

REPORT ON THE STATE OF HUMAN RIGHTS IN BOSNIA & HERZEGOVINA IN THE YEAR 2001

IZVJEŠĆE O STANJU LJUDSKIH PRAVA U BIH ZA 2001. GODINU.

Presented by the Justice and Peace Commission of Bosnia-
Herzegovina.

Published by the German Commission for Justice and Peace on behalf
of the

European Conference of Justice and Peace Commissions.

Predloženo od bosansko-hercegovačke komisije Justitia et Pax.
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Preface

One year after the attacks of September 11, the international public still pays desultory attention to the various violent incidents which dominate the daily headlines, from the operation in Afghanistan, to violence in Israel and Palestine, to the attacks on Bali island, to the hostage tragedy in Moscow - which directed international attention for a short period to the Chechen war - through to the impending war in Iraq, to name just a few examples.

Meanwhile the situation in Bosnia and Herzegovina is more and more slipping out of the focal point of international attention. Such superficially violence-focused interest is sending a disturbing message, a fact that was also well "understood" in Kosovo in 1998/99.

The consolidation of the peace process in Bosnia and Herzegovina is of great importance for the entire region and is not least a political symbol for the international community's way of thinking. As it is very likely that the international community of states will continue their commitment in Bosnia and Herzegovina for many years, the necessary processes must be observed with unbroken attention and accompanied by critical debate.

The Justice and Peace Commission of Bosnia and Herzegovina has prepared this document as a contribution to the required dialogue on the present situation and the future of Bosnia and Herzegovina. We are particularly grateful to those who have raised their voice for their region and thereby challenged our ways of thinking and acting. This report was preceded by numerous conversations and discussions on the situation in Bosnia and Herzegovina at the level of the European Conference for Justice and Peace. It was revealed in this dialogue that every country perceives the conflict in its own way and that this diversity must be addressed as a central issue of European policies. However, in order to be effective, the required European conflict management must involve a permanent dialogue with local representatives of Bosnia and Herzegovina. For, it is not the international community of states that - despite their valuable commitment - are able to guarantee peace in the region in the long-term, but only the people of Bosnia and Herzegovina themselves.

Bishop Prof. Dr. Reinhard Marx
President of the German Commission for Justice and Peace

BISHOPS CONFERENCE OF BOSNIA AND HERZEGOVINA

COMMISSION "JUSTITIA ET PAX"

REPORT ON THE STATE OF HUMAN RIGHTS IN BOSNIA & HERZEGOVINA IN THE YEAR 2001



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In Place of an Introduction

All men are the creation of God and for that reason they are all equal before God. God loves them all in a manner that is peculiar to Him, and He wishes to redeem them all. (Cf. 1 Timothy 2,4)

By virtue of one's human dignity, all men are equally entitled to fundamental Human Rights as defined in various Universal Charters and Declarations. The Catholic Church has recognized the advancement and protection of Human Rights as an integral part of its mission to announce the Kingdom of God among men. This is precisely the sense for the existence and activities of more than 30 European Commissions for Peace and Justice (*Justitia et Pax*), among which can be found the Bishops' Conference of Bosnia and Herzegovina (BK BiH), as a full-fledged member. As with all the others, our Commission has as its goal the promotion of Justice and Peace according to the principles espoused in the Gospels and in the social teaching of the Church.

In that spirit and with that goal in mind, our Commission has prepared this Report on the status of Human Rights in Bosnia and Herzegovina in the year 2001. Conscious of our limited possibilities, we offer you our view of the status of the social, legal, judicial, educational and media spheres. We call attention to the priorities of the International Community whose Representatives have the last word on all that happens in BiH. We also call attention to our vision of the political crisis in 2001, and a glance at the role and activities of SFOR in BiH as the index of the by-passing of, or the abnegation of Human Rights. And along with the serious nature of other topics such as that of the Constitutive Peoples, solutions to problems with the Constitution in BiH, and others, in this year's *Report*, we focus on the problem of restitution in BiH as an extremely important question. Through these views, we wish to inform our domestic public, and that of the world, as to some acute problems regarding fundamental Human Rights.

Grateful to all those who toil at promoting fundamental Human Rights in this long-suffering nation, we urge even greater efforts to that end: This is the primary goal of our Report.

1. Task Priorities for 2001 as seen by the International Community: Solving Human Rights Problems in BiH.

Following the practice set heretofore, the Representatives of the International Community in BiH have set task priorities in the field of Human Rights for the year 2001. We feel it necessary at the outset of this *Report* to present the goals of the International Community so that we might better take note of definite problems that torment this nation from their perspective.¹ Those goals are:

1.1. The return of refugees and displaced persons

- The coordination of laws dealing with Return of Property (Laws with respect to dwellings, Privatization Laws, and laws ignoring the Return of Property) must be coordinated, amended, and implemented to create a consistent and non-discriminatory system for Return of Property.
- The support of the RRTF (The Working Committee for Return and Reconstruction) and the PLIP (Plan for the Implementation of Laws Governing Return of Property) which is well functioning. Representatives of these organizations are working in the field so as to oversee and guarantee a coordinated approach and the politics of implementing the Return of Property law, and so as to coordinate funding and a strategy of return.
- The establishment of a functioning system of information exchange between the Housing Authorities and the OMI's on repossessions so as to prevent multiple occupancy.
- The Enforcement of all CRPC (Commission for the Return of Property to the refugees and those who are displaced) decisions in harmony with the laws governing the implementation of CRPC decisions.
- The urgent conclusion of the process of issuing decisions on and the eviction of multiple occupants.
- The issuance of decisions in chronological order.
- The identification, guarantee, and budgetary provisions for alternative accommodations on the part of local authorities.
- The implementation of all deadlines and decisions as defined by law—even when the local authorities fail to provide alternative accommodations.

¹ See: "Ljudska prava u Bosni i Hercegovini, prioriteti za 2001 godinu," ("Human Rights in Bosnia and Herzegovina, priorities for the year 2001"), Recommendations of the Administrative Committee for organizations dealing with the question of Human Rights, the Working Committee for the protection of Human Rights, (5 February, 2001).

- The guarantee of transparency in the procedures to re-validate contracts as regards unclaimed apartments.
- The fashioning of a project to insure quality of administration in the field of the Administrative and financial sectors in cooperation with The Organization for European Security and Cooperation's Department of Democratization, is to be initiated. Its goal is to assure responsibility on the part of the local authorities who are charged with resolving property questions, with a guarantee of budgetary provisions to cover alternative accommodations, and greater efficacy of implementation of Property Laws.
- The implementation of preventive measures assuring that local police authorities, particularly in contentious return areas are pressured to implement operational plans to increase police presence so as to guard against possible violence related to the process of return. Priority is to be given to monitoring and implementation of such plans.
- The intervention of Public Prosecutors is to be sought so as to assure the implementation of investigative measures as regards serious violations of the law.
- The focusing of attention on instances wherein local officials attempt to limit legal sanctions against perpetrators of crimes by means of initiating misdemeanor offence proceedings against them instead of criminal proceedings.
- The prosecution and subsequent punishment of temporary occupants of apartments who loot the contents of those apartments.
- The systematic gathering of information on incidents of Return-Related Violence (RRV), inasmuch as they have a negative impact on the return process. This statistical material should be expanded and made use of when dealing with the inadequate implementation of the law by Law Enforcement officials.
- The increased monitoring in the field of measures taken by local police authorities in connection with RRV's and Property Law violations, including those of looting. When the official results of re-registration are published, a regional overview of displaced persons, as well as a listing of refugees from problematic areas as regards the questions of Sustainable Return, and the Return of Property is to be elaborated.
- The increased dismissal of obstructionists and ineffective policemen, as well as the withdrawal of certification for work as a police officer, and the issuance of judgements against those who disrespect the rules governing police work. Maximum use of the Prosecutor's office in disciplinary matters, including improper use of property, and the use of disciplinary commissions, with oversight by the International Community.

- The reporting of improper behavior on the part of individual public prosecutors and judges to appropriate bodies for verification.
- The guarantee that information will be gathered through the Center for Legal Aid which functions under the auspices of UNHCR and the office of the ombudsman.
- The promotion of the exchange of information with the Ministries of the various Entities of BiH, and among them.
- The execution of the financial audits of selected enterprises chosen to serve as an example so as to evaluate their personnel policies, and so as to determine if any discriminatory documents exist. To insure this, the following activities are necessary: 1) The guarantee of hiring professional auditors (with the help of OHR's Fraud Office), or the identification of implementing agencies within the International Community. 2) To receive audit-control authority from the appropriate authorities and enterprises. 3) To oversee this project. 4) To evaluate results.
- The inclusion of benefactors and the Office of Economics of the OHR in discussions concerning the viability of investments prior to investing in them, so as to insure that just principles are in place assuring the employment of Returnees.
- The promulgation of the stand of the International Community, and its expectations as regards employment of Returnees - for example, announcements in the press.
- The oversight of the work of the commission for the implementation of the corresponding articles, namely, Article 143 of the Federal Statutes, and Article 152 of the Statutes of the Republika Srpska.
- The assessment of the implementation of the agreement concerning reciprocal rights and obligations as regards pensions and disability insurance, and its effect on the payment of pensions across Entity lines within the Federation.
- The analysis of the existing legal framework and the elaboration of policies in conjunction with the Department of Economics so as to assure the payment of pensions to individuals in their place of residence.
- The cooperation with the Department of Economics of the OHR so as to establish the necessary mechanisms for fund transfers to be used for pensions across the boundaries of the various Entities.
- The re-assessment of the existing legal framework, and the development of a strategy by which Health Insurance coverage will be assured regardless of one's place of residence, be it in an Entity or a Canton, or the location of the Pension Fund.
- The establishment of the necessary mechanisms for the transfer of funds from the Agency of Health wherein one pays his premium to any other health agency within BiH.

- The guarantee that Counties apply the provisions of the law governing Health Care uniformly.
- The joint monitoring of school textbook revision and the implementation of the inter-entity Education Agreement of May 10, 2001.
- The collection of information regarding minority pupils and teachers throughout the year 2001.
- The increased stress of Education within the policy structures of OHR.
- The adoption of a modern legal framework governing primary and secondary education based on the standards of the European Union.
- The promotion of a modern legal framework governing higher education.
- The support of a modernization of the present system and a rationale based on the Bologna Declaration, making use of regional development opportunities provided for by the Stability Pact as well as by the EU instruments for development and cooperation.

1.2. Reform of the judiciary and law enforcement

- The unacceptable delays within all phases of the legal system require legislative reform as relates to initial police investigation, through the filing of charges, and the appearance in court. This needs to be addressed by a revision of the Criminal Codes and criminal procedures within the RS and the Federation. The failure of the legal system to expeditiously dispatch cases has a direct impact on return-related violations. This will require a coherent and consolidated approach to the issue and judicial reform should be a priority. Such reform should include reformation of court procedures, the promotion of uniform procedural court guidelines, statutes, strengthening the role of the Public Prosecutor, reducing the role and function of the Investigative Judge. The training of judges, prosecutors, and lawyers should take place by means of the Council of Europe, the domestic Committee on Training, and the IJC.
- The acceleration of reform of the Courts as regards criminal and civil procedures based on the conclusions and recommendations contained in JSAP's final report. This is to be accomplished by means of the efforts of the IJC. Particular attention is to be paid to improving the performance of Judges and Prosecutors, to the reduction of delays, and inefficiencies within the judicial system.
- The establishment of Training Institutes so as to provide, among other things, practical training for incoming and sitting Judges and Prosecutors, as well as comprehensive, continuing legal education for lawyers. From the Human rights

standpoint, the Training Institutes should provide training in judicial administration and case management in order to improve judicial efficiency, as well as to reduce delays within the judicial system.

- The fostering of the de-politicization of the Police by supporting the creation of the office of Police Commissioner within each Ministry of the Interior.
- The pressuring of local police authorities to unify ethnically divided Police Administrations.
- The pressuring of Local Authorities to improve and strengthen internal control mechanisms.
- The pressuring of local Police officials in the Federation and in the RS to reform and improve arrest and custody procedures.
- The continued cooperation with local police officials in the Federation and in the RS to reform and improve arrest and custody procedures.
- The provision of training in Judicial Administration and Case Management in order to effect Court efficiencies, and to reduce the delays and inefficiency within the Judicial system should be provided by Judicial Training Institutes so as to assure Human Rights.
- The support of the International Community of the initiatives of the Council of Europe, the Domestic Training Board, the UNMIBH, and the Independent Judicial Commission, for training seminars for Judges, Prosecutors, and Police. Training sessions should be specifically focused on the issue of return-related investigations and proceedings.

1.3. Increasing domestic capacities for human rights institutions

- The drafting of legislation to support the merger of the Human Rights Chamber and that of the BiH Constitutional Court based on the Report adopted by the Venice Commission of the year 2000.
- The advancement of cooperation between the agents and local authorities by way of appropriate funding, as well as political support and sustainable integration of agents within the structures of the government of BiH.
- The assurance of adequate funding on the part of the State for institutions foreseen by Annex 6 and 7, in the minimum amount of 600,000 DM for each Institution, that is, for the Ombudsmen in BiH, the Human Rights Chamber, and the CRPC. This is in accord with the requirements of the Council of Europe for accession, and by the “road map” of the European Union, as well as the payment of outstanding balances.

