 22-23.
102. See Waters, supra note 12, at 538-50.
103. See INTERNATIONAL CRISIS GROUP, REUNIFYING MOSTAR: OPPORTUNITIES FOR PROGRESS 38 (Apr. 19, 2000). See also ESI, supra note 94.
105. See M.J. v. Republika Srpska, CH/96/28, Human Rights Chamber for Bosn. & Herz., para. 32 (Nov. 7, 1997) compiled in HUMAN RIGHTS CHAMBER FOR BOSNIA AND HERZEGOVINA, DECISIONS ON ADMISSIBILITY AND MERITS, 1996-1997 ("an occupancy right is a valuable asset . . . which constitutes a 'possession' within the meaning of Article 1 as interpreted by the European Commission and Court").
106. See INTERNATIONAL CRISIS GROUP, REUNIFYING MOSTAR, supra note 103, at 37.
rences under the protection of partisan leaders. At the war's end, all sides agreed to allow conditions to return to the status quo ante. All refugees were to be allowed to return to their rightful homes and former lives. But, the Dayton Accord also provided that most areas controlled by ethnic groups during the civil war would remain under those groups' control after the war. In order to remain in control of their areas, the ethnic leaders could not allow their voting bloc to become diluted by other ethnicities. To exclude the other ethnicities, the partisan leaders had to prevent their legal right to return to their property. Thus, like the war itself, property was the main issue the Chamber confronted when it opened its doors in Sarajevo in 1996.

(b) The JNA Cases

The first test came quickly. Within a month of signing the Dayton Accord and agreeing to return all property to its former owners, the Federation signaled its insincerity when it passed a law taking back all apartment sales made under a 1991 privatization effort by the Yugoslav National Army (JNA). The move deprived thousands of Bosniaks, Croats and Serbs of their property, but because it was a blatant violation of the ECHR and other international human rights conventions, every victim had recourse to the Chamber. Faced with victims flooding its dockets, the Chamber nevertheless responded by answering each claim individually, clogging its resources for months. And despite the Chamber's insistence that the Federation's law be repealed, the Federation ignored

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108. See, e.g., Medan, supra note 71.
109. Dayton Accord, supra note 44, at Annex B.
110. See generally Szasz, supra note 11.
111. Recall that voters in Bosnia overwhelmingly vote with their ethnic groups. See discussion, supra Part I.B.
112. See Human Rights Chamber for Bosnia and Herzegovina, Annual Report 1999 § 1 available at http://www.gwdg.de/~jvr/hrch/99annrep.html ("The vast majority of applications received by the Chamber relate to housing.").
113. See Kvesevic v. Fd'n of Bosn. & Herz., CH/97/46, Human Rights Chamber for Bosn. & Herz., para. 21 (Jan. 16, 1998) compiled in Human Rights Chamber for Bosnia and Herzegovina, Decisions and Reports 1998. Two factors underlie refusals by the Federation and Republika Srpska governments to address legally the JNA cases. First, the parties seeking the return of their property are typically minorities who served in an opposing militia during the war (or are at least viewed as such). Second, the Ministries of Defense in the Republika Srpska and the Federation prefer to reserve these former JNA properties for their own officers and staff. Avdic, supra note 100.
114. See Palmer & Posa, supra note 77, at 371-72.
117. Palmer & Posa, supra note 77, at 372.
118. Medan v. Bosn. & Herz. and Fed'n of Bosn. & Herz., CH/96/3, Human Rights Chamber for Bosn. & Herz., para. 67, 77 (Feb. 4, 1997) (decision on admissibility) ("It is the responsibility of the Federation to take the necessary legislative or administrative action to render ineffective the annulment of the applicants' contracts which was imposed.").
the order.119

While the Chamber dickered with the JNA’ cases, the widespread assault on property rights continued through 1996 and 1997. A mob prevented 250 Serb refugees from visiting their former homes in Drvar; after they departed, 35 of the homes were burned down.120 In Mostar, extremists continued their policy of ethnic cleansing in the face of the international community.121 When the United Nations High Commissioner on Refugees pressured Bosnian Serbs to allow Bosniaks to visit their old homes in Prijedor, 96 homes and 3 mosques were burned down.122 After the Chamber ordered the Serbian mayor of Banja Luca, the capital of the Republic of Srpska, to allow three destroyed mosques to be rebuilt, the mayor refused to comply.123

In the face of the open onslaught against the Agreement, the international community did little to back up the Chamber.124 After the Chamber informed the OHR of the Banja Luca mayor’s intransigence, the OHR instructed the mayor to comply, an order that the mayor also ignored.125 The OHR also directed the Federation to roll back its JNA legislation, but the Federation ignored that order.126

2. Bureaucratic Sabotage

The Parties to the Agreement proved themselves adept at undermining the Chamber in other ways. First, the Federation cut off the Chamber’s funding. Under the Dayton Accord, the Parties agreed to be the sole source of the Chamber’s funding, formally making the Chamber a domestic institution.127 But in the first two years, the Federation never included the Chamber in its budget, claiming it lacked the money to do so.128 At the

122. International Crisis Group, Going Nowhere Fast: Refugees and Internally Displaced Persons in Bosnia and Herzegovina 35 (May 1, 1997).
124. See Palmer & Posa, supra note 77, at 373.
125. Human Rights Chamber for Bosnia and Herzegovina, supra note 123, § 1.
126. Id.
128. See Human Rights Chamber for Bosnia and Herzegovina, supra note 116, § V.
same time, however, nearly $1 billion in public funds apparently disappeared into corrupt pockets.129 With no money coming domestically, the Chamber turned to the international community for help, but here also, it found little assistance.130 Faced with few resources, the Chamber was hard-pressed to operate in its first two years; its President resigned as a result.131

Similarly, the Parties shorted the officials obliged to carry out the Chamber's rulings. The Republika Srpska boycotted the Chamber altogether, while the Federation simply failed to appoint a monitor to oversee the rulings.132 In 1998, the Federation finally appointed a monitor, but provided no money to deal with the cases.133

The Parties also bogged down the Chamber's procedures. In each case before it, the Chamber is required to give every party a chance to respond to the other side.134 The Federation responded to a case against it in only five of forty-eight cases.135 When it did, it usually submitted nothing in advance, but instead showed up at the public hearing and introduced allegations for the first time.136 Often, the Federation would request additional time to submit responses and then would fail to follow-up on these requests once granted.137 Since the Chamber must wait for the other Party to respond to those allegations, the procedure could be delayed for months.138 Likewise, the Republika Srpska delayed proceedings against it by routinely missing deadlines.139

With all of these tactics, the Parties succeeded in their goal.140 Despite "the clear obligation on the Parties" to implement the Chamber's decisions, "by the end of 1998 very few of its decisions had been fully implemented by the State and Entity governments."141 The Chamber was left to forlornly conclude: "This goal [of developing a body of case law] will remain purely theoretical if the State and Entity authorities do not also work towards it."142

129. HUMAN RIGHTS WATCH, WORLD REPORT 2000 259 (2000) ("enormous amounts of public funds appear to have been misused, enriching the ruling political elite rather than benefiting the Bosnian population").
130. See HUMAN RIGHTS CHAMBER FOR BOSNIA AND HERZEGOVINA, supra note 116, § V.
131. id.
132. HUMAN RIGHTS CHAMBER FOR BOSNIA AND HERZEGOVINA, supra note 123, § IV.
133. id.
135. HUMAN RIGHTS CHAMBER FOR BOSNIA AND HERZEGOVINA, supra note 119, § IV(E).
136. id.
138. id.
139. id.
140. See Palmer & Posa, supra note 77, at 368.
141. HUMAN RIGHTS CHAMBER FOR BOSNIA AND HERZEGOVINA, supra note 119, §I.
142. id.
C. The Chamber Comes into its Own

Faced with the Parties' antagonism, the international forces ratcheted up the pressure. The Peace Implementation Council, which oversees the international operation in Bosnia, announced in 1998 it would condition future aid on the Parties' cooperation and authorized the OHR to take a tough stance against hostile factions. In 1999, the OHR quickly began to back up the Chamber. When the Federation still refused to rescind its JNA law, the OHR implemented a law of its own rescinding the old measure. Even more controversially, the OHR fired the mayor of Banja Luka for ignoring the Chamber's order to allow mosques to be rebuilt. The Office also fired twenty-two other Bosnian officials, in part for their obstruction of Chamber decisions in favor of refugees.

1. The Chamber's New Strategies to Deal with Property Rights

At the same time that the international forces gave the Chamber stronger support, the Chamber began to set sweeping precedents to help refugees. First, it ruled that a violator could be fined punitive damages. In fact, the Chamber has increasingly levied financial penalties against the entities for the failure of local officials to properly implement the law. The Chamber caseload in 2000 alone had the potential to present financial penalties between DM 1.5 million to DM 100 million to the entity governments.

(a) Case Bundling and Resolution of the JNA Cases

To tackle the backlog of cases, the Chamber began treating cases with similar facts as quasi-class action cases, bundling them into one decision. The Chamber's goal in selecting these decisions was to establish legal precedents, forcing local officials to comply with the law. The Chamber also began to work with legal representatives of applicants, agreeing to accept cases "bundled" together as similar quasi-class action suits in order to streamline the administration of justice.

144. See Human Rights Chamber for Bosnia and Herzegovina, supra note 119, § IV.
145. Human Rights Chamber for Bosnia and Herzegovina, supra note 112, § I.
149. Interview with Therese Nelson, Executive Officer at the Human Rights Chamber and Peter Kempees, Registrar, Human Rights Chamber, in Sarajevo, Bosn. & Herz. (Sept. 2000). Bundling allowed the Chamber to handle many cases with the similar facts and legal claims in a more efficient and timely fashion. The new, more streamlined procedure also allowed legal representatives to present evidence of widespread discrimination in a more compelling fashion.
property cases stalled on the Chamber's docket. In Medan, Podvorac, and Grbavac, the Chamber took similar cases lodged between November 1997 and April 1998 and ruled that the Federation could not deprive refugees of homes they had purchased before the war. A similar set of bundled cases followed several months later. This formed a new pattern of action by the Chamber—to bundle sets of cases dealing with the same legal issue or geographical area, and follow up with a second or third set of similar cases when the first set of decisions failed to produce the required action by government officials.

Recognizing the high stakes now attached to the decisions, the Parties began responding to the complaints against them. For instance, when the Chamber began asserting rigid deadlines for observations, the Parties responded respectfully. In doing so, the Chamber nearly quadrupled its decisions in 1999, with a total of 206 decisions, many of them precedent-setting case law.

(b) The Implementation of CRPC Decisions

In another important step in establishing the rule of law, in 2000 the Chamber began to deal with the large number of Commission on Real Property Claims (CRPC) decisions filed with the Chamber. The Dayton Accords stabled the CRPC to serve as a forum for parties to establish legal

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154. The Chamber hoped that by bundling these cases it could hasten the enforcement of the JNA decisions. If local authorities did not follow these decisions then the Chamber was prepared to revisit the JNA issue again in future sets of cases. Nelson, supra note 69. In Karan v. Fed'n of Bosn. & Herz., the Chamber extended its class-action style decisions beyond the property cases to include detention cases. See Karan v. Fed'n of Bosn. & Herz., CH/99/1992, Human Rights Chamber for Bosn. & Herz. (Nov. 4, 1999) compiled in HUMAN RIGHTS CHAMBER FOR BOSNIA AND HERZEGOVINA, DECISIONS AUG.-DEC. 1999 (1999).
156. The first of the cases bundled by geography came from the municipality of Gradiska in the Republika Srpska. See Pletilic v. Republika Srpska, CH/98/659, Human Rights Chamber for Bosn. & Herz. (Sept. 10, 1999) compiled in HUMAN RIGHTS CHAMBER FOR BOSNIA AND HERZEGOVINA, DECISIONS AUG.-DEC. 1999 (1999). This set was followed by a second set of cases from the same municipality. See Dzidarevic v. Republika Srpska, CH/98/1124, Human Rights Chamber for Bosn. & Herz. (June 9, 2000).
157. See Nelson, supra note 69.
158. HUMAN RIGHTS CHAMBER FOR BOSNIA AND HERZEGOVINA, supra note 119, § IV(C)(7).
159. See HUMAN RIGHTS CHAMBER FOR BOSNIA AND HERZEGOVINA, supra note 112, § 1.
ownership of property. However, even though CRPC decisions are final and legally binding, local officials often refused either to acknowledge their binding nature or to implement the decisions as required under the law.\footnote{160}{See Nelson, supra note 69.}

Given the final nature of CRPC decisions, the Chamber reasoned that one legally binding decision should be sufficient to resolve property disputes, and thus refused to issue further decisions.\footnote{161}{See Nelson, supra note 69. See also Human Rights Chamber for Bosnia and Herzegovina, supra note 119, at § 1.}

This view changed in 2000, though, following the promulgation of a new law by the Office of the High Representative defining a failure to implement a CRPC decision as a violation of law.\footnote{162}{Referred to as the Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (Oct. 27, 1999), available at http://www.crpc.org.ba/new/download/en/laws/RSCRPCENG.pdf.}

Because administrative silence toward a CRPC decision now constituted a continuing violation, the Chamber could better address problems with implementing the decisions.