- The assurance of adequate funding of Entity Ombudsmen Institutions by integrating a budget for the Institutions in the 2001 budget of the respective Entities. The acceptance of a minimum structure and outline of the institutions in a Memorandum of Understanding with OSCE.
- The support of the reappointment of RS Ombudsmen who are currently in office, and the appointment of qualified candidates in the Federation.
- The assurance of translation and publication of GFAP (Dayton) in the official Gazettes of BiH, in particular with respect to the Human Rights Agreement, (Annex 6), and the status of Human Rights Instruments in BiH, (Annex 4).
- The realization of 90% implementation rates for decisions of the Human Rights Chamber and the BiH Ombudsman, including active monitoring of the implementation process by OHR and OSCE along with the Agents of the three governments, through regular contact and meetings with those Agents.
- The continued assistance of other International Organizations in the implementation process, in particular that of UNMIBH, and IJC.
- The Ministry for Human Rights and Refugees is to chair Property Implementation meetings along with the participation of the International Community and the Entity Ministries Responsible for implementation.
- The Return Process role of the Ministry for Human Rights and Refugees will need to be strengthened during 2001. MHRR can play an important role in facilitating the exchange of information among Entities on the return of displaced persons and the implementation of Property Law. Talks will also be held about a Protocol between OHR, UNHCR, the Ministries for Human Rights and Refugees, and Entity Ministries, concerning Return and Reconstruction Priorities for 2001.
- The promotion of involvement of the local Legal Aid Centers that are currently supported by UNHCR, and by domestic Non-Governmental Organizations in all monitoring and reform activities so as to make them sustainable in the long term. The provision of training and funding is necessary as well.
- The passing of laws governing Associations and Foundations by BiH, as well as two similar laws in the Federation and RS. The legislative process still very much depends on the local Parliaments.
- The monitoring of the legal framework of general laws which are not expected to cover all legal problems and restrictions facing NGO's. This relates, in particular, to financial aspects such as taxation and customs, inasmuch as these have great impact on the sustainability of non-governmental organizations in BiH.

- The application of pressure on local authorities to open shelters and to protect victims, so that such victims might witness against those who traffic in human beings.
- The extension of assistance to Government Ministries and to non-governmental bodies in the areas of responsibility designated to them under the National Plan of Action.
- The application of pressure on domestic authorities so that they might speed criminal charges against those who traffic in human beings.
- The providing of information by local authorities on all missing persons in keeping with their obligations under the Dayton Peace Accords, (Annex 7, Article V). Authorities must ensure that sufficient funds are allocated to the Missing Persons Commission, and to the Courts, so as to continue the Inter-Entity Exhumation Program.

1.4. Personal integrity of officials

- The submission to measures of verification of those policemen who fail to respect Property Laws.
- The resolute implementation of IPTF policies tied to Registration and Non-Compliance, and the intent of ensuring that policemen with unsuitable backgrounds, or those who display unsuitable behavior, are not permitted to work as policemen.
- The application of pressure on local police authorities to initiate internal disciplinary proceedings against policemen who receive non-compliance reports from the IPTF.
- The monitoring of activities, with the oversight of the IJC, of the Commissions and Councils charged with the obligation to conduct professional reviews of sitting Judges and Prosecutors in order to determine their fitness to hold office.
- The long-term regulation of the professionalism of Judges and Prosecutors by means of the codification of appointments and of disciplinary procedures as contained in the RuleBook governing Commissions and Councils. Also, the shaping of authority for these commissions and councils. These two procedures are significant to the long-term development of standards of independence and professionalism in the judicial system, and these procedures should embrace standards contained in professional codes of ethics as passed in 2000.
- The providing of assistance, by way of the IJC, to the Commissions and Councils as regards the interpreting of laws, without political pressure, regulating Judges and Prosecutors, so as to establish their authority in regulating questions which arise concerning Judges and Prosecutors. The suggestion of changes to, or the addition of

necessary additions to regulatory measures so as to assure the application of ethical and professional standards.

- The implementation of verification measures for Judges who violate Property Laws.
- The removal of Officials who constantly obstruct this process, either by means of PIK, or else by the authority of the High Commissioner.
- The drafting of laws to suspend Officials who obstruct the implementation of Property Laws.
- The prosecution and fining of Officials who fail to observe the Law or who obstruct its application.

1.5. Respect for international treaty obligations on the part of Bosnia and Herzegovina

- The assurance of respect for the fundamental principles governing International Refugee Laws, including repatriation and access to a given territory. The term "repatriation" (*refoulement* in the original), is a term which designates the return to a country or territory where a person has fear for his safety. The term also applies in situations where there is great likelihood that the returnee will be trapped indirectly, as, for example, at the border itself.
- The assurance of Right of Asylum to refugees who seek it.
- Ensuring asylum seekers access to procedures in BiH by developing mechanisms to identify and refer potential asylum seekers and refugees to the UNHCR.
- The comprehensive training of workers in the Ministry for Human Rights and Refugees, Border Patrol Service, the local Police, the Judiciary, and all other structures so as to acquaint them with laws governing refugees.
- The elaboration of all articles associated with Immigration Law and the Law of Asylum, and all other necessary points of guidance in cooperation with the Ministries.
- The fostering of permanent solutions regarding Refugees from the Federal Republic of Yugoslavia and Croatia.
- The cooperation of the International Community with the Ministry for Human Rights on starting the process of formulating a report that is to be presented to the various Bodies governed by these Treaties. The guarantee of technical help in achieving this process. Fourteen reports to all six treaty bodies are overdue at present. The greatest attention is to be given to the reports which are to be presented to the Committee for Economic, Social, and Cultural Rights, and to the Committee for Human Rights. The same degree of attention is to be given to the elaboration of the Central Document

which is to be presented to the appropriate bodies established on the basis of the Treaty on Human Rights.

- The improvement of the status of national minorities in BiH, including the Roma, in accord with the framework of the Convention on the Protection of National Minorities. This is to be accomplished by way of implementing the framework of the Convention for the Protection of National Minorities in Bosnia and Herzegovina from the beginning of the year 2001.

2. The Situation of Human Rights in BiH in the Year 2001

2.1. The social picture

Long-suffering and impoverished by war, the population of Bosnia and Herzegovina has no prospect for even an average economic existence, even though six long years have elapsed from the end of the war conflict. In the over-all picture of the socio-economic relations, the majority of the population fails to see any exit from the poverty facing them, and they seek avenues of escape from their homeland. According to unofficial statistics based on causes as recorded in polls taken in September 2001, about 60% of the young people expressed the desire to leave BiH. The loss of professional cadres is worrisome. Both young and middle-aged who are educated find no prospects for employment of any sort, and if they are employed, they are unable to meet their most basic needs with their salaries. Hence, if they do not wish to turn to crime,² they are forced to seek their fortune elsewhere. At the same time, more than one million citizens of Bosnia and Herzegovina who were forced to flee to other lands during the war are losing hope that there will be, anytime soon, a basis for their prompt return.

The rate of unemployment is steadily increasing in the Federation of Bosnia and Herzegovina. At the close of the year, the rate has already surpassed 40%, while the unemployed receive, for all practical purposes, no aid from the state. The condition in the Republika Srpska is even worse. The lack of any possibility of employment is surely the greatest ordeal for the citizens, and thereby, the nation of Bosnia and Herzegovina at this moment. This problem is, to a large extent, the result of the political solution to divide the country. Though it served to end the war, it did not establish a peace with a human face. The social status in BiH is a convincing confirmation that the absence of war is not a guarantee for the longed-for peace.

Of the 412,000 or so currently employed in the Bosno-Herzegovinian Federation, more than 42,000 are temporarily laid off due to lack of work, or as a consequence of "technological over-staffing," which employers seem unable to solve. During this time, those workers-in-waiting have no income, or else, they receive little more than a symbolic monthly income ranging somewhere between 10 and 30 DM. According to official statistics from the Federal Bureau of Statistics for BiH, the average pay for the month of October was 458 DM, while the average cost of living for a family of four, for the same period, was 440 DM.

The governmental machinery demonstrates a pronounced inability to deal with the ever-wider black market, and "off-the-books" employment which deprives the workers of health benefits, pension payments, and social security. While traffic in illegal goods of dubious origin is evermore widespread across Bosnia and Herzegovina, the state coffers suffer, and the authorities in charge are unable to fulfil their basic duties toward citizens. For example,

² Based on official statistics of the Federal Ministry of the Interior, the rate of crime in the BiH Federation rose by 8.7%.

the average pension in the Bosno-Herzegovinian Federation at the close of the year 2001 was at 169 DM. In recent months the average pension within Republika Srpska was 50 DM, hence, it is not uncommon to see pensioners on the streets of our cities digging in garbage containers. This is their "reward" for many decades of drudgery-filled work. Begging has become a common sight. Administrative bodies no longer pay much attention to it. How distant and hollow sounding is the phrase "right to work" to the citizens of Bosnia and Herzegovina!

2.2. Administrative chaos in Bosnia and Herzegovina

Upon ending the awful war in Bosnia and Herzegovina, the Dayton Accords defined the composition of the new nation. Bosnia and Herzegovina is a nation of three constitutive peoples and is divided into two entities which are difficult to reconcile. One of the entities, namely Republika Srpska, has a centralized structure and is a mono-national administrative "nation", while the Federation of Bosnia and Herzegovina has a federal structure and is a conglomerate of two nationalities, divided into ten Parishes or Cantons. The territorial units of the Cantons are comprised of counties that are a significant segment of the national administration. Above and beyond this, there is to be found in BiH the District of Brčko, which in many ways is to be seen as a third entity.

From the point of view of international law, Bosnia and Herzegovina is a united, internationally recognized nation. However, according to its own legal norms it is in essence divided into two loosely connected parts. The District of Brčko was to become the paradigm of sorts for tying together this divided country. Thus far, it has not succeeded in doing so. Legal ties that should maintain the integrity of this internationally recognized entity leave one with the impression that they are at best tentative. As regards the geopolitical and geo-strategic significance of the area the country occupies, and the non-coordinated relations it has with world powers, it is a fact, one which does not astound - even though it is true - that our nation is *de facto* an undeclared Protectorate of the International Community.

The irreconcilable political options in play - radicalized during the war - resulted in an accord that created a composite legal construct in BiH. The composite organizational construct of Bosnia and Herzegovina unavoidably manifested itself as a mottled construct, and by this very fact, resulted in an uncoordinated legal system. This small nation has thirteen constitutions and one statute! A simple glance at the legal statutes in force speaks volumes as to the condition of legal norms in BiH, that are the result of the Dayton Accords. We are speaking of the following legal statutes:

1. The legal system based on Annex 4 of the general framework for The Agreement for Peace in Bosnia and Herzegovina (Dayton's Constitution for Bosnia and Herzegovina). One must not dismiss from mind that the constitution is the result of a compromise, and the wish of the International Community to establish peace at all costs. As such, this legal system was unable to maintain the principles for a just solution, for it is the result of

the conditions that came to be as the result of the war. It is an incontrovertible fact that with this constitutional solution the results of force and aggression by act of war were given legal status.

2. The legal system for the Federation of Bosnia and Herzegovina is based on the Washington Accords from 1994, and confirmed by the Dayton Accords. Here we have before us a Legislature empowered by the Federation, along with the Legislatures of ten Parishes, that is, ten Cantons that have great legislative powers. Every Canton, as based on the Constitution of the Federation of Bosnia and Herzegovina, has its own constitution, legislative body, government, and Ministers with Portfolio - except for the Minister of External Affairs and the Minister of Defense - and its own President of the Canton.
3. The legal system of the Republika Srpska has been legitimized by virtue of the Dayton Accords, and came into being by the exclusive wish to have one people.
4. The District of Brčko, along with its constitutive and functional statutes, came into being as the result of a political compromise because of the strategic significance of this region of Bosnia and Herzegovina.
5. The legal system of the Republic of Bosnia and Herzegovina dated April 6, 1992, through the signing of the Dayton Accords partially continues to be in force on the basis of the Constitutional decision about the continuity of BiH. It is based on the wartime Legislature found in the area under the control of the Bosno-Muslim People.
6. The legal structure of the Croatian Republic of Herzeg-Bosna, whose activities are recognized by the Washington Accords, and which have remained applicable by virtue of the assumption of Legal Decisions in the Cantons having a Croatian majority.
7. The Legal Norms have their origin through the use of the authority granted by the Office of the High Representative (OHR). The High Representative (Wofgang Petritsch) manifests himself as arbiter, and makes decisions with the force of Law through his use of the authority granted under Annex 10 of the Dayton Accords. Despite the preponderance of good will, there is an insufficient sensibility on the part of OHR in carrying out its legislative functions, and despite the understatement of those legal decisions, they contribute to the chaos of norms. A particular problem presents itself in the myopic view held by the legislators of the OHR. They lack insight into the traditional Continental-European Legal System, and they incorporate legal norms on the basis of the Anglo-Saxon type. This also contributes to the confusion in legal norms.
8. The Legal System of the former Socialist Federative Republic of Yugoslavia (SFRJ), as well as that of the former Socialist Republic of Bosnia and Herzegovina (SRBiH), which, as a federal unit of the failed nation, also had its own Legislature. These Legal Statutes, in the main, remained in force by assuming the entire burden of legal judgements along

with eventual, though often meaningless, changes. The Legislative Bodies, because of inertia, assumed the task of making legal judgements which were incompatible with fundamental democratic principles.