Using the quasi-class action strategy the Chamber found that the Federation and its local officials had failed to properly implement CRPC decisions, and ordered the return of property to minority complainants.\footnote{163}{The Chamber specifically found that delay tactics and misapplication of the law by local officials constituted a violation of a citizen's rights under the ECHR and the constitution and laws of Bosnia and Herzegovina. See, e.g., Bojkovski v. Bosn. & Herz. and Fed’n of Bosn. & Herz., CH/97/73, Human Rights Chamber for Bosn. & Herz. (Apr. 6, 2001); Petrovic v. Fed’n of Bosn. & Herz., CH/00/6142, Human Rights Chamber for Bosn. & Herz. (Mar. 9, 2001); Leko v. Fed’n of Bosn. & Herz., CH/00/6144, Human Rights Chamber for Bosn. & Herz. (Mar. 9, 2001); Lazarevic v. Fed’n of Bosn. & Herz., CH/00/3708, Human Rights Chamber for Bosn. & Herz. (Mar. 9, 2001).}

And in a shift from previous years, by September 2001, the Federation was fully complying with the Chamber decisions, returning the property to its rightful owners and paying the Chamber's mandated financial penalties.\footnote{164}{Human Rights Chamber for Bosnia and Herzegovina, Human Rights Chamber Decisions on Admissibility and Merits: Status of Compliance (2001) (internal chamber document on file with author). In general all Chamber decisions involving property matters generally provide for the affected state parties to comply with all ordered remedies within ninety days. Though not all the parties in the cases cited above have fully complied with the Chamber's orders, as of September 2001 all the plaintiffs in these cases had received their money and property. Avdic, supra note 100; Nelson, supra note 69.}

2. Poropat and the Foreign Currency Accounts Cases

On June 9, 2000, the Chamber held that it had the power to order the legislature to take action to protect citizens' property, including foreign currency deposits established by citizens of Bosnia and Herzegovina in the former Yugoslavia before the civil war.\footnote{165}{Poropat v. Bosn. & Herz. and Fed’n of Bosn. & Herz., CH/97/48, Human Rights Chamber for Bosn. & Herz. (June 9, 2000). See also, Sp.L. v. Republika Srpska, CH/98/1019, Human Rights Chamber for Bosn. & Herz. (Apr. 6, 2001).}

Citizens had been allowed to deposit foreign currency into special foreign currency accounts in banks within the country. A critical shortage of foreign currency in the late...
1980s and early 1990s saw account holders increasingly restricted in their access to their foreign currency accounts. Much of the foreign currency in these accounts disappeared before and during the war, used either to purchase arms for the conflict or “secretly deposited in foreign banks abroad.”

The loss of these savings represented a huge capital transfer from the general population to those with the ability to control and invest these assets abroad during the war. One expert cited in Poropat, a Central Bank of Bosnia official, calculated that the pre-war savings of the population of Bosnia and Herzegovina was “three times higher than the current budget of the Federation of Bosnia and Herzegovina,” one of the two entities comprising the state of Bosnia and Herzegovina. This expert concluded that full reimbursement of the foreign savings accounts would lead to the economic collapse of the country.

Not surprisingly, then, the government of Bosnia moved slowly to deal with the foreign currency deposits. In some cases where citizens did manage to obtain a court decision ordering a successor bank to release the account reserves to the account holder, the government simply ignored the court order. In 1997 and 1998, the Federation of Bosnia and Herzegovina effectively denied account holders all access to their accounts by enacting legislation requiring all claims based on these foreign currency accounts to be resolved through the process of privatization of all socially owned property in the country.

The “Law on Settlement and Claims” allowed access to the value of these accounts primarily through the privatization of socially owned apartments in the country. Under this law, the balance of all foreign currency accounts listed in the financial records of banks were to be recreated in “Unique Citizens Accounts,” the value of which would be issued to the account owner in the form of a certificate. As part of the privatization process, these certificates could then be used to purchase apartments or interest in public buildings or enterprises.

167. Id. para. 41.
168. As of March 31, 1991 the number of foreign currency accounts in Bosnia was estimated to be approximately 660,000, with about 240,000 of these accounts containing amounts greater than DM 100. The total value of funds in these accounts was estimated to be approximately DM 2.36 billion. As of March 8, 1999, 75,077 depositors had registered claims for a total of DM 696 million. Id. para. 82 (citing Office of the High Representative data provided to the Chamber).
169. Id. para. 42.
170. Id.
173. Id. para. 1-3.
174. Id. para. 3.
The Poropats and the other applicants filed claims stating that they wanted access to their accounts in cash. Many of the applicants to the Chamber noted that they already owned their own homes, and were thus ineligible to participate in the privatization process of socially owned apartments.\(^{175}\) Shut out of this process, the applicants noted that they would be consigned to sell their certificates on the secondary market where they could only recoup approximately five percent of the certificates’ value.\(^{176}\)

In reaching its decision in *Poropat* the Chamber balanced the greater good of society against the rights of its citizens.\(^{177}\) The Chamber ultimately found that the government had interfered with the rights of its citizens.\(^{178}\) To strike a fair balance between the general interest in a stable economy and the rights of citizens such as the Poropats and their fellow foreign currency account holders, the Chamber ordered the Federation of Bosnia and Herzegovina to amend its privatization process.\(^{179}\)

The Chamber singled out several aspects of the government’s actions it found troubling. The Chamber was particularly disturbed that the government’s decisions had diminished the value of privatization certificates by giving greater value to cash payments over privatization certificates at the same time that it sought to use these certificates as compensation for the missing financial reserves of its citizens.\(^{180}\) The Chamber noted that the result—an enormous capital transfer from the citizens to the government—constituted a failure of the government to fulfill its responsibility to observe and protect the rights of its citizens.\(^{181}\)

Thus, the Foreign Currency Accounts cases provided a critical watershed in which the Chamber defined and mandated the proper role of the

\(^{175}\) id. para. 185.

\(^{176}\) id. para. 5, 189.

\(^{177}\) id. para. 178-93.

\(^{178}\) id. para. 181-92.

\(^{179}\) id. para. 204. The Chamber was particularly concerned with the fact that the use of the certificate program transformed secure currency savings into forms of property, the value of which was uncertain, and thereby forced the account holders to become investors against their will. The Chamber also noted that those parties who did choose to participate in the privatization process with their certificates would not enjoy the same discounts provided to those who paid in cash and therefore they were being provided with a certificate which did not enjoy the same value as money. *Id.* para. 60, 187-188. Finally, the Chamber was also concerned over the two-year time limit on the validity of the certificates, given that the slow pace of privatization in Bosnia hindered the ability of citizens to utilize their certificates. *Id.* para. 186.

\(^{180}\) id. para. 181-93. The Chamber was also troubled by evidence that senior government officials and others in the national and international community shared an implicit understanding that the privatization process was to result in international interests purchasing the most financially attractive Bosnian enterprises, with certain Bosnian business and political persons with the financial means purchasing many of the remaining enterprises. *Id.* para. 72-73.

\(^{181}\) Id. para. 181-93. As of late 2000, the Poropat decision remains to be fully implemented. This is primarily due to the fact that the Constitutional Court of Bosnia subsequently invalidated one of the national laws the Chamber relied upon in its decision. The impact of the Constitutional Court’s decision on the Poropat decision remains unclear. Nelson, supra note 69.
government and established itself as an accountability check on government abuses.

3. Discrimination and the Chamber

The Chamber has also had a deep impact in the realm of discrimination and access to economic and social benefits. In one of its early decisions, the Chamber established that dealing with discrimination forms a central purpose of the Dayton Accord and the institutions created in the GFAP.\textsuperscript{182} In its decisions dealing with discrimination claims, the Chamber has sought to cut through the morass of quasi-legal acts and leftover wartime legislation in order to establish guidelines to handle discrimination claims better, particularly those relating to employment and social benefits.

In one prominent discrimination case—Zahirovic\textsuperscript{183}—the Chamber set clear guidelines for appropriate government action. Zahirovic involved a state-owned company that dismissed a worker during the war based on his ethnicity.\textsuperscript{184} Following the war, the worker, along with a number of his fellow workers who had suffered the same fate, sought removal from the wait-lists on which they had been placed during the war\textsuperscript{185} and sought to reclaim their jobs with their former employer.\textsuperscript{186} Their employer and the local officials denied the workers’ demands, justifying their actions based upon wartime regulations that provided a legal basis for ethnic cleansing, and the postwar economic situation in the country.\textsuperscript{187}

After the company refused to move them to active employment status, Zahirovic and the others filed suit in municipal court in 1997, seeking reinstatement to their jobs.\textsuperscript{188} The court rejected the suit in December 1997


\textsuperscript{184} Id. para. 1.

\textsuperscript{185} Id. The use of “waiting lists” was a common development in the employment sector during the conflict of the 1990s. \textit{See id.} para. 73-75. The term waiting lists refers to the practice for handling excess employees during the wartime and postwar years in Bosnia. \textit{Id.} para. 74. To deal with employment issues arising out of the war and the related ethnic cleansing, legislation was passed in all three wartime entities to provide a system to resolve the status of these workers. \textit{See, e.g. id.} (citing \textit{The Law on Working Relations with Special Provisions for Wartime Circumstances}, art. 7, para. 1, \textit{Official Gazette of the Republic of Bosnia and Herzegovina}, Nov. 23, 1992, no. 21/92). These lists provided workers who had been placed on waiting lists with certain legal rights, including nominal payment of wages and certain social benefits, as well as rights of reemployment. \textit{See Zahirovic v. Fed’n of Bosn. & Herz., CH/97/67, Human Rights Chamber for Bosn. & Herz.}, para. 73-75 (July 8, 1999).

\textsuperscript{186} Zahirovic v. Fed’n of Bosn. & Herz., CH/97/67, Human Rights Chamber for Bosn. & Herz., para. 73-75 (July 8, 1999).

\textsuperscript{187} Id. para. 83. In particular, local officials relied upon Article 5 of the Municipal Decision on the Way of Implementing and Executing the Working Duty in the Livno Area, issued June 2, 1992. \textit{See id.}

\textsuperscript{188} Id. para. 1.
without holding any hearings on the case. In response to this decision, the plaintiffs then filed a second suit in January 1998. The case then sat dormant until the local court began to hold hearings in the spring of 1999, shortly before the decision of the Chamber in July 1999.

The applicants in Zahirovic claimed that their treatment by their employer and local officials constituted discrimination on the basis of their ethnic or religious background. To examine this claim the Chamber consulted evidence from a number of sources, including field officers from the Organization for Security and Cooperation in Europe (OSCE), the Office of the Human Rights Ombudsman for Bosnia, the European Commission Monitoring Mission, as well as from national human rights activists. This evidence documented the government's efforts to block applicants from reclaiming their jobs. Specifically, the evidence included statements that the Governor of the Canton had ordered judges not to hold any hearings in employment discrimination cases where a Bosniak or Serb was the plaintiff and that any hearings actually held were only to be done for the purposes of assisting in obscuring the discriminatory practices underway and deflecting the pressure of the international community. The Chamber found that the evidence demonstrated discriminatory treatment by officials based on ethnic or religious background, and that this was a violation of law that lacked any justification. The Chamber then ordered Mr. Zahirovic reinstated and compensated for losses he suffered during his attempts to reclaim his job.

The Chamber has also addressed discrimination based upon religious practice or identification, finding that local officials have used local courts and administrative procedures to deny citizens the ability to practice their religion. In doing so, the Chamber has ruled that merely cloaking discriminatory actions by using legal administrative processes is unlawful if the purpose of the procedures is to discriminate against citizens based on their religion or ethnicity. Thus, in one case, the Chamber struck down a local municipality's order, which sought to block the use of a Muslim cemetery and force a citizen to exhume the body of his wife from this cemetery and

189. Id. para. 29. In its decision, the court cited the suit as being incomplete in not providing what it termed necessary information regarding the names and addresses of the plaintiffs, along with other information including evidence and information about the representation of the plaintiffs. Id.

190. Id. para. 30.
191. Id. para. 33-34.
192. Id. para. 2, 26-30.
193. See id. para. 35-72.
194. Id. para. 37, 57.
195. Id.
196. Id. para. 130-31.
197. Id. para. 130-36.
198. Id. para. 147-53.
re-bury her in a non-existent cemetery. 199 In a later series of cases, the Chamber ruled that bulldozing a set of mosques and subsequently building a parking lot on the land was illegal and a violation of the rights of Muslim citizens. 200

The Chamber again found that such a discriminatory interference with the applicants’ rights could not be justified and was not in accordance with the public interest. 201 The mere fact that local administrative organs authorized the destructions did not prevent the actions from being discriminatory. 202

The Chamber also has provided guidance as to what constitutes acceptable government behavior in regulating its citizens’ access to social benefits. Secerbegovic 203 deals with claims that the government had discriminated against citizens by issuing a decree that cut their postwar pensions to one-half of the level of their pre-war JNA pensions. 204

In its decision, the Chamber compared the government’s treatment of JNA pensioners to its treatment of other groups of pensioners. While the JNA pensioners were receiving less money than similar pensioners of the wartime Army of RBiH and Army of the FBiH, the Chamber noted, the JNA pensioners were still receiving more money than most pensioners in postwar Bosnia. 205 The Chamber also noted that the JNA pensioners had not fought in the war, as had postwar pensioners of the Army of the Republic of Bosnia and Herzegovina and the Army of the Federation of Bosnia and Herzegovina. The Chamber also found that as the government entities of

204. Id. para. 1. All applicants in these cases had been officers in the pre-war Yugoslav National Army who had retired prior to 1992. After the war the new government issued guidelines that stated that pensioners of the former JNA would receive a new pension that was fifty percent of the pre-war pension. Id. This decree only affected former JNA pensions and did not have any impact on the pensions of civilian pensions or the pensions of former members of the Armies of the Republic of Bosnia and Herzegovina or the Federation of Bosnia and Herzegovina. Id. para. 63.
205. Id. para. 20.
Bosnia had inherited the JNA pensioners from the former “SFRY,” the JNA pensioners were in a legally different situation than general pensioners in Bosnia. The Chamber found the setting of different pension levels in this case to be a reasonable balancing of the public interest and the private rights of citizens of Bosnia.\textsuperscript{206}

Thus, the Chamber found no discrimination and no unacceptable interference with any property or other right of the JNA pensioners. In so finding, the Chamber further expounded a type of acceptable balancing between the public interest and private rights by a government pursuing its public duties.

III. The Impact of the Human Rights Chamber on the Rule of Law in Bosnia

When the eight European judges landed in Sarajevo in 1996 to begin serving on the Chamber, they encountered a judicial system that had literally been bombed to destruction.\textsuperscript{207} Since the Chamber was the first of its kind, it had no body of law upon which to build.\textsuperscript{208} It took several years to lay the groundwork for an efficient forum.\textsuperscript{209} Most of the judges worked only part-time, meeting once a month, with no system in place to enforce their official decisions. Worse, the backlog of cases had piled so high, it would have taken ten years to clear the docket.\textsuperscript{210} Further, the Chamber faced inadequate financial support, a problem with which the Chamber continues to struggle.\textsuperscript{211} Despite these hardships, the Chamber has slowly gained an increasingly important role in the implementation of the rule of law in Bosnia and Herzegovina.