9. The assumption of obligations under International Treaties signed by the former SFRJ. Within this legal cauldron, which is beyond the law and the Constitution, it is interesting to mention that during the course of talks, the Dayton Constitution, was strengthened by Annex 1 (*Supplemental Accord on Human Rights which is to be applied in Bosnia and Herzegovina*), by a series of standards which apply to the realization of Human Rights, and which proceed from the acceptance of a series of expressly cited international conventions:

- The Convention for the Prevention and Punishment of the Crime of Genocide, from the year 1948.
- The Geneva Convention, the Geneva Protocols, I - II, from 1977 and I - IV, for the protection of victims of war, from the year 1948,
- The Convention relating to the status of Refugees from 1951, and the Protocol from 1966.
- The Convention on the nationality of married women from 1957.
- The Convention from 1961, governing the reduction in number of persons not having citizenship,
- The International Convention on the elimination of all types of racial discrimination, from the year 1965.
- The International Accord on political and citizenship rights, from 1966, and the Optional Protocol from the years 1966, and 1968.
- The International Accord from 1968 on economic, social, and cultural rights.
- The International Convention on the elimination of all types of discrimination against women, from the year 1979.
- The Convention against torture, inhumane, or degrading treatment and punishment, from the year 1984.
- The European Convention against torture, inhumane, or degrading treatment, and punishment, from 1987.
- The Convention on the Rights of Children, from 1989.
- The Convention on the Rights of Temporary Workers in Foreign Lands, and the members of their families, from 1990.
- The European Charter for regional languages, and minority languages, from 1992.
- The General Convention for the protection of national minorities.

As is obvious, it would be difficult to find a means wherein all the above listed regulations might be coordinated into an effective and harmonized legal system. The complexity of the Bosno-Herzegovinian legal system, the complexity of an immature Executive, and the presence of discrimination contribute to a government of chaos rather than to a government of Rights.

2.3. Problems within the judicial system

The work of the Courts in Bosnia and Herzegovina also fails to contribute to a government of Rights. Because of the sluggishness of the Courts, Justice seems to be unattainable. Even though a large number of Judges emigrated from BiH, the remaining number of Judges is not below the European average. In the meanwhile, their unprofessional behavior toward citizens and the cases before them, as well as the lack of material and technical readiness, and the instability of the legal system itself, contributes to the accumulation of unresolved cases to be found on the file-shelves of the Courts. We can take as an example the effectiveness, or lack thereof, of the Courts in the Capital City of BiH:

County Court I, in Sarajevo in 2000 had 231,146 cases before it, of which 45,242 cases were carried over from the previous year. In 2001, 63,504, that is, just short of 30% of unresolved cases were carried over. Meanwhile, it is a startling statistic that 62% of the cases dealing with business matters remained unresolved, while some 60% of the litigation remained unresolved.³ Of the 7,687 cases accepted by the Courts in 2000, 4,483 cases remain unresolved - a 58% rate of inefficiency, while the efficiency in resolving cases for the year 2000 was at about 50%. The lack of effectiveness in resolving the number of cases recorded in the Department dealing with questions of Contract (KPU), is staggering: of the 33,885 cases from the year 2000, the number of unresolved cases or those carried over, is 24,733, or 73% of the cases. Thus, for example, the simple recording of Deeds of Ownership requires a wait of twelve to fourteen months.

Of the 95,294 cases pending before County Court II in Sarajevo in 2000, more than one-third were carried over into 2001 - that is, about 62% unresolved Commercial Law cases, some 60% of Criminal cases, and some 56% of Contract disputes.

The Canton Court in Sarajevo carried over into the year 2001 some 33,754 cases it was to have resolved in 2000. This is just short of 20% of the cases. Here too, one observes a delay in resolving first-stage litigation (of 76 cases, only 26 were resolved), as well as administrative cases (965 unresolved cases out of 1,689 cases pending before the court).

The High Representative offered his Decision of March 13, 2001⁴ which was aimed at increasing the effectiveness and independence of the Courts. He ordered that an International Justice Commission (IJC) be formed. This Commission was given a mandate, by virtue of this order, to address and coordinate measures of reform for the justice system of BiH. The commission was also to undertake measures that would contribute to the establishment of a government of law. Judge Rakel Surlien, of Norway, was placed at the head of this Commission. Fifteen international, and eleven local officials were directly charged with carrying out court reform and monitoring the judicial system. The Independent Judicial Commission was given the authority to intervene in Court and Prosecutorial

³ Litigation, according to the Law on Litigation, should be resolved hastily!

⁴ The Decision was published in "The Official Newspapers of the **FBiH**," No. 14/01, and in the "Official Gazette of the **Republika Srpska**."

Commissions. It was also authorized to call for the suspension of cases so as to have them await a decision by the High Representative. The High Representative thusly combines and assumes the legislative and executive privilege as well as the prerogative of judicial authority. Prior to the formation of the IJC, the reforms of the judicial system were undertaken within the framework of the UN Mission to BiH. Commissions were formed at the Entity level, and at the Canton level within the Federation of BiH. They were given the task of evaluating the judicial system (JSAP), and evaluating the work of Judges and Prosecutors. The fundamental direction of these commissions was identical to that of the IJC.

The material wellbeing of Judges in the Federation of BiH was greatly improved with the passage of the law governing the functions of the Court and Prosecutor. It resulted in judicial salaries ranging between two and three DM, depending on their judicial rank. Despite this, the state of justice did not improve in 2001.⁵ This condition within the judicial system convinces the citizens that it is impossible to protect or achieve their rights by recourse to courts.

2.4. The silence of the administration

In analyzing the functioning, or lack thereof, of all segments of authority in Bosnia and Herzegovina, one cannot circumvent the silence of the Administration as an obstacle to the realization of the law guaranteeing Rights. We will reveal the present status by means of the work of administrative and legal bodies, as relates to requests on the part of citizens for the return of occupied property. One need not dismiss from mind that as a relic inherited from the former socialists in BiH, *Tenant Rights* were carried over as a specific right of sorts to sub-letting, similar to the right of ownership. These rights consist of a lifetime right to make use of an apartment that is owned by the State. The right of ownership could be transferred only to members of one's own family as co-owners of Tenant Rights. Presently, an entire set of laws are in force through which Rights are to be implemented by means of decisions as found in Annex 7, of the Dayton Accords. The return of Refugees, and persons displaced because of the war is tied to these decisions. Despite the fact that six years have elapsed since the end of the war, official statistics show that by the end of October 2001, only 44% of confiscated property in BiH was returned to its rightful owners. In the Republika Srpska, the figure is at 22%. For those residing in the District of Brčko, the figure stands at just 9%. Beyond all that has been stated above, politicians in power look to their own interest under the banner of fighting for the good of the people or the party and this is but one of the causes preventing the return of property. Another cause is the silence of the Administration. This silence, in fact, is in the service of those in power, for it is they who have influence on who will, or will not be employed at the County, Canton, or State Administrative levels.

The responsible Administrative Bodies are, according to Administrative Law (*Official newspapers of the Federation of Bosnia and Herzegovina*, No 2/98 and 48/99), obligated to resolve cases within 30 days from the date they were filed. At a maximum, no less than two months are to elapse if a special investigation is required. In the meanwhile, it is not

⁵ Statistical data for the Court System for 2001 are not formulated at present.

uncommon for the responsible body not to have resolved the case even after four or five years from the time of filing. Often, this is the case despite the fact that no real obstacles or contentious issues stand in the way. The law, it is true, grants the litigant the possibility to file for a delay as though the request was refused, or the possibility of filing an administrative complaint before the appropriate court was denied. This adds to the cost for the litigants, which they often cannot meet. When there is administrative silence, or when one is forced to accept long-termed measures, the only possible recourse remaining is the lodging of a request for an investigation, or the eventual filing of cause against the very body responsible for resolving the issue. These requests are filed with the Ministry of Justice at the Federal level asking for federal inspection. The fact that this body is inundated with requests on the part of the citizenry, is a clear indication of the lack of respect for lawfulness in BiH. (The large number of requests has a significant impact on the work of this body and reduces its effectiveness.) The fact that those responsible to further causes before the court are delinquent is of little help, nor does the fact that rather rigorous fines are foreseen for such inaction within the timeframe prescribed by law. Meanwhile, just the mention of the possibility of an investigative inspection often presses these “delinquent” officers of the Court to faster resolution of cases.

The lack of confidence in the Court system on the part of the citizenry is fully understandable. This very fact causes citizen trepidation at the thought of bringing a cause of action before administrative bodies. These obstacles, subjective in nature, come about regularly when particular rights need to be realized in a territory comprised of a predominantly different nationality. It is not unusual that cases are formally and legally resolved in favor of those having pre-war vested property rights, or with owners of the usurped real estate, however, these individuals are not able to realize their rights established validly and by way of discharged administrative acts. The executive procedure from this jurisdiction is, in the main, taken at the request of the party whose cause is to be adjudicated, after the responsible body offers the decision by which the resolution is permitted. Even though they are responsible to make a decision to approve a resolution within fifteen (15) days from the time the action is initiated, the responsible bodies often reject moving the cause forward. They justify their action by stating they have no possibility of assuring the necessary accommodations for illegal apartment dwellers. This approach to the problem has become universal and the majority nationality not only tolerates it, but, in fact, considers it to be normal. This speaks volumes as to the post-war spirit in Bosnia and Herzegovina.

The fact that parties to a cause may not participate in the action before the day determined by registration on the so-called “Waiting List,” demonstrates the kind of power legal norms have in BiH. The practice of this sort of “accommodation” on the part of the responsible bodies offers the complainant the possibility of approaching the person responsible to further the legal action only after forty or more days of waiting. They are thereby given the chance to uncover essential facts to the case, or to eventually become informed by the necessary relevant proofs, only after the legal time frame for the action has expired. It is clear that there are definite political trends emanating from the centers of power, and given to the responsible bodies, all with the goal of preserving the *status quo*.

2.5. Implementation of Annex 7 of the Dayton Accords, or, the violation of the right to return

As is obvious, the national composition of Bosnia and Herzegovina contains a multitude of understated elements that affect all spheres of societal life. The huge administrative apparatus installed in BiH by the International Community is, nonetheless, unable to react to the multitude of problems facing it. Citizens find it ever more difficult to realize their Rights through the mediation of the agencies of the International Community. An entire block of laws put forth by the Office of the High Representative, that are intended to realize the Right of Return as foreseen by Annex 7 of the Dayton Accords, is little more than a barely attainable goal only on paper. The High Representative, in his attempt to reanimate the functioning of the Legal System, in keeping with the authority granted by the Dayton Accords, was forced to impose a large number of laws that were unable to be brought into harmony with regular parliamentary procedures. Despite these and similar endeavors in BiH, more than 1,300,000 exiled and displaced persons cannot return to their homes! The impression is had that the OHR, from the very start, tolerated the practice of preventing the return of those exiled from Republika Srpska. This resulted in the universal view that the Republika Srpska was "created" by Dayton exclusively for the Serbian People! The question arising is self-generated: Is the already established practice of imposing laws an effective means, if those who are supposed to carry out those laws, do not regard them as their own? On the other hand, the right to a sustainable return to his home and place of domicile is a basic right of every citizen, as well as the foundation for existence and a beacon for Democracy in BiH.

Attempts on the part of citizens to resolve their problems as regards Return by appealing to the Office of the Ombudsman for Human Rights are not uncommon. With the intent to prevent the detrimental practice of the nation's Administration, the Office of the High Representative (OHR), the last part of October 1999, imposed the Law on Changes and Additions to the Law on Administrative Procedures (Official Newspapers of the FBiH, No. 48/99). The changes foresaw the assured presence of the Ombudsman in all phases of the administrative process. This fact vividly demonstrates the administrative barriers faced by the citizens when they attempt to seek their Rights. Unfortunately, this institution has a significant influence on the neglect seen in the flow of society in BiH, and, as a result, on the flow of the administrative process, as well. Statements made by the Ombudsman as to the violations of Human Rights, most frequently have no effect in speeding up the process. We remind one of the fact that the task assigned to the Ombudsman is much wider in scope, though we limit it herein to the problem of Return. The actions of the Ombudsman regularly end up at the level of suggestions, even though the Ombudsman has the authority to bring about proceedings. The question remains: Why has the Human Rights Chamber, whose decisions are binding, and that resolves 80% of the cases given it, failed to find its corresponding voice on this complex and important question?