Partly as a result of the increasing effectiveness of international efforts, in 1999 many refugees watching from afar decided the moment had arrived for them to return. Record numbers of refugees returned to Bosnia in 1999, and even more returned in 2000.\textsuperscript{212} To deal with the flood of new complaints, the Parties agreed to extend the Chamber’s mandate.\textsuperscript{213} At the same time, voters in Bosnia began to back moderate political leaders, with the result that in many areas political parties calling for unity now

\textsuperscript{206} See id. para. 95-99.
\textsuperscript{207} See Nelson, supra note 69.
\textsuperscript{208} However, the Chamber relies on the European Court of Human Rights for advisory power. See EKKEHARD STRAUSS, The Jurisdiction of the Human Rights Chamber in Selected Areas of Human Rights Violations, in THE HUMAN RIGHTS CHAMBER FOR BOSNIA AND HERZEGOVINA, A HANDBOOK FOR PRACTITIONERS 41, 64 (2000).
\textsuperscript{209} See Nelson, supra note 69.
\textsuperscript{210} See HUMAN RIGHTS CHAMBER, supra note 53.
\textsuperscript{211} The Chamber received only 79% of its requested budget in 2000. In addition, the government of Bosnia and Herzegovina continues to fail to fully fund its obligations to the Chamber. In 2000, the government allocated KM 400,000 to the Chamber, a figure that is approximately ten percent of the overall budget of the Chamber. However, only KM 250,000 was actually provided to the Chamber. Id. at 14. See also, Nelson, supra note 69.
\textsuperscript{212} INTERNATIONAL CRISIS GROUP, supra note 10.
\textsuperscript{213} See Network Bosnia News, July 18, 2000.
have as much strength as extreme nationalists.\textsuperscript{214}

A. Adherence to Chamber Decisions by Local Authorities and the Establishment of Effective Legal Precedents

The slow movement by Bosnian authorities to respect the Chamber's decisions reflects the increasing effectiveness of the Chamber in the late 1990s. In 1998, the Chamber issued final decisions in thirty-six cases, but the respective governments fully complied with only five of these decisions.\textsuperscript{215} However, by the end of 1999, the Federation increasingly complied with the Chamber's decisions.\textsuperscript{216}

This trend continued through the year 2000. Excluding JNA apartment cases, the Chamber issued sixty-nine decisions requiring the respondent party to undertake some sort of action.\textsuperscript{217} The respondent parties fully complied with forty-three of these decisions, with either partial or noncompliance in the remaining twenty-six decisions.\textsuperscript{218} These results are a bit misleading, though, because many of the cases themselves deal with multiple cases. Thus, for instance, in Pletilic\textsuperscript{219} eighteen of twenty applicants had not regained possession of their property as ordered by the Chamber, while in Basic v. Republika\textsuperscript{220} twelve of fifteen applicants had also not regained control of their property.

The set of Mostar property cases handled by the Chamber, also reflects the judicial body's increasing impact in 2000 and 2001. Originally, the applicants' legal representative, the American Refugee Committee Legal Aid Program in Bosnia, with the approval of the Chamber staff, submitted thirteen cases to the Chamber in the fall of 2000 as a collective legal strategy.\textsuperscript{221}

With the decisions in the cases of Francic and Turundic on February 2, 2001, and the subsequent decisions in the cases of Petrovic and Leko on March 9, 2001, the Chamber sent a strong message to the Mostar East municipal authorities regarding their failure to properly implement the property laws. The local authorities apparently understood this message; not only did the parties in these cases have their property returned to them, but they also received the monetary awards dictated by the court.\textsuperscript{222}

\textsuperscript{215} See Human Rights Chamber for Bosnia and Herzegovina, supra note 119, at 8.
\textsuperscript{216} By the end of 1999, the Federation had implemented approximately ten percent of the Chamber's decisions, paid six of eight financial awards for non-property related cases (the largest amount being DM 30,000). However, the Republican Spike continued to obstruct and not comply with many of the decisions handed down by the Chamber. See Human Rights Chamber, supra note 53.
\textsuperscript{217} Id. at 2.
\textsuperscript{218} Id. The majority of the cases originated in Republican Spike. Id.
\textsuperscript{220} Basic v. Republican Spike, CH/98/752, Human Rights Chamber for Bosn. & Herz. (Dec. 10, 1999).
\textsuperscript{221} Nelson, supra note 69.
\textsuperscript{222} Avdic, supra note 100.
In addition, by September of 2001 the remaining parties in the original thirteen cases submitted to the Chamber also reported the return of their property.\(^2\)

Similar success occurred with the implementation of JNA apartment decisions. The Chamber decided 117 cases involving violations of property owners' rights related to their JNA apartments.\(^2\) By the end of 2000, the respondent parties in 97 of these cases had issued orders registering the applicants as owners of the contested apartments,\(^2\) and had paid the compensation ordered by the Chamber in all 117 cases.\(^2\)

The Chamber has encouraged adherence to its decisions through the use of financial awards and penalties. Increasingly, the Chamber has levied damages against government entities for administrative silence and other acts of government obstruction—particularly for the emotional and mental distress the government's actions caused applicants. Indeed, before striking out cases that are resolved by amicable settlement, the Chamber now examines the record of a case to determine whether the case involves particularly egregious government behavior. If so, the Chamber may then decide to award compensation to the applicant even though the government has already returned the disputed property to the applicant.\(^2\)

These damages appear to have had an impact on the behavior of local government officials. Although the Federation or Republika Srpska government (or in some cases the State of Bosnia and Herzegovina) is responsible for the payment of all financial damages awarded by the Chamber, in property cases the possibility for increasing damage awards appears to have coerced local officials in the Federation into complying with the law. This appears to be due to the connection between damage awards the Federation must pay and allocation of local government budgets.

While the budgetary process between local governments and Federation ministries is murky, local officials have revealed that in some cases the Federation issubtracting a portion of the damage award from local municipal budgets.\(^2\) As a result, local officials are increasingly aware of the need to comply with Chamber decisions. This result can be seen in the Mostar CRPC cases. Following the initial set of decisions in these cases, the parties settled and resolved all the remaining cases, returning the property in question before the Chamber issued its decisions. One factor behind the quick resolution of these cases was a desire on the part of the local municipalities to avoid having the Chamber award even further

\(^{223}\) Id. These parties reported the return of their property subsequent to the Turundic, Petrovic and Leko decisions without any further action being taken by the Chamber.

\(^{224}\) Human Rights Chamber, supra note 53, at 14.

\(^{225}\) Id.

\(^{226}\) Id.

\(^{227}\) Id.

\(^{228}\) Avdic, supra note 100.
B. The Impact of the Chamber on the Rule of Law in Bosnia

Given the lack of the rule of law in Bosnia and Herzegovina, any efforts to reconstruct the legal system must require reasserting the legitimacy of the law itself. In this regard, the Chamber has played a major role in reestablishing the legitimacy of law itself, fulfilling a critical element in the reconstruction and rehabilitation of the Bosnian legal system. The Chamber has forced the governments in Bosnia to deal with critical legal and economic issues, and has directly attacked the governments' misuse of the legal process to obfuscate and obstruct the legal rights of their citizens. The Chamber has delineated the proper role of government in the rule and administration of law, and has set limits on the government's legitimate exercise of its power in dealing with its citizens.

Thus, in Poropat, the Chamber concluded that even though the government of Bosnia may have pursued a legitimate goal in establishing a process to resolve the issue of access to pre-war foreign currency accounts, the government failed to strike a fair balance between the public interest and the rights of its citizens who owned these accounts. In Poropat, the government had ignored the issue of the foreign currency accounts and the legal rights of its citizens for years until the Chamber finally forced the government to deal with the issue.

In the administrative law realm, the Chamber has found human rights violations where a government body failed to undertake timely action in...
responding to the legal claims of citizens. In these decisions, the Chamber rebuked the governments’ attempts to obstruct the return process and block citizens from reclaiming their legal property. Instead, the Chamber established high standards for the government, finding that actions that treat some citizens differently from the rest of society would be considered discriminatory unless the government can provide a reasonable justification for the treatment.236

Federation and Republika Srpska officials argued repeatedly that they could not adhere to the Dayton Accord and enforce the legal rights of refugees because they were unable to control or influence local officials.237 They also argued that refugees could not yet resort to the Chamber because they had failed to exhaust all local remedies, even in cases where claims had long languished.238

Elsewhere, government bodies failed to respond to claims and appeals as required by law.239 Even where minority parties were successful in securing a legal decision in their favor, government officials failed to enforce the court or administrative decision.240 In these cases, the governments justified the local officials’ behavior in several different ways. First, they argued that they lacked jurisdiction in the handling of property claims and hence had no responsibility for the local officials’ actions in obstructing the return of property to minorities.241 Alternatively, the governments claimed that their behavior in expropriating the property was legal and that the applicants had no right to the property.242

236. Id. See also Hermas v. Fed’n of Bosn. & Herz., CH/97/45, Human Rights Chamber for Bosn. & Herz., para. 86 (Feb. 18, 1998).
239. See Petrovic v. Fed’n of Bosn. & Herz., CH/00/6142, Human Rights Chamber for Bosn. & Herz., para. 12-13 (Mar. 9, 2001); Leko v. Fed’n of Bosn. & Herz., CH/00/6144, Human Rights Chamber for Bosn. & Herz., para. 11-14 (Mar. 9, 2001); Turundic v. Fed’n of Bosn. & Herz., CH/00/6143, Human Rights Chamber for Bosn. & Herz., para. 9-12 (Feb. 8, 2001); Cuturic v. Republican Spike, CH/98/1711, Human Rights Chamber for Bosn. & Herz. (Oct. 8, 1999) (finding that although the applicant initiated proceeding in 1993, the municipal court had still not provided any decision by 1999, claiming another state agency had failed to provide the court with necessary information); Pletilic v. Republican Spike, CH/98/659, Human Rights Chamber for Bosn. & Herz., para. 12-13, 22-23 (Sept. 10, 1999); Marija Stanivuk v. Fed’n of Bosn. & Herz., CH/97/51, Human Rights Chamber for Bosn. & Herz., para. 42 (June 11, 1999).
241. Medan v. Bosn. & Herz. and Fed’n of Bosn. & Herz., CH/96/3, Human Rights Chamber for Bosn. & Herz. (Feb. 4, 1997) (Federation claiming that housing policy was the responsibility of canton and district officials).
In answering these arguments, the Chamber laid out clear guidelines on the positive obligation of the government to protect the legal rights of its citizens. To the argument that parties had failed to exhaust all of their domestic remedies, the Chamber set the standard that the burden of proof in claiming the existence of effective domestic remedies for its citizens lies with the government. In establishing this proof of effective remedies, the Chamber noted that the mere existence of remedies on paper is not sufficient—the government must demonstrate that remedies will be actual and effective. To the governments' argument that the Chamber lacked jurisdiction to deal with property claims filed with the court the Chamber asserted its competence to consider all alleged and apparent violations of human rights as provided in the European Convention for the Protection of Fundamental Freedoms and its Protocols. This power was delineated in Article II(2)(a) of the Dayton Agreement.

In Bulatovic, the Chamber made the Federation and the Republika Srpska governments directly responsible for the actions of their local officials. The Chamber has consistently reiterated this principle, upholding the positive obligation of the government to protect the rights of its citizens as one of its most basic obligations.

In a series of decisions, the Chamber gave meaning to the nature of the government’s obligation to enforce the rights of its citizens. In response to assertions that the government had legally expropriated property under legislation passed during the war or through a legitimate act of the local authorities, the Chamber noted that for a law to be legitimate, it must meet several standards. Furthermore, the wartime legislation cited by the

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243. Leko v. Fed'n of Bosn. & Herz., CH/00/6144, Human Rights Chamber for Bosn. & Herz., para. 34–36 (Mar. 9, 2001) (existence of remedies must be sufficiently certain not only in theory, but also in practice); Turundic v. Fed'n of Bosn. & Herz., CH/00/6143, Human Rights Chamber for Bosn. & Herz., para. 39 (Feb. 8, 2001) (burden on respondent to show remedies will be effective); Stanivuk v. Fed'n of Bosn. & Herz., CH/97/51, Human Rights Chamber for Bosn. & Herz., para. 41 (June 11, 1999); Onic v. Fed'n of Bosn. & Herz., CH/97/58, Human Rights Chamber for Bosn. & Herz., para. 38 (Feb. 12, 1999).

244. Bulatovic v. Bosn. & Herz. and Fed'n of Bosn. & Herz., CH/96/22, Human Rights Chamber for Bosn. & Herz., para. 32 (Nov. 3, 1997) (stating that under the Dayton Agreement, the parties to the accord have a direct obligation to secure to all parties their human rights and fundamental freedoms contained in the agreement and that the parties are responsible for violations of human rights committed at any level of government organization).

245. See Blentic v. Republican Spike, CH/96/17, Human Rights Chamber for Bosn. & Herz., para. 28 (Dec. 3, 1997) (citing Art. 1 of the human rights agreement that all parties are obliged to secure to all persons in the jurisdiction of the government the highest level of internationally recognized human rights and fundamental freedoms); Eracovic v. Fed'n of Bosn. & Herz., CH/97/42, Human Rights Chamber for Bosn. & Herz., para. 43 (Jan. 15, 1999).


government failed to meet these standards.\textsuperscript{248}

In several cases, the Federation argued that by merely passing property legislation that gave citizens the right to reclaim their property, the Federation had enabled people to reclaim their property and therefore had fulfilled the government's obligation to protect its citizens' property rights.\textsuperscript{249} The Federation government also claimed that if local authorities had issued a decision recognizing the legal rights of a person to their property, that decision was, in and of itself, a return of the property.\textsuperscript{250} The Chamber, however, held that where the government fails to implement legislation or fails to assist parties in regaining possession of their property, then the government's inaction constitutes an interference with citizens' enjoyment of their possessions.\textsuperscript{251} Similarly, the Chamber noted that when local governments fail to issue a decision as required by law, that failure illegally interferes with the rights of its citizens.\textsuperscript{252} The failure of a court or government agency to implement a decision was also shown to violate the law.\textsuperscript{253}

Together, these decisions lay out a framework within which the government must defer to the individual rights of its citizens. In laying out these precedents, the Chamber has taken the language of the ECHR and the other international human rights covenants in the Bosnia and Herzegovina Constitution and given them meaning in the Bosnian legal context.