As we have seen, the great difficulty in the functioning of the authorities and the Legal System in all of BiH is generated by the inadequacy of Legal Statutes, as well as by the lack

of political will to bring to realization the General Framework Accords for Peace. If steps are taken toward a just resolution of the problem, and a judgement is rendered by the Constitutional Court, that all three Peoples in BiH are constitutive Peoples - across all of the territories of BiH - there will be hope that this Gordian knot will be untied. The judgement of the Constitutional Court demands that braver and more sincere steps be taken at all levels. Without such steps, it would seem that the failure to return exiled and displaced persons will, all the more convincingly, and harmfully demonstrate that the Dayton Accords cannot be the framework wherein it would ever be possible to create a Democratic BiH. The interests of the citizens and the Peoples of BiH - in fact, interests that are even wider - and a respect for fundamental Human Rights, demands that the "myth" of Dayton not become a negation of its positive achievements, nor a barrier to correction and improvement of its decisive points.

2.6. The violation of constitutionally guaranteed rights to freedom of religious conviction and freedom of religious profession

In the course of the war, thousands of Sacred Structures - Churches, Mosques, Monasteries - and Faith-related objects were destroyed to their very foundations. The systematic destruction and desecration of sacral structures was not only intended as a destruction of the cultural, historical, and religious heritage of the citizens of another nationality and religious confession. Its intent was also to let it be known to those citizens that with "ethnic cleansing" the division of Peoples was complete and final, and that their return cannot and will not be. Unfortunately, across all of Bosnia and Herzegovina, historical, cultural and religious objects jaggedly continue to jut out with prominence as monuments to barbarism and irrational hatred. Political and state structures assist in renewing or rebuilding religious objects of those religious confessions or Churches, which are, in the majority, within the Entity wherein they were destroyed. Even though top Religious Leaders have created an Inter-Religion Council, they are unable to find a way as to how they can agree on preventing this type of obvious abuse of what is Holy. It is impossible to understand, on the basis of religious tolerance, the stand taken by representatives of some Churches and Religious Communities. They accede to the notion that their politicians or political parties, based on self-interest, relate to them, obligingly, and to their community, while, disregarding the fact that, at the same time, they are violating the fundamental Rights of the members of another religious community. Perhaps unconsciously, they leave one with the impression that they too, accede to the violation of fundamental Religious, and therefore, Human Rights.

As is obvious from the above, a particular difficulty in achieving Human Rights can be found in the Republika Srpska. National and religious discrimination result from the very constitution of the RS, in that the Republic is defined as "The Nation of the Serbian People."⁶

⁶ Upon acceptance of **Annex 4** of the **Constitution of BiH**, Amendment XLIV, from the year 1995 was added to the **Constitution of Republika Srpska**. This amendment, through **Article 1**, changed the constitution to read: "*Republika Srpska is the nation of the Serbian People, and all its citizens.*" The constitution of the Serbian Republic of Bosnia and Herzegovina was incorporated February 28, 1992. It represented the fundamental act of the "new nation," and was the preface to a bloody war and to

This stance of the legislators reflects upon all spheres of societal life in that part of Bosnia and Herzegovina. The Constitutional Court has retracted the notion that the Republika Srpska is "The nation of the Serbian People." However, this act did not stop the practice wherein the Serbian Orthodox Church has rights not granted to other Churches and Faith Communities and their members. By way of example of much deeper and wider problems, all one has to do is offer the occurrences which occurred in the spring of 2001 at Trebinja and Banja Luka:

At the time indicated, and in the towns mentioned, at the insistence of OHR and other representatives of the International Community, and under the jurisdiction of Republika Srpska, the symbolic start of rebuilding Mosques which had been destroyed during the war was to take place. It was meant to be a symbol of the presence of Moslems in that area. While attempting to lay the cornerstones for the *Oman-pasha Mosque*, in Trebinje, and the *Ferhat-pasha Mosque* in Banja Luka, the most ugly scenes took place. This ceremony, which was supposed to encourage, and symbolize the future return of the Bosnian Moslems in the territory of Republika Srpska, was transformed instead into a sign of protest against the Returnees, and against their Moslem identity. Along with representatives from the Moslem Religious Community, representatives of the International Community were physically attacked, as well. Wolfgang Petritsch directly blamed the authorities of the Republika Srpska for the events that took place. The strength of the protesters, and in its own way, the approval registered in the media of the Republika Srpska, clearly demonstrate the existing climate as regards the implementation of the Peace Accords in this part of Bosnia and Herzegovina, when it comes to basic Religious Rights.

2.7. Education

Questions concerning Education within FBiH to a large extent come under the auspices of the Cantons. Unfortunately, a system of Education in Bosnia and Herzegovina that would assure the right to all three Constitutive Peoples by way of constitutional guarantees, to an education, on the one hand, and the right to be educated in one's mother-tongue, on the other hand, has not been adopted, as of yet. This matter, by its very nature, is very complex, yet very important. It will not be easy to resolve the matter, even with much good will or understanding. Instead, those who expose the matter to view have taken it as correct - who knows how many times until now - that the matter be resolved without so much as asking what the various Peoples think or wish.

genocide. Prior to the introduction of that Constitution, and up to the signing of the **General Framework Accords for Peace** (December 14, 1995), this constitution was changed in more than one instance - in fact with as many as 43 amendments to it. With the acceptance of the **Dayton Accords**, it was altered to read: **The Constitution of Republika Srpska.**

Within the Bosno-Herzegovinian Federation, Education is under the competence of the Cantons, and, as a result, the practice of financing only those Educational Institutions that follow the programs of the "majority peoples" is arrived at by way of rough estimate. Nonetheless, it is necessary to point out that in some places, namely, *Stolac, Čapljina, Prozor, and Bugojno*, the schools in those places already have organized classes to meet both the Bosniac and Croatian programs. Obviously, these programs are financed by Canton funds. However, there are still many places wherein the Rights of the Bosniacs are violated by the majority Croatian population, and where identical violations against Croatians take place in predominantly Bosniac areas. It is sufficient that one call to mind the already forgotten "tent-schools" Žabljak, located in the county of Tešanj, or the maltreatment of Croatian children in Vareš. "Schools for Europe," that were organized by the Vrhbosna Archdiocese in 1994, in Sarajevo, Zenica, Tuzla, Travnik, Konjic, and Žepče, are the first private schools with State approval, and schools having a large percentage of children from all three Peoples, and various Faiths. It is truly regrettable that this attempt to open multiethnic schools wherein efforts are made to foster the existing differences, and the necessity of the sense of community, did not meet with greater understanding and support - either on the part of the local authorities or on the part of the International authorities.

The school system in the Republika Srpska makes exclusive use of the Serbian language, and a Serbian program of education. Clearly, it is exclusively designed for Serbian children. The extent and breadth of impropriety in this jurisdiction in the social sphere were amply demonstrated at the beginning of this year in the District of Brčko. Huge demonstrations were held by Serbian high school and elementary school students to prevent the Bosniac and Croatian Returnee school children from attending the same school for afternoon classes.

All of the above points to the fact that more and varied efforts are needed in working out a plan and program for schools if there is to be peace and prosperity in BiH. The Representatives of the International Community - regardless of their goodwill - will be ineffective in this sensitive matter, if they, again, make use of the method of forcing their solution on the matter.

2.8. The status of the public media

It is difficult to speak of freedom of the press in Bosnia and Herzegovina. Along with the political pressure applied to journalists, one has the impression that the press lacks professionalism. However, the question at hand is the freedom of the press and the media in BiH. Even though the Bosno-Herzegovinian Press abounds in non-objective and unprofessional journalists, it is obvious that the greatest problem is the fact that the majority of the media, in this manner, or that, is under the control of the political centers of power.

The Office of the High Representative, in order to establish some order in this field, established the Independent Commission for the Media, the IMC. Its task was the reconstruction of the Media. One has the impression that individual workers of the IMC (later changed to read: Regulatory Agency for the Media) attempted to establish a supra-national

system for the Media. They regarded even the slightest mention of national identity as an act of nationalism, and, by extension, an act against the course of the Dayton Accords.

The beginning of spring 2001 saw the intervention of the IMC. They terminated the signal of some Media Centers and Mostar's EROTEL. The transmission of programs from the Republic of Yugoslavia and the Republic of Croatia (HRT) were jammed as well. The Serbians living in the Republika Srpska, as particular to their Entity, have - by name and by content - their own far-reaching electronic Media. The Croats in BiH, as a result of these actions, were left as the only Constitutive People without a television channel that would emit its programs using the Croatian language.⁷ It is true that the former TV station BHT (Bosno-Herzegovinian TV) was transformed into the Federal TV (FTV). The intent of this transformation was to have a TV station that could be seen across all of Bosnia and Herzegovina. The Bosniac and Croatian interests were to be represented even-handedly. However, that did not happen, and the likelihood that it will in the near future, is highly unlikely. The editorial policies of FTV have changed. They are less biased than the policies under BHTV. Yet, by virtue of its programming, the ethnic composition of its employees, and the manner of its reporting, Croats, unfortunately do not see the station as their own. Insufficient representation of the Croatian Language in the programming of FTV is made conditional by the fact that the Croatian journalists, who might be employed by the station, do not speak or do not wish to speak standard Croatian.

It is indisputable that an urgent overhaul of the Media in Bosnia and Herzegovina is necessary. However, such an overhaul must be done in the spirit of tolerance and even-handedness as regards all three Constitutive Peoples. The state of the Media forces the conclusion that the International Community - which took upon itself the role of guarantor of a united and financially sustainable media system - has to take note of and stress the differences of all the Peoples and citizens of BiH.

3. The Political Crisis in BiH

Seldom has a word enjoyed such decadence and inflation of meaning as has the word "Crisis". We make use of it for any and all occasions. As a result, the word's original meaning of *judgement, discussion, or, evaluation of a problem*, is often taken lightly. The territory of Bosnia and Herzegovina has always seen greater or lesser crises as well as opposing interpretations of them. The maelstroms of war offer us the most ugly proof of complex crises. Also, war is the most unfavorable way of resolving them. The Dayton Peace Accords, agreed upon on November 21, 1995 and formally signed in Paris on December 14, 1995 were designed to definitely end the war and political crisis in Bosnia and Herzegovina between the years 1991 and 1995. It succeeded in stopping the war. However, it did not succeed in removing the root-causes of the deep political crises in this area. However unjust the Accords were, they were better as an option than war. The Bosno-Herzegovinian

⁷ With the suppression of EROTEL in BiH, only three local TV channels exist that emit programs in the Croatian Language: HTV-Mostar, Oskar-C (Mostar) and TV-KISS (Kiseljak).

Croatians, the smallest population of the Constitutive Peoples of this nation, accepted the Dayton Accords with great enthusiasm. They did this even though two of the Dayton Entities - The Federation of Bosnia and Herzegovina, and Republika Srpska - as well as the legally unresolved District of Brčko, from the very start, represented potential flash-points for a new political crisis. It is for this reason that some Croatian Representatives to Dayton refused to sign the Accords. These potential flash points were becoming evermore real, as the Entities unfolded on the basis of "ethnic" principles. As these "ethnic principles" took greater hold from day to day, the Dayton construct of a unified nation paled more and more. Because of this fact, fear for their national rights in this land intensified each day on the part of the Croatians in Bosnia and Herzegovina. The Dayton Accords became the source of political crises, rather than a source for their solution. It is in this context that one needs to view the truly great political crisis in Bosnia and Herzegovina in the year 2001.

The political crisis of 2001 saw its culmination in the make-up of the government after the elections of November 11, 2000. Hence, the root of this year's crisis is to be found in the past calendar year. The crisis, however, culminated in the present year. The Temporary Election Law plays the central role in this crisis for the year 2000, for at that time, no permanent election law existed. The Temporary Commission for Elections, whose mandate was affirmed by Annex 3 of the General Framework for Peace in Bosnia and Herzegovina, adopted - actually, more correctly, accepted - the imposition of the rules and regulations according to which the Elections of November 2000 were held. This Commission was composed of both local and foreign members. The head of the Commission was the head of the OSCE mission to BiH, Ambassador Robert L. Barry. The true, but hidden intent of the OSCE organizers of the election was to reduce the influence of the domineering national parties. They saw them as a major obstacle to political stabilization and to the democratization of the land. They thought that in this way they could assist the less nationalistic political parties from whom they anticipated greater cooperation in implementing the Dayton Accords. The changes to the rules for the election of delegates to the House of Parliament for the Federation of BiH became one of the stones that muddied the political waters. The institution of the People's House was founded with the goal of protecting the vital national interests of the Constitutive Peoples. Its counterpart does not exist in Republika Srpska. The change to the rules was made October 11, 2000 by Ambassador Barry. The change was made with the approval and the blessing of the High Representative of the International Community (OHR)⁸ to Bosnia and Herzegovina, Mr. Wolfgang Petritsch. The change took place less than one month prior to the Elections, after many months of delay and under protest of two Croatian members of the Election Commission. Illustrative of our theme, the essential and central changes are:

1. That it is permissible for all members of Canton Assemblies to vote for all Canton Representatives in the Federal People's House. The vote is to be proportional where the Candidates on all lists are designated as a Croatian, Bosniac, or otherwise. The Ethnic Quota for every Canton will assure that the number of Croatians and Bosniacs in the

⁸ It must be said that the idea and role played by the **OHR** and the **OSCE** is quite complex, and that they were not always united in their views.