The attitude of the national and entity governments towards the Chamber reflects the effectiveness of the Chamber in achieving the integration of the rule of law into legal processes in Bosnia. Over the last several years, the Federation has increasingly come to accept the role of the Cham-

\begin{itemize}
  \item \textsuperscript{248} See Kevesevic v. Fed'n of Bosn. & Herz., CH/97/46, Human Rights Chamber for Bosn. & Herz., para. 50-58 (Jan. 16, 1998).
  \item \textsuperscript{249} Petrovic v. Fed'n of Bosn. & Herz., CH/00/6142, Human Rights Chamber for Bosn. & Herz., para. 33 (Mar. 9, 2001); Leko v. Fed'n of Bosn. & Herz., CH/00/6144, Human Rights Chamber for Bosn. & Herz., para. 29 (Mar. 9, 2001); Turundic v. Fed'n of Bosn. & Herz., CH/00/6143, Human Rights Chamber for Bosn. & Herz., para. 33 (Feb. 8, 2001).
  \item \textsuperscript{250} Petrovic v. Fed'n of Bosn. & Herz., CH/00/6142, Human Rights Chamber for Bosn. & Herz., para. 34 (Mar. 9, 2001); Leko v. Fed'n of Bosn. & Herz., CH/00/6144, Human Rights Chamber for Bosn. & Herz., para. 30 (Mar. 9, 2001).
  \item \textsuperscript{251} Petrovic v. Fed'n of Bosn. & Herz., CH/00/6142, Human Rights Chamber for Bosn. & Herz., para. 34 (Mar. 9, 2001); Leko v. Fed'n of Bosn. & Herz., CH/00/6144, Human Rights Chamber for Bosn. & Herz., para. 57 (Mar. 9, 2001); Lazarevic v. Fed'n of Bosn. & Herz., CH/00/3708, Human Rights Chamber for Bosn. & Herz., para. 44 (Mar. 9, 2001).
  \item \textsuperscript{252} Petrovic v. Fed'n of Bosn. & Herz., CH/00/6142, Human Rights Chamber for Bosn. & Herz., para. 59 (Mar. 9, 2001); Leko v. Fed'n of Bosn. & Herz., CH/00/6144, Human Rights Chamber for Bosn. & Herz., para. 47 (Mar. 9, 2001); Lazarevic v. Fed'n of Bosn. & Herz., CH/00/3708, Human Rights Chamber for Bosn. & Herz., para. 46 (Mar. 9, 2001); Turundic v. Fed'n of Bosn. & Herz., CH/00/6143, Human Rights Chamber for Bosn. & Herz., para. 48 (Mar. 9, 2001); Lazarevic v. Fed'n of Bosn. & Herz., CH/00/3708, Human Rights Chamber for Bosn. & Herz., para. 59 (Feb. 8, 2001).
  \item \textsuperscript{253} Petrovic v. Fed'n of Bosn. & Herz., CH/00/6142, Human Rights Chamber for Bosn. & Herz., para. 51 (Mar. 9, 2001); Leko v. Fed'n of Bosn. & Herz., CH/00/6144, Human Rights Chamber for Bosn. & Herz., para. 51 (Mar. 9, 2001); Lazarevic v. Fed'n of Bosn. & Herz., CH/00/3708, Human Rights Chamber for Bosn. & Herz., para. 46 (Mar. 9, 2001); Turundic v. Fed'n of Bosn. & Herz., CH/00/6143, Human Rights Chamber for Bosn. & Herz., para. 52 (Jan. 15, 1999).
\end{itemize}
ber and the concept of the rule of law on which the decisions of the Chamber are based. Indeed the Federation is now so responsive in honoring Chamber decisions that Chamber officials are now “fairly confident” that the Federation will enact a decision by the Chamber, even to the point of carrying out the decisions before the deadlines established by the Chamber.

Much of the improvement in relations between the Federation and the Chamber is tied to two factors. First, the Council of Europe tied admission to the Council in part to the governments of Bosnia successfully implementing and obeying legal decisions of the Chamber. Second, the Federation, the Republika Srpska and the State of Bosnia and Herzegovia appointed agents to handle relations with the Chamber. These agents have established efficient procedures for carrying out Chamber decisions, and as a result, Federation officials have increasingly complied with Chamber decisions and the rule of law. The same cannot be said of the Republika Srpska and its officials. The Republika Srpska’s resistance to the Chamber and its rulings is part of the republic’s larger process of obstructing of the Dayton peace process. In part, this obstruction may point to the need for the continuing presence of the Chamber and similar institutions in Bosnia.

IV. Transitional Justice and the Rule of Law in Post-Conflict Settings

A. Transitional Justice in the Civil Law Setting

Transitional justice theory examines what it takes to establish a rule of law in a civil society emerging from war and oppression. Transitional justice theorists have traditionally focused on war crimes, and are split over whether postwar regimes require war crimes prosecutions or amnesties before the society can emerge into a rule of law. However, many transitional justice theorists agree:

1) that instituting a democratic regime amounts to substituting a rule of law for the use of force; 2) that upholding the rule of law amounts to making every citizen accountable for his or her actions; 3) that instituting the principal of individual accountability amounts to securing that no group of citizens will either benefit from the privilege of impunity or be collectively held

254. See Nelson, supra note 69.
255. Id.
256. See generally Human Rights Chamber, supra note 53.
257. See Nelson, supra note 69. See also Office of the High Representative, A Comprehensive Judicial Reform Strategy for Bosnia and Herzegovina 13-14 (July 1999). One concern for the Chamber here is that this requirement has since been dropped by the Council of Europe. What impact this will have on the Chamber and its decisions in the future is uncertain. See Nelson, supra note 69.
258. Nelson, supra note 69. An additional factor may be the increasing burden the financial penalties of Chamber decisions represent to the Federation budget.
259. See generally Human Rights Chamber, supra note 53.
responsible on the basis of their identity.261

It seems odd, then, that transitional justice theory gives scant attention to the role that civil justice can play in a transition. After all, by answering human rights claims on property rights and discrimination, the Human Rights Chamber is able to uphold a rule of law, make the individual accountable for infringing upon or denying the rights of other citizens, and reduce the level of discrimination based on group identity. Furthermore, in considering the change in law, transitional justice theorists outline other requirements that precisely reflect the Chamber’s own experience.