Federal People's House will be at 30, while the number of the remaining will stand at 20. Further, the reallocation of the vacant seats among the Cantons will be guaranteed.

2. That a new method is introduced for the allotment of seats to the various Canton Assemblies that should point to the influence of the electorate in every Canton. In this manner, this rule is intended to make possible that the representation of every Canton to the People's House reflects the electoral strength within that Canton. At the same time, it guarantees a minimum of representation for every Canton.
3. That the apportionment of seats is regulated on the basis of ethnic groups.

The first change in regulations by this decision tied to the procedure for the election of delegates from the Canton Assemblies was the most questionable. In fact, some Croatian political parties, centered on the Croatian Democratic Union (HDZ), declared it to be unconstitutional. They considered that the sovereign right of the Croatian People in BiH to elect their own Representatives to the People's House of the Parliament was thereby violated. In harmony with earlier election laws, associations of Representatives from the Cantons chose representatives to the People's House. The rule change foresaw that every party, party union, or an assembly of three Representatives to the Canton Assembly, may offer their own list of candidates to the Federation's People's House, from the ranks of Croats, Bosniacs, or other ethnic groups. It is important to note that the rule change was relevant at the Canton level. Formerly, representatives to the People's House were chosen at that level on the basis of strict ethnic principles. This means that the population residing in a given Canton chose candidates from their own ethnic group. According to the changed principle, candidates can be chosen independent of their nationality. Some Croatian parties saw in this a blow against their constitutive sovereignty, inasmuch as members of another nationality could recommend and elect Representatives of the Croatian People. These parties brought action against such a change in Election Rules. They demanded that the Rules be brought into harmony with their interpretation of the Constitution, that is, that they be returned to their former standing.

A second stone muddying the political waters was the altered structure for the number and national composition of the elected Representatives from the Canton Assemblies, in relation to the general elections of 1996 and 1998. The OSCE used as its criteria the number of registered voters distributed according to Cantons, and in harmony with the census of 1991. Some Croatian political parties saw this as illogical. They reasoned that some Cantons, for example, those having ten thousand Croats, could elect the same number of Croatian Representatives as a Canton having ninety thousand Croats. Aside from this, they pointed out the possibility of tremendous influence on the part of Bosniac Representatives in Canton Assemblies, on the election of Croatian Representatives. They maintained that 19 Croatian Representatives to the Federation's People's House, out of a total of 30, could be chosen by Bosniac Representatives.

As regards the election of the President and Vice-President of the Federation, the new rules make it possible for Representatives of other ethnic groups to choose either from the Bosniac

Delegates' Associations or from the Croatian Delegates' Associations. Since the Constitution of the Federation of BiH states that this matter is regulated only by the Bosniac and Croatian Associations (B, Art. 2) the Electoral Commission was reproached for having violated the decisions of the Constitution of the Federation of BiH, with its changes to the Election Laws. Hence, they concluded, the changes are unconstitutional and, therefore, invalid.

The OSCE did not accept the insistent demands of the Croatian political parties that the changed Election Laws be revised. The relations between the two sides were sharpened and polarized. The crisis deepened by the end of the year 2000.

At a meeting held in Mostar on October 23, 2000 by several political parties, the following decisions were made:

1. The changes made to the Election Laws are unconstitutional, and, as such, they represent the process of eliminating the Croatian People in BiH as one of the Constitutive Peoples. An abrogation of the changes is demanded. At the same time, a demand is made that the right and manner of election of representatives to the People's House be standardized. By doing so, it would allow the various ethnic associations to choose their own representatives to the People's House of both Entities, and at the BiH Federation level, as well.
2. The decision was made to hold a Croatian National Convention in Novi Travnik on October 28, 2000. The legal and constitutional position of the Croatian People in BiH would be discussed at this meeting. Also to be discussed would be the manner of achieving equality, sovereignty and constitutive status for the Croatian People in BiH.
3. The creation of a working committee to prepare and organize the Croatian National Convention of BiH was decided upon. Representatives of all the Croatian political parties present at the meeting, are to be members of this committee.⁹

The Croatian National Convention was held on October 28, in Novi Travnik. It was celebrated as the new and highest political body of the Croatian People in BiH. A declaration of the rights and position of the Croatian People in BiH and the decision to hold a referendum on the matter were formulated and adopted. Present at the meeting in Novi Travnik were the Cardinal Archbishop of Vrhbosna, Vinko Puljić, along with the Provincial of the Bosnian Franciscans, Father Mijo Džolan, and a large contingent of priests from the Vrhbosna and Mostar diocese.

After a strained election campaign, during which was seen the removal of names from the list of candidates, or the withholding of a mandate without the right to a substitute as is customary in Democratic societies, the elections took place on October 11, 2001. On that same day, by decision of the Croatian National Convention, a parallel referendum was held

⁹ N. Herceg - Z. Tomić, p. 88. Not all of the Croatian political parties were present, regardless of their importance, or lack thereof.

in areas having a Croatian majority. The referendum was designed to determine the regulation of relations toward BiH. Some saw separatist tendencies in such a formulation. There was a long wait for the results of the election. The composition of legislative bodies was supposed to take place according to time constraints imposed by the constitution. Thirty days was the cut off time allotted at the Confederation level, while at the Federal level, 20 days was allotted for the official announcement to be made.

The OSCE unwittingly and indirectly diverted the electoral water flow toward the grist mill of the national parties. Their fabricated and tendentious line was cleverly taken advantage of by declaring it as an assault to the vital national interests of the very national being and identity. This is affirmed by the election slogan of the HDZ: *“Freedom or Extermination”*. The HDZ Party of BiH, won 5 of 10 Cantons. At the same time, it gave an ultimatum seeking the revision of the regulations governing elections, and rejected entry into the process of electing delegates. In this manner, they blocked the work of all legislative bodies at the Federal and Canton levels. Ambassador Barry, as President of the Temporary Electoral Commission, finally confirmed the composition of the People’s House Assembly, only on February 23, 2001 long after their election by a “truncated” People’s House of the Federation of BiH, and the National Assembly of the Republika Srpska. It was “truncated” because the Representatives from the Croatian National Parliament were not present. At the formation meeting of the People’s House Assembly of the Federation of BiH, only 14 (out of 30) delegates from the ranks of the Croatian People were present. Twenty-five (out of 30) delegates from the ranks of the Bosniac People were present, and 19 (out of 20) delegates from the ranks of the others were present. These delegates chose 5 Croatian delegates and 5 Bosniac delegates to the People’s House Assembly of BiH.¹⁰

The newly formed Croatian National Parliament of BiH boycotted the work of the Peoples’ Parliament of BiH. It questioned the Parliament’s legality and legitimacy. It did so from the point of view of unconstitutional procedure, lack of a sufficient quorum, the unconstitutional vote of the others, and procedural violations, and its failure to act in a business-like fashion. An example of this is the fact that the President of the past assembly was to call for the seating of a new constitutive assembly. He avoided this obligation insistently. Mr. Ante Jelavić announced on March 1, 2001 that from that day forward, the Federation was purely Bosniac, that is, it is composed without Croatians. He declared the institutions in Bosnia to be illegal and non-legitimate. He stated he would neither participate in them, nor would he recognize their decisions. This stance made it possible that candidates were chosen for the legislative body from those who did not run for office in the election, or else, from those who did not receive majority support from the voters.

The one-sidedness of the changes to the election laws was not democratic. The changes were not the happiest solution. The Election Law was not in accordance with democracy, and, as a result, the radical forces gained even more strength. Doris Pack, the President for the Office for Southeastern Europe at the European Parliament in Strasbourg, declared it to be so on April 20, 2001. The intent of the OSCE to soften the strength of the national parties was not achieved. The Croatian Political Parties regarded the election law changes to be a

¹⁰ Ibid., p. 131.

quiet, unconstitutional revision of the Dayton Accords, and a blow to Croats as a Constitutive People. It was seen as a strike against their vital interests, analogous to the right to elect representatives to significant legislative bodies, and the right to self-determination. Bishop Perić, offered his analysis of the situation before the American Congress on July 25, 2001. He stated that Croats have the right to elect a Serbian as their Representative, if they choose so. However, he stated, the Croatian People cannot be represented even by a Croatian if he had been chosen by Serbs or Bosniacs, instead of Croats.

The crisis reached its pinnacle by springtime. Major accusations could be heard from one side and the other. The Croatian National Parliament of BiH took the position that the Croatian People in BiH were reduced to second-class status, and this violated the Croatian right to equality. They gave an ultimatum asking that the Constitution and the Election Laws be changed within 15 days. The changes must guarantee the portioning of all of Bosnia and Herzegovina into regions having autonomous powers. If this is not done, they stated, they will proclaim their own Entity, with its own constitution, administration, government, legislature, judiciary, taxing bodies, etc. In other words, they would revive the Croatian Republic of Herzeg-Bosna. This, they said, was justified in that the Serbs gained their own republic in Dayton, and with the post-Dayton changes executed by the High Representative, the Bosniacs gained their own Republic. Self-administration would entail five of the ten Cantons of the Federation. These were the main demands made by the Croatian People's Assembly held on March 3, 2001 in Mostar. By doing so, the "*pax Daytoniana*" would, "ad acta," achieve the status of a museum piece. These efforts were an attempt to achieve equality on the part of the Croats - even to the point of separation - if no other solution offered itself. The OHR and the OSCE responded by suggesting they would take drastic measures, and that they would severely punish all those who sought to construct a parallel, anti-Dayton structure of government. Thus, the High Representative of the OHR, removed Mr. Ante Jelavić from the Presidency of BiH, and forbade him, along with six others from engaging in political and party activities. Despite this, the HDZ elected Jelavić as its party president.

Bishop Ratko Perić addressed the People's Assembly, in Mostar. Starting with the results of the Referendum held parallel to the elections of November 11, 2000, Bishop Perić stated that the Croatian People in BiH have the right to defend their national being, their rights, obligations, and freedom. Bishop Perić further stated that the Croats achieved their right to hold such an assembly on the basis of a plebiscite, which represented the will of the Croatian People in BiH. He advised the Assembly, as a social and political institution, that it must remain as a lasting and stable institution. Bishop Perić further stressed that all the Peoples of BiH are to be seen as equal. The Bishop engaged himself to seek a revision of the Washington and Dayton Accords, on the basis of the unjust division of the territory of BiH. High Representative Wolfgang Petritsch reacted to Bishop Perić's address by characterizing it as "hate speech." The Bishops' Conference of BiH gave its support to Bishop Perić at their March 8, 2001 meeting in Sarajevo. They issued a statement in which they subscribed to the "principles" spoken of by Bishop Perić, at the assembly in Mostar on

March 3. Furthermore, they expressed their dissatisfaction with the International Community's dismissing of the political will of the Croatian People.

The Bishops of BiH maintain that the changes to the Electoral Laws, the manner of choosing members to the Presidency, and the role of the People's House, in fact, abolish the equality of the Croatian People as relates to the other two Peoples. They called for a dialog between the International Community and the legitimate and legal representatives of the Croatian People. They distanced themselves from those who wished to take advantage of Croatian interests for their own self-serving needs. They also distanced themselves from those who sought to reduce the Croatian People in BiH to little more than a national minority. By stressing the "principles" of the Croatian People's Assembly, they indirectly stressed the fact that they do not support all their extra-institutional measures of defense.

The electrified atmosphere passed from the political sphere to all spheres of society. It captured the mind-set of the Croatian contingent of the Army of the Federation of Bosnia and Herzegovina. The connection between the political and military authorities was clearly seen. The officers, non-commissioned personnel, and the soldiers themselves refused to obey the newly appointed Minister of Defense, who was, by nationality, a Croatian. Military installations were abandoned only to be spontaneously occupied by women and demonstrators. The representative of the International Community saw in this action an attempt to revitalize the army of Herzeg-Bosna.

The incident involving the Herzegovinian Bank was also a drastic response on the part of OHR. With heavy-armed force, the OHR took over the Central Office of the Bank in Mostar on April 18, 2001. Some saw the Bank as the foundation of economic strength for the Croats in BiH. Others thought the Bank was founded by the HDZ, and that all the major Croatian institutions in BiH were forced to do business with the bank. This event saw the appointment of a temporary administrator for the Bank on April 5, 2001. The representatives of the International Community in BiH have, to this date, failed to demonstrate or reveal any unlawful actions on the part of the Bank.

Conclusion

The political crisis in BiH in the year 2001 is actually a constitutional crisis. In the end, it is the product of insufficiently defined spheres by the Dayton Accords, by which BiH received its Constitution. The Dayton Accords failed to ground and formulate precisely governmental institutions and structures. It would seem that such an insufficiently defined and elaborated Constitution - badly in need of supplementation - reflected the wants and needs of the International Community. It is true that the International Community was of great value for the peace process in BiH with great financial investments and with this kind of constitutional agreement it received. But it also gained an almost unlimited control of the country without the legal and official assumption of the role of a *Protectorate*. The International Community justified its role in thinking that only a strong International presence, along with its experience

in Democracy, could solve the intra-national conflicts within BiH, and bring stability and Democracy to the nation. This political crisis - among other proofs - demonstrates that the above mentioned thesis is no more than an illusion.

The authority of the High Representative to BiH is truly great. This crisis in BiH showed his authority as follows: 1) He forbade political action; 2) He forbade one's right to be elected; 3) He abrogated the mandate of those legitimately elected; 4) He influenced the enactment of laws; 5) He imposed certain laws and decrees of his own will, as for example, those governing the use of the national emblem, the National Anthem, and the use of the National Flag; 6) He authorized the armed take-over of the Mostar Bank prior to any Judicial ruling; and, 7) He confiscated evidential materials, etc. The actions of the High Representative in this crisis demonstrate clearly that his Authority is greater than that granted to a *Protectorate*, or even to a *quasi-Protectorate*. In fact, in recent times, his use of such authority was expanded. It is possible for the High Representative to influence the work of the Judiciary, the Police, the Media, etc. Toward the end of 2001, Brussels authorized the High Representative to establish a parallel government of sorts in BiH.

The Croatians are one of three Constitutive Peoples in BiH. It is true, the newly changed Election Law applied to all three Peoples. However, the changes to the Electoral Law mostly affected the Croatian People as the least numerous population group. The changes made possible that Representatives of other Peoples have an overly dominant influence on the election of Representatives of another People. It is precisely at this point that the least populous People in BiH are most affected by such changes. Practically speaking, in the end, it became possible, because of those changes, for Representatives of two other Constitutive Peoples to elect Croatian Representatives to the People's House. Added to this, the introduction of the concept of "*others*" and the status given them - contrary to the rules of the EC concerning the rights of minorities, one can rightly conclude that a "fourth" Constitutive People has been added to the mix. Through this action, the position of the Majority People within the Federation of BiH was significantly increased. The Constitutive status of the Croatians as a People was also, thereby, brought into question. The result of this was that the free and democratic expression of the majority of the Croatian electorate was nullified. The chief sense of the People's House is the protection of the collective rights of all three Constitutive Peoples in BiH. The question seems to be justified, as to whether the People's House is in the position to truly protect the vital interests of each Constitutive People in BiH.

The make-up and role of the Croatian People's Parliament is, in itself, a good idea. Our thinking is that it should be outside of party lines, all Croatian, a moral voice, and an advisory body. The voice and stand of all political and party lines should be heard within it, as well as that of societal, cultural, and church representatives. This body, serving as the highest morally binding agency, should serve to protect vital Croatian interests. Formed at a time of great political crisis, and without the necessary reputation preceding it, and without a reciprocal moral and authoritative profile, the Parliament was, it would seem, politicized by various political parties. The idea for such a parliament existed even prior to the crisis. However, the leading political party, at the time, did not accept its formation. The impression

was that the attempt to raise actual problems from the level of partisanship to that of an all-encompassing Croatian level, by means of creating a parliament, was, in fact, too late. Perhaps, also, because of similar political and party reasons, two members of that party, in the year 2000, were opposed to the very important decision brought by the Constitutional Court of BiH, declaring that three Peoples are Constitutive across the entire territory of BiH. Furthermore, the political scenario of this crisis was similar to some extent - naturally, under different circumstances - to that of 1992. At that time, Croatian members of the Presidency, prior to Ambassador Barry's unjust change to the Election Laws, walked out on their positions within the Presidency, the Government, and the Parliament. At that same time, they declared Croatians who remained in their positions, as for example, those in Sarajevo, to be traitors. The most powerful Croatian political party in BiH ruled in the name of the Croatian People for ten difficult years. However, despite undeniable successes in most instances, the Party brought about catastrophic conditions for Croatians in BiH - or, at least, it did not succeed in preventing them. Instead of acknowledging their joint responsibility in the matter and wishing to spread this responsibility to others, to a large degree, it resorted to creating the Croatian National Parliament. Judging by all accounts that same Party had all the strings in its own hands and directed all the important political moves within the Croatian National Parliament.

After a long-lasting blockade on the part of the majority of the elected Croatian Representatives, they joined the composition of the government. Croatians who received far fewer votes filled those places that rightfully belonged to those legally and legitimately elected to them. What the first group refused to accept the second group took on with open arms. One cannot blame them for this, based on the manner of action carried out by the first group. Power is both a sweet and a dangerous temptation. Having entered into the structures of the new government, the Croatians engaged in a frontal attack against their "own" without regard as to the means. One had the impression that it was more important for them that they remain in power, than that they have concern for that which is legal or legitimate.

When all is said and done, it must be said that the Croatian People suffered great blows and harm. The Croatian Community in BiH is seen - unjustifiably - as separatist, ultra-nationalistic and chauvinistic. One must recognize that such individuals do exist, to the same degree as they exist in other ethnic groups. During this grave crisis, the Croatian People received too many "yellow and red cards," that is negative political points both domestically and on the International political scene. The view that Croatians, as a People, are uncooperative, intolerant, and unwilling to co-exist alongside other Peoples in BiH, is a baseless characterization of them as a People. A great gap was created within the Croatian People. Because of the suffering caused by the war and because of post-war injustice inflicted upon them, the Croatian People are divided among themselves. As is often the case in such instances, some members of the International Community in BiH demonstrated and proved the case of the strength of the powerful. Even though they saw their own negligence in the matter, they lacked the courage to publicly acknowledge their faults - and even less, to correct them. It would seem that they followed the old Roman maxim: *divide et impera*. In this instance, it became *cause a quarrel, and rule*. It is as though this would serve to show -

through their tough stand toward those who are weakest - at least some degree of success. The Croatian politicians showed too little political sensitivity, tact, and maturity. Too little room was left to the possibility that perhaps the others might have the same goal, but wished to achieve it in some other manner, or by other means. Some decided to engage in the political battle outside of the established institutions, while others decided to participate in the government even though they did not have an electoral mandate from the people that they represented to do so. One cannot justify the absence of political will on the part of individual Croatian politicians and parties to do everything possible to build a fair picture of BiH, despite the false and unjust framework of Dayton as regards the Croats. On the other hand, it is necessary to underline the fact that the measures taken by the High Representative of the International Community brought the Croatian People to the point where they ceased to be a political factor in BiH. Such a state cannot lead to stabilization, prosperity, or Democracy for this Nation. It is true, the return of the soldiers to their barracks and the return of the parliamentarians to the Parliament speaks to a willingness to bridge the gap within the Croatian national body and the willingness to resolve fundamental questions within the framework of the existing institutions. However, the question remains open, as to whether the present representatives of the International Community and the domestic structures of authority are willing to adequately resolve the status and question of the Croats in BiH. Fortunately, the political crisis in BiH has abated somewhat. However, it is not resolved. Much is expected of the Constitutional Court's willingness to rule on the constitutive status of the three Peoples across all of the territory of BiH. Presently, serious political discussions are taking place regarding this matter.

The Commission for Justice and Peace of the BiH bishops' conference sees the future of this country as a united state in which all of the three constitutional nations are equal and in which there is a guarantee that their basic and their human rights will be respected. The BiH Commission feels that the political crisis in BiH in the year 2001 sharpened the polarization at the political and at the international level. This did not help anyone - neither any of its nations, nor the state, nor the International Community.

4. The Stabilization Forces (SFOR) in Bosnia and Herzegovina

4.1. The history and task of IFOR

Following the signing of the General Peace Accords in Paris on December 15, 1995 after the discussions in Dayton, a multi-national force under NATO was given a mandate to implement the military aspect of the General Peace Accords, Annex 1A. They were to be known under the acronym IFOR. Their one-year mandate began on December 20, 1995. Within the framework of their mandate, the task of IFOR covered the following:

- The separation of military forces of the Federation of Bosnia and Herzegovina Entities, that is, those of the Bosniacs and the Croats, and also, the Serbian Entity in Republika Srpska. This was to be accomplished by the middle of January 1996.
- The transfer of territories between the two Entities by March 1996. (The Dayton Accords foresaw that individual territories that belonged to one Entity would be transferred to the other Entity.
- The collection of heavy arms within the Entities by June 1996.

During the course of its one-year mandate, IFOR oversaw a boundary of 1,400 km dividing the Entities. It also collected some 800 pieces of heavy arms and other ordinance. They also repaired some 60 bridges and opened some 2,500 km of roadway across all of BiH. Control of the airport in Sarajevo was also undertaken by IFOR. Because of these measures, a zone of security throughout BiH was established. This made it possible for other organizations and agencies to carry out the work in the civilian sector as foreseen by the Peace Accords. Conditions were thus created for the return of normal life in BiH. Toward the end of its one-year mandate in BiH, IFOR gave impetus to the first post-war free elections in July 1996.

The military aspect and other tasks assigned to it by the mandate of the General Peace Accords were quickly and efficiently accomplished by IFOR. Their efforts were well received by the general public. After the horrors of the war, peace arrived and had to be respected. The actions undertaken by IFOR resulted in a stabilized reintegration of the areas between the Entities as well as the removal of heavy arms so as to prevent the possibility of re-igniting the flames of war.

4.2. The transformation of IFOR into SFOR

With the peaceful holding of elections in July 1996, IFOR successfully completed the military aspect of its mandate. The political situation in BiH, however, was still unstable and unsure. Following the election of July 1996, the NATO Ministers of Defense concluded that it was necessary to re-organize their forces. Their intent was to widen the security zones in BiH

upon expiration of the IFOR mandate in January 1996. A plan was generated to assure security within BiH, and was adopted in Paris. The Ministers of External Affairs and the Ministers of Defense of the NATO countries concluded that it was necessary to reduce the military forces, and to organize a Stabilization Force (SFOR). The mandate of SFOR began January 20, 1996. The difference between IFOR and SFOR is apparent by their very names, namely IFOR (Implementation Forces) and SFOR (Stabilization Forces). At the start of their mandate, the forces of SFOR numbered some 32,000 troops. This number was approximately one half that of IFOR. SFOR as well as IFOR operate within strict rules as approved by Article VII of the UN. The article strictly defines the use of force by them as to self-defense. Within the framework of their mandate, the primary task of SFOR is to participate in the creation of a zone of security so as to create a sustainable peace. The special tasks specific to SFOR are as follows:

- To prevent renewed hostilities, that is, fortify the advance of peace.
- To advance a climate wherein the peace process can improve.
- To assure support to civilian organizations within a framework of possibilities.

4.3. The participation of various countries in SFOR

Continuing the enforcement of the military aspect of the Peace Accords, SFOR helped implement the circle of security assuring civilian and political reconstruction. The following organizations are responsible for carrying out the civil work of the Peace Accords: The Office of the High Representative (OHR), UNIPTF, UNHCR, the Organization for Security and Cooperation in Europe (OSCE), the International Tribunal for War Crimes in the Former Yugoslavia (ICTY) and many other state and non-state organizations.

The civilian aspects of the Peace Accords are carried out by International Organizations, under the coordination of the High Representative. SFOR assisted in carrying out the important civilian portion of the Peace Accords. To achieve the goal of better efficacy, SFOR and the organizations, which are assigned the task of carrying out the civilian portion of the Peace Accords, had to have a definite plan. SFOR had to be prepared to offer support when necessary. Thus, SFOR under the umbrella of its activities supporting the carrying out of the civilian portion of the Peace Accords, had the following task:

- To guarantee the national elections in October 1998; the County elections in 1997 and those in April 2000; the special election in the Republika Srpska, held in 1997; and the general elections held in November 2000.
- To ensure the support of OSCE in preparing for the above mentioned elections, as well as the establishment of rules governing political parties and control over the armed forces across the territory of BiH.

- To ensure the support of the UNHCR in overseeing the conditions under which the Refugees and Exiles return to the zones of division, also the prevention of conflicts in Returnee areas.
- To promote local and other laws, in cooperation with UNIPTF, which are based on the establishing and maintenance of peace.
- To work with the authorities in BiH to establish a security rim so as to sustain the Summit Pact on Stability within Southeastern Europe which was held on July 29 and 30, 1999 in Sarajevo.
- To guarantee the Security Rim for the implementation of peace in the District of Brčko, as foreseen by the Arbitrator's Agreement of March 5, 1999 for the supervision of Brčko, by UNIPTF and UNHCR. Oversight of the demilitarized zone of the District of Brčko.
- To support the International Tribunal for War Crimes Perpetrated on the Territory of the Former Yugoslavia (ICTY), which includes the patrolling, arrest, and extradition of persons accused of War Crimes.

4.4. Conclusion

From the very start of its mandate, SFOR was actively involved in infrastructure reconstruction projects, especially in areas of Return. They repaired roads, garnered necessary supplies so as to allow for the Return process, such as food, building materials, potable water supplies, etc. The SFOR troops ensured the support of the International Commission for Missing Persons (ICMP) in their task of identifying the bodies that were found in mass graves. This is but a portion of the activities carried out by SFOR, in aiding all the suffering Peoples of BiH.

The work of SFOR within the framework of the military portion under the Peace Accords is clearly defined by instruments of the United Nations. These are strictly tied to the fundamental mission of SFOR. Meanwhile, in the support offered to organizations tasked with the civilian portion of the Peace Accords, one has the impression that the interpretation of the role to be played and the tasks of SFOR vary from situation to situation. SFOR controls its own activities and gives orders by its own authority as regards the carrying out of its mandate. Because it does so, it is impossible to state clearly as to whether mistakes exist or not.

United Nations Resolutions by the Security Council gave SFOR the mandate of creating a circle of security within BiH. Within the framework of its mandate, SFOR is to identify potential threats, engage them and, as a military force, resolve them. Thus far, SFOR has not captured some individuals against whom international warrants for arrest have been

issued, as, for example, Karadžić or Mladić. SFOR has captured and delivered to The Hague, 23 persons accused of having committed war crimes, that is, persons against whom international warrants have been issued and also against individuals who support terrorists or their activities. The presence of SFOR in such unstable political and security conditions in BiH is still very necessary. SFOR is certainly one of the most successful missions of the International Community in BiH. On the other hand, it is also certain that their prestige among the populace of all three Peoples is declining. Formerly, the vast majority of the people saw SFOR as their liberators. Today, those same people see SFOR as their oppressors. No doubt SFOR's selective approach, manner and intensity of engagement in capturing individuals accused of war crimes has contributed to this change in view. The occasional and exaggerated demonstration of force did more to irritate than to assure a sense of security. An example of this is SFOR's disproportionate participation in the process of crossing out incriminating content in textbooks and their frequenting school buildings while fully armed. Further their forced entry into civilian structures, as, for example, County and Canton Offices, business offices and banks, is seen as a clear overstepping of their mandate.

5. A Special Report The Restitution of Property Seized during Communist Rule

5.1. The manner and institutionalization of expropriated property in Bosnia while a territorial unit of FNRJ and SFRJ

5.1.1. The institutionalization of expropriation of property rights in (SR) BiH and SFRJ

Particular elaboration of the rights of an individual in a totalitarian system is hardly necessary. All totalitarian systems are, in essence, directed against the basic rights of man and the individual. The system of the so-called Socialist Workers Self-management in the former Yugoslavia is, in essence, a construct of an irrational anti-theistic ideology. It mercilessly oppressed all those who did not think as they did, while, at the same time, propagating the rights of the working class.

All legitimate regimes wish, at least in a declarative sense, to be seen as Democratic. Thus during the reign of the Marxist-Collectivist “visionaries” in the former Yugoslavia, the platitude of the so-called “Democratic Centralism” came into being.¹¹ Those who did not think as they thought were declared to be enemies of the people. Hundreds of thousands were victims of this utopian and repressive ideology.

In view of the fact that the Communist ideology was founded upon the idea of “collective ownership,” the consequences of this policy resulted in the liquidation of “class enemies,” and the expropriation of their property. The first blow was leveled at the churches and faith communities. Party functionaries and their followers vied with each other as to who had more hatred toward believers and faith-based institutions. Along with the general repression carried out by the Communists against adherents to various churches and faith communities, the expropriation of entire properties of those who were a hindrance to the realization of their “class project” was formally institutionalized.

Even though property could be expropriated through a simple decree, the Communist Party or self-willed wielders of party power nonetheless endeavored to reduce the procedure to an institutional framework. Thus, the taking of property within Bosnia and Herzegovina as a territorial unit of the former Yugoslavia was regulated by a multitude of legal norms. These were created by the centers of national power. Such norms are as follows:

1. *The Law of Agricultural Reform and Resettlement* (Sl. list DFJ, No. 64/45; Sl. list FNRJ, No. 16/46, 24/46, 101/47, 105/48, 4/51, 19/51, 21/56, and 55/57; Sl. list SFRJ, No. 10/65.)

¹¹ The mouths of tyrants were always filled with the word “democracy.” As an example, the so-called “Stalin Constitution” of 1936, formally proclaimed all human rights that could only be imagined. The heritage left behind from Stalin’s regime hardly needs to be called to mind.

2. *The Law of Agricultural Reform and Resettlement, NR BiH (Sl. list NR BiH, No. 2/46, 18/46, 20/47, 14/51, and Sl. list SFRJ, No. 10/65.)*
3. *The Law Governing the Agricultural Land Fund under Societal Ownership, and the Granting of Land to Agricultural Organizations (Sl. list FNRJ, No. 2/46, 18/46, 20/47, 14/51, and Sl. list SFRJ, No. 10/65.)*
4. *The Law Governing the Treatment of Property Abandoned by the Owners during the Occupation, and Property taken from them by the Occupiers and their Accomplices (Sl. list DFJ, No. 36/45 and 52/45; Sl. list FNRJ, No. 64/46, 88/47/ 99/48, and 77/49.)*
5. *The Law Governing the Nationalization of Private Enterprises (Sl. list FNRJ, No. 98/46, 99/46, 35/48, 68/48, and 27/53.)*
6. *The Law Governing the Nationalization of Leased Properties, and Construction Sites (Sl. list FNRJ, No. 52/58, 3/59, 24/59, 24/61, and 1/63.)*
7. *The Fundamental Law Governing the Expropriation of Property, (Sl. list FNRJ, No. 28/47.)*
8. *The Fundamental Law Governing the Treatment of Expropriated and Confiscated Forest Land (Sl. list FNRJ, No. 61/46, 88/47, 106/49, and 4/51.)*
9. *The Law Governing the Transfer of Enemy Property to Societal Ownership, and the Sequestration of Property from Absent Landlords (Sl. list FNR, No. 63/46, and 105/46.)*
10. *The Law Governing Trading of Land and Buildings (Sl. list SFRJ, No. 43/65, 57/65, 17/69, and 11/74.)*
11. *The Law Governing the Right to Ownership of Commercial Properties and Commercial Space (Sl. list SRBiH, No. 23/79, 26/86.)*
12. *The Law Governing the Confiscation of Property, and the Discharge of the Act of Confiscation (Sl. list FNRJ, No. 40/45, and 61/46.)*
13. *The Law Governing the Need of, and the Changes and Additions to the Law on Confiscation of Property, and the Discharge of the Act of Confiscation (Sl. list FNRJ, No. 61/46.)*
14. *The Fundamental Law Governing the Use of Farmland (Sl. list FNRJ, No. 43/59, 53/62, and 10/65.)*

15. *The Statutes Governing Reallocation of National Farmland having National Significance* (Sl. list FNRJ, No. 99/46.)

16. *The Statutes Governing Property Relationships and the Reorganization of Peasant Workers' Cooperatives* (Sl. list FNRJ, No. 99/46.)¹²

5.1.2. The legal foundation for the law governing expropriation from 1945 through the time of democratic change

5.1.2.1. Agrarian reform

The Agrarian Reform measures taken by the Communist Authorities immediately after World War II¹³ regulated the expropriation and transfer to state ownership of the following resources:

1. Large agricultural and forest resources with *total area* exceeding 45 hectares, or 25-35 hectares of arable land (fields, pastures, orchards, and vineyards)¹⁴ provided that they were tilled or maintained, that is, made use of either by lease or by hired help.
2. Land parcels which banks, businesses, shareholding societies owned, and other legal and physical persons.
3. Land parcels owned by religious communities¹⁵
4. The excess of arable land in land parcels which is beyond that foreseen by the Law governing land maximums.
5. The excess of arable land beyond 3-5 hectares whose owners are not farmers by trade.
6. Land parcels that during the course of the war were left without a legal owner or heir, regardless of the reason.

¹² The nomenclature of Legal Norms taken from *A Proposal for the Law Governing Restitution* - a proposal with built-in amendments composed by a team of experts for the Government of the Federation of Bosnia and Herzegovina.

¹³ The law governing Agrarian Reform and Resettlement came into force July 23, 1945.

¹⁴ This was the maximum amount of land allowed in private ownership by an individual farmer. As the exception, the maximum land ownership allowed for monasteries and religious communities was set at 10 hectares. Should the Communist Authorities determine that a given parcel of land owned by a religious institution was historically significant, the maximum of 30 hectares was allowed. The maximum land parcel allowed to persons not farmers stood at 3 to 5 hectares of arable land. Forestland was set at 5 hectares for the same individual. When compared to other Socialist countries that introduced agrarian reforms after World War II, these land maximums were the lowest. The maximum land ownership was later "guaranteed" by the Constitution of SFRJ.

¹⁵ The socialist nomenclature did not allow the use of the concept *Church*, hence the term *religious community* was used instead. It included the Catholic Church, as well as the Serbian Orthodox Church.

The process of expropriation that was carried out in keeping with the *Law on Agrarian Reform and Resettlement* lasted about three years and during that time in the former Yugoslavia some 1,500,000 hectares of land were expropriated.

The Law Governing the People's General Land Fund of 1953 reduced the maximum land to be held to 10 hectares (as an exception, 15 hectares) and subsequently, some 300,000 additional hectares of land was confiscated. This land was used exclusively by the Socialist sector of agriculture.

The economic consequences of the Agrarian Reform measures taken by the former Yugoslavia including those on the territory of Bosnia and Herzegovina were detrimental. The land fund became very fragmented and as a result no intensive agricultural activities could be sustained. That portion of land that passed over into societal ownership following the Russian Collective Farms example was in fact left without real ownership and because it had no real owner, it was unable to produce any positive economic gain.

5.1.2.2. The reallocation of agrarian landholdings and forest resources

So as to avoid the consequences of fragmentation of landholdings, the Communist authorities carried out the process of reallocation of landholdings and forest resources at their own discretion. Reallocation of landholdings represents the expropriation of land from private landholders, with compensation, and its annexation to the societal sector, so as to "round out" that sector. Keeping in mind that in the former Yugoslavia, a government of rights was not in play, the reallocation of landholdings and resources that caught the eye of those who were in power, proved injurious to the land or resource owners.

Above and beyond the reallocation measures, the measure limiting the rights of ownership were also measures of commassation,¹⁶ that is, the redistribution of land parcels on a "rational" basis. The goal was to group together land parcels for the building of hydroelectric objects, agricultural roads, etc. In contrast to reallocation measures, the measure of commassation could be put into motion at the request of private owners of land, as for example at the request of the majority of owners of agricultural land parcels that would be used to accomplish some agro-technical measures.

5.1.2.3. Colonization of expropriated land

Along with the above-mentioned measures, the Agrarian Reform went further, namely, the colonization of expropriated resources. The Communist Authorities took these measures for social reasons, however, they also took them for political reasons. The massive colonization

¹⁶ The laws of the Republics and the Provinces of the former Yugoslavia regulated the problems that were caused by commassation.

of abandoned regions, was in part the consequence of the economic policies that the Government was fostering at the time. Meanwhile, these measures were largely used as an instrument that was designed to change the geopolitical picture of the state at that time. Colonization was, at the same time, an instrument of political pressure and retaliation for wartime losses.¹⁷

The ethnic structure of the *colonists* for the region of SAP Vojvodina, as it existed at the time, can be an instructive example. Of the total number of *colonists* resettled on the abandoned parcels of land, 76.6% were Serbians, 13.3% were Montenegrins, and the remaining percentage was comprised of the leftover minorities of the former Yugoslavia. Such ethno-social policies changed the ethnic structure of this region forever. It was ruinous, and, to the detriment of the former population occupying the area.

5.1.3. The nationalization of the “expropriations of the expropriators”

Elaborating the fan-spread of measures of expropriation of private ownership carried out by the Communists in the former Yugoslavia, it is sometimes difficult to define the fundamental differences one might find from case to case. Meanwhile, in the end, all these measures achieve the same effect, for they are all the result of the same ideological foundation.

The Communists understood the term *nationalization* to be the forced transfer from the private domain into the public or State domain of all enterprises within a given economic field - major enterprises, that is, enterprises of a particular sort or size - with, or without compensation. With the act of nationalization, the effect of expropriation was not the only effect achieved. The enforcement of these measures prevented both legal and real persons whose property was expropriated from regaining subjective rights to the property that they lost by act of nationalization.

The ideological apologist for the regime of the time defined *nationalization* as an “economic-political measure” that can (but need not!) be carried out with appropriate compensation. Keep in mind that the motto representing the communist ideology was “*the dictatorship of the proletariat*”. The just compensation of those individuals who were affected by expropriation of property was caught-up by this *economic-political* philosophy and such individuals can be said to be transformed into real proletarians. This radical measure was eagerly referred to as “*the expropriation of the expropriators*” by those who set themselves up in business as the executors of the measure. Translated, this demagogic definition of *nationalization* should be read as an act of expropriation of the entire capitalist class.¹⁸

¹⁷ Under the burden of these measures, some 500,000 *folksdojčers*, that is, ethnic Germans, were forced to abandon their holdings in the territory of the former Yugoslavia

¹⁸ The *October Revolution* in the USSR was followed by extensive nationalization—not only industry, business and trade, but also landholdings were transferred entirely to State ownership.

The Law Governing the Nationalization of Private Enterprises, enacted December 6, 1946 by The Federal Peoples Republic of Yugoslavia, transformed all private enterprises, ranging across 42 different industries, into State Economic Enterprises. In those instances where the nationalization of an enterprise was compensated, the owners were paid in State Obligation Bonds which had little or no real value.

5.1.4. Expropriation - a measure of expropriation in the “common interest”

Expropriation represented the confiscation of privately owned real estate. Through this Act, private property was turned into state ownership. Such measures were taken when it was “*in the common interest*” and accompanied by “*just compensation*”.

In contrast to *nationalization*, compensation was given in money, while for expropriated farm resources, *natural compensation* came into play. If an agreement on compensation could not be reached, the Court, outside the framework of a legal suit, determined the compensation. These matters were decided upon at the Federal level¹⁹ at first, and subsequently, by the statutes at the Republic or Provincial levels of the former State.

The extent of the established demagoguery on the part of the authorities of the time is reflected by the legal definition applied to the expropriation of only a portion of a parcel of real estate. The definition reads: “*If at the time of the expropriation of a portion of a real estate parcel it is determined that the owner does not have an economic interest in making use of the remaining portion of said real estate, that is, if, because of the expropriation, it is impossible, or essentially made difficult for the remaining portion to stand as viable, then, at his request, that portion of said real estate is also expropriated.*”

5.1.5. Confiscation - sanctions for criminal acts

Confiscation also represented forced expropriation. This measure was always undertaken without compensation for the expropriated resource. In essence, it was a sanction that was pronounced matter-of-factly upon those committing a criminal act. This measure of expropriation was pronounced optionally, and could be pronounced upon a person who committed a criminal act for which at least a three-year sentence was pronounced. Even though it was defined as an inconsequential and optional sentence, often it was of a more serious nature than the main sentence. This practice was made use of to settle accounts with enemies of the Socialist system. Namely the *Criminal Law of SFRJ* foresaw the possibility of pronouncing this judgement “*for whatever criminal offence against humanity and International Law, or against the economy and unity of the Yugoslav market, as well as against the official duties of official personages within Federal bodies, or the Armed Forces of SFRJ.*”

¹⁹ *The Fundamental Law on Expropriation* (Sl. list FNRJ, No. 28/47).

Every act of opposition to the reigning single-mindedness in Socialist Yugoslavia was defined by law as a criminal act. Included were: 1) participation in the armed forces of the enemy, 2) collaboration with the enemy, 3) counter-revolutionary acts, 4) a verbal offence, 5) revealing military or State secrets, etc. Hence, one can easily see the range of reasons for carrying out these measures of expropriation.

In light of the ease with which the governmental structures pronounced - as they determined the need - sanctions based on these criminal offences, the expropriation of private property was a convenient way of settling scores with obnoxious members of society. The confiscated property was transferred to societal ownership and the local County Officials thus had it at their disposal.

5.1.5.1. The Act of sequestration - insurance of property interests of the state

Prior to carrying out the act of confiscation of private property, an act of *sequestration* was carried out. This was done as “*a measure of insurance*.” By virtue of this act, all or part of a piece of property of a person, which was expected to be subject to Confiscation, was sequestered. In the former Yugoslavia, this problem was regulated by a string of laws governing expropriation.²⁰

The essence of these measures largely demonstrates the character of the entire societal system and the make-up of the State in the former Yugoslavia. The application of these measures resulted in great prejudices against those under suspicion and against those who were subject to measures of expropriation or defamation.

This measure casts a light on all the hypocrisy of the authorities then in power, as well as the Marxist-Leninist ideology.

5.2. An introduction to the problem of restitution in BiH

With a wholehearted application of the above mentioned measures, the fate of hundreds of thousands of “class enemies” in the former Yugoslavia was determined on the basis of ideological, quasi-sociological standards. It is difficult to express the suffering that the greater part of the population of the former Yugoslavia passed through. The accumulated historical injustice did not relate exclusively to the loss of property. It was accompanied by systematic

²⁰ For example, “*The Law Governing Confiscation of Property and the Execution of the Act of Confiscation.*” *The Law Governing the Transfer of Property Belonging to Enemies of the State, to Ownership of the State, and the Sequestration of Property from Absent Landowners.*” *The Law Governing the Approach to Resolving Property Abandoned by the Owners during the Occupation, and Property Confiscated by the Occupiers and their sympathizers*” and other laws of like nature.

persecution and humiliation of all those who had an opposing belief or whose world-view could not partake in the flow of self-managed socialism.

With the fall of Communism in 1991 and with the introduction of democratic elections, the newly formed government verbally took on the task of returning confiscated properties to their former owners or their legitimate successors. A systematic reworking of *The Law Governing Restitution* had not yet begun on the part of the responsible bodies. Nor had this measure found its way into the procedural workings of the Parliament. Despite the urgency facing the Bosno-Herzegovinian economy in this matter it is unclear when and in what form measures of restitution will truly begin. It is abundantly clear, even to non-experts, that no just or efficacious measure of restitution can take place without strong fiscal support.

At the start of this year, a tenant in Sarajevo appealed to the Legal Advisor to *Iustitie et pax*. Her land was nationalized by a decision rendered in 1998, by the County Center-Sarajevo, on the basis of *The Law on Nationalization* from 1956. The reason given for doing so was that due to negligence at the time of an earlier act of nationalization, her property - which is located in the center of the city - was not nationalized due to an error. The complaint of the former owner of the land parcel was dismissed as being premature. The explanation given was that BiH, along with its Entities, still do not have a positive legal regulation by which such problems of Restitution might be resolved.

Rightly so, the question arises: Is the past really behind us?

5.2.1. Preliminary activities with the goal of resolving the problem of restitution

The Office of the High Representative to BiH, by virtue of his Act of August 13, 1999 - directed to the Parliament of BiH - concludes that there is consonance between the authorities and the population of BiH, as regards the suitability of executing measures of restitution for properties nationalized during the time of the previous regime. This Act defines the fundamental principles that the Parliament of BiH and the Legislative Bodies of the Entities are to observe when resolving the problem of Restitution. The text of the Act, in essence, represents the outline for The Framework for the Law on Restitution of Nationalized Properties in BiH. The Act foresees agreement among future laws governing Restitution passed by the Entities. The finding of the framework concludes that with the conveying of the framework for the law, urgent measures are to be taken by the Entities to enact laws governing the problem of Restitution. (It is the duty of the Entities to incorporate these laws within six months from the day of their proclamation in the Official Gazette of BiH (*Sl. glasnik BiH*)).

The Outline was put together in a contrived and surface manner, inasmuch as it includes acts of nationalization or expropriation as the only relevant methods of expropriation of private property. From the start, the fundamental principles upon which the Framework

Outline is based contains essential discriminatory signs relating to the future process governing expropriation cases. This is apparent in that it protects the existing status of legal subjects who are making use of the expropriated property and excludes in advance the former owners from the process of natural restitution - a method that is allegedly preferred as the method of Restitution. Recognizing the full difficulty of the problem, and the unavoidable fact of negative implications to the entire economic, social, and political *milieu*, the Representative of the International Community in BiH significantly endeavor to retard the process of formulating and executing laws on Restitution.

5.2.1.1. A brief review:

The law on restitution - a proposal with “built-in amendments”

A team of experts for the Government of BiH formulated *A Proposal for the Law on Restitution with built in amendments* in December 1999. The proposal was to be the basis for consideration by the legislative bodies of this Entity. To this day, nothing has been done to bring this law into existence. Time will tell what sort of legal solutions will be enacted and also whether they will succeed in reconciling the imperative demanding justice, on the one hand, and the chronic lack of funds in the National Budget of BiH, on the other hand.

In view of the fact that the matter is very complex and sensitive, a long and sharp parliamentary debate is expected. The extensive efforts taken by those who have enriched themselves at the expense of others under the former national authority in order to thwart such a law will be seen soon enough. The fact that too many such individuals are still present in all spheres of society, makes resolution of the already heavy atmosphere created by the problem of Restitution all the more urgent.

5.2.1.2. Fundamental provisions for *The Proposal for a Law on Restitution* in the federation of Bosnia and Herzegovina

The Law on Restitution in FBiH should - as intended by its authors - comprise a consistent whole with an entire set of enacted laws regarding privatization. In view of the fact that the issue is complex, the expert team for the Government of the Federation of Bosnia and Herzegovina composed a fair copy outlining the matter. This will become in all likelihood the basis of parliamentary debate and a framework for the procedures of enacting the future law governing Restitution in the Federation of Bosnia and Herzegovina. Here in below, we will offer a brief analysis of this proposal.

With the *Proposal for Restitution in FBiH*, the principles, format, subject, manner of and approach to the problem of restitution are regulated. This law defines *restitution* as the return of property and rights to their former owners (legal and real persons) that were taken from

them on the basis of coercive ordinances²¹ as well as the granting of compensation for confiscated properties and material resources.

5.2.2. Subjects of restitution

The right to restitution belongs to former owners whose property was confiscated without foundation or with baseless legal action under duress or fraud on the part of representatives of the State.

The proposal listed those authorized for restitution:

- 1. Real persons. In the event they died, their spouses, their blood relatives, as well as brothers and sisters, and their children.*
- 2. Religious communities, or organizations who have standing as legal persons.*
- 3. Associations of citizens and other legal persons, that is, their legal adherents.*

The right to restitution of confiscated property, in the meanwhile, would not be given to former owners to whom a just compensation was paid, or to whom other rights or things of value were given in exchange. Article 5, Paragraph 2 of the Proposal for a Law of Restitution presumes that the compensation given was just, as long as said compensation was determined on the basis of the law wherein it was defined by the term “just.” This legal resolution of such matters is very problematic and undesirable for former owners of confiscated property. I think that the fairest legal solution would be if the right to restitution would be granted to all persons to whom an equivalent value in compensation was not given for the confiscated property or rights. Naturally, the compensation would be equivalent to the ensuing loss. Paragraph 3 of the above mentioned Article would deny restitution to those persons from whom property or rights were confiscated “on the basis of a judgement for a crime committed, which, by International Conventions, represents a War Crime”. Keeping in mind the ease with which the former authorities passed defamatory judgements. They readily accused persons of having committed War Crimes. Also, keeping in mind that processes of rehabilitation were not undertaken after the fall of Communism in BiH, I think that this decision does not contribute much to the realization of the principles of Justice.

Considering that those who proposed the measures for restitution and who defined the regulations governing exclusion from restitution did not use the expression “*judgement of the court*”, but rather used the expression “*judgement*”. All sorts of decrees and decisions enacted by various bodies that represented centers of power in the former nation could thereby be rehabilitated. It cannot be said of them that they acted on the basis of legal principles, not to mention on the basis of other democratic categories.

²¹ The Ordinances governing confiscation of property referred to in a previous section of this Report that are relevant to the process of Restitution. “The Mode and Institutionalization of the Confiscation of Property in BiH, as a territorial unit of **FNRJ-SFRJ**.” Our thinking is that this list is incomplete for it fails to list some laws that are of fundamental importance as relates to the institutionalization of property confiscation.

For foreign persons, legal or real, the right to restitution was regulated based on the principle of reciprocity. Persons who were compensated for expropriated property on the basis of International Treaties also would not have the right to restitution which would be the logical solution.

According to the *Proposal for a Law on Restitution*, the right to restitution would be held by legal successors of legal persons whose property was transferred to the State or to societal ownership. The Federation of Bosnia and Herzegovina is named to bear the obligation of monetary restitution. One needs to take into consideration that we are speaking of an Entity-based law that needs to be brought into harmony with the corresponding law of BiH, when adopted, and that yet needs to be adopted by the Parliament of BiH. A person who, on the day of adoption of this law, would be in possession of the property covered by the law of restitution would be considered to be the natural one to be obligated.

5.2.3. The form and manner of realizing restitution

The proposal for Property Law foresees the following forms of restitution:

1. *Natural Restitution* - the return of property to its former owner, as well as the confirmation of the co-owner's portion and the owner's share. The property would be returned in the condition it is in at the time of the enactment of the Law. In the event the property's value has significantly increased from the time of its expropriation, it is permitted that the former owner receive his share of the increased value to the extent that this is possible without causing damage to the property to be returned.
2. *Compensation* - confirmation of the limit of the damages sought by the former owner toward the obligated party on the basis of the value of the property to be returned. It is to be expressed in KM in the form of certificates that could be used to buy businesses and shares in a business. It could also be used to buy apartments and the like.²² With regard to the fiscal liquidity of the State and its businesses, this version of compensation