First, transitional justice theorists speculate that in order to make the break from the oppressive past, an entirely new court must enter the judicial stage, with the freedom to create new law, while reflecting conventional legality.262 This new court must have well-defined limits and a discrete life.263 When the court turns away from the former system for fear of justifying it, it often turns to international human rights law. This legal turn “enables preservation of a sense of continuity and even the forging of a constructive prospectivity, thereby reconciling the goals of transformation and normative change within an established legal system.”264

The Human Rights Chamber reflects this transitional justice requirement of a new, temporary court that applies new law. True, when the Human Rights Chamber opened in Sarajevo in 1996, it faced a former body of law that exacted justice depending on ethnicity.265 However, its competence extended only to the international human rights conventions incorporated in the constitution. Drawing on international law, it began establishing precedent and building the groundwork for a new rule of law. Second, transitional justice theorists often consider transitional justice’s value as symbolic, rather than substantive.266 However, this symbolism provides the public with an important alternative to vengeance or violence, thus beginning the transition to a rule of law. “The transitional legal response is deliberate, measured, restrained, and restraining; in their transitional form, ritualized legal processes enable gradual, controlled change.”267 Though it may be largely symbolic, transitional justice also serves to define the rules and rights of citizenship, articulating the rights and responsibilities of citizens while setting limits on state power.268

261. MICHAEL FEHER, Terms of Reconciliation, in HUMAN RIGHTS IN POLITICAL TRANSITIONS: GETTYSBURG TO BOSNIA 325 (Carla Hess & Robert Post eds., 1999)
263. See generally id., at 220.
264. Id. at 222.
266. Teitel, supra note 262, at 220 (“Transitional law is above all symbolic—a secular sanctification of the rituals and symbols of political transformation.”).
267. Id. at 221.
268. Id. at 221. See also TRANSITIONAL JUSTICE: HOW EMERGING DEMOCRACIES RECKON WITH FORMER REGIMES 181 (Neil Kritz ed., 1995).
The Chamber plays at least a symbolic part in defining citizens’ rights and providing an alternative to use of force to win back what they had lost. Even though the Chamber decided 451 cases in 2000, it still faces a backlog of over 6,000 cases; hundreds of thousands more human rights victims never filed a claim with the Chamber. Yet to neutral observers and possibly to the refugees themselves, the Chamber’s decisions have had the effect of helping instill a sense of the rule of law in Bosnia because its rulings give Bosnians equal rights, regardless of their ethnicity. The Chamber is thus one of the only organs in Bosnia acting as a counterweight to partisan political leaders. In this sense, the Chamber fills precisely that transitional justice need for a ritualized legal process.

Given these obvious parallels between transitional justice theory and Human Rights Chamber practice, it seems natural to ask why civil justice has gone so unnoticed in discussions of transitional justice. The answer may lie in the evolution of human rights. Core human rights have revolved around bodily integrity, such as torture, rape, summary imprisonment or execution and genocide. Next in priority come political and cultural rights, such as the right to expression, to vote and to participate in society. Economic, social, and cultural rights lie along the outer ring of human rights, unacknowledged by some states, merely aspired to by most, but required only in Bosnia.

Nevertheless, most societies transitioning from oppression face lingering property and discrimination troubles. Adjudicating these disputes through an international, independent court can lessen the chasm between groups and help to instill the rule of law. In both theory and in practice, then, the Human Rights Chamber can play a key role in the transition to the rule of law.

B. Transitional Justice and the Role of Civil Law in Bosnia

By some measure, transitional justice may be the wrong course for a state such as Bosnia. After all, a number of critics of the Dayton Accord have argued that promoting integration in Bosnia is like King Chanute holding back the tides—a futile attempt to stop nature from taking its course. They assert that by keeping hostile factions in close range and insecure about the future, international forces are actually promoting, rather than preventing, conflict. Instead, they say, international forces should allow the ethnic groups to consolidate, with their security serving to promote stability.

This argument is misguided, however, for both pragmatic and theoretical reasons. Domestically, the conflict emerged from the strongholds of

270. See Asbjorne Eide, Economic, Social and Cultural Rights as Human Rights, in Economic, Social and Cultural Rights: A Textbook 25-28 (Asbjorne Eide et. al. eds., 1995) (Civil rights arrived in the 18th century, political rights in the 19th century, and economic and social rights were born in the 20th century.).
272. Id.
the ethnic factions. If the factions were allowed to consolidate through ethnic cleansing, the new unity could threaten neighboring ethnic groups with old territorial claims, causing the conflict to flare anew. On the level of transitional justice theory, if ethnic cleansing were allowed to hold, civil injustices would fester and wait for the next conflict to be avenged.

An even greater problem may be diminishing the Chamber's role without upsetting Bosnia's balance of power. From the time the Dayton Accord was signed, the international forces were aware they would have a problem pulling out from Bosnia. "We set a five year deadline, but we knew at the time it would be more like a generation," said Paul Szasz, one of the architects of the Dayton Accord. Once the international forces were in place in Bosnia, intervention officials grew even more perplexed on how they would get out. "We do not know, however, how we will exit, how we will not perpetuate Bosnia's culture of dependency," observed Christian Clages, head of the OHR's Political Department.

Furthermore, since the Chamber dispenses justice based on international human rights law, rather than on local law, the goal of status quo ante is, by definition, out of reach. Thus, the Chamber is installing a new regime of law despite the hostility from the local leaders. As one commentator noted, the result of the Dayton Accord is that a "two tier system of legal accountability has been created . . . [where] the linkages among . . . structures remain imprecisely defined, and subject to much local ambivalence." The danger is obvious. If the international community indeed becomes a true trustee for Bosnia, local enforcement of the rule of law will be much harder to encourage. After all, coercive violations of sovereignty rarely make for stable regimes.

To establish the rule of law in Bosnia, the Bosnian legal system must be able to stand on its own. Without strong pressure from the international community, the domestic authorities would never have acceded to as much of the Dayton Accord as they did; however, this strong influence jeopardizes Bosnia's future, in that it brushes with autocracy. After the OHR began flexing its muscle in 1998, its deputy representative told one reporter, "we dictate what will be done . . . those who resist will have to face the consequences." When the OHR fired the mayor of Banja Luka, one

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274. Hedges, supra note 39.
275. Ni Aolain, supra note 29, at 988; Avdic, supra note 100. Many local officials, at least initially, viewed the Chamber and OHR and the legal decisions and laws promulgated by these institutions as law purely of these international bodies, which had no national use and which would be abandoned once the international mandate and presence of these international institutions ended.
Serb leader called the action "deeply antidemocratic." A Federation official said the firing of the 22 other officials amounted to declaring Bosnia a protectorate of the international community.

If the Chamber's main goal is to establish a rule of law, it must provide one of the key features of a working judiciary—efficiency. Yet even at the Chamber's most efficient pace, it would take several years to clear its current backlog. Although the flood of applicants clearly represents faith in the system, that confidence will quickly turn brittle if applicants must wait years to have their rights recognized. Thus, speed is of vital importance to the success of this Chamber or future chambers like it.

Although an ideal strategy for pulling out eludes even the most veteran experts, the conditions necessary for exit are clear. First, the institutions necessary for the rule of law must pervade the local level. Second, the citizens must have full rights to their lawful property and the freedom to live and move anywhere in Bosnia. Finally, all groups in Bosnia must have faith that they can turn over the keys to power to a rival group without risking catastrophic loss. By creating the Human Rights Chamber, the international forces have begun moving Bosnia down all three paths.

Conclusion

Once a war ends, a society in transition often focuses on war crimes, but overlooks civil violations. A forum for civil cases can help turn a state to a rule of law and a lasting peace. The Human Rights Chamber in Bosnia and Herzegovina demonstrates what such a forum can do, and the problems it faces when confronted by governments opposed to its goals. The Chamber illustrates both the need for institutions of this nature in implementing the rule of law, and the need for effective and ongoing international involvement to guarantee adherence to the rule of law in post-conflict settings.

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281. Id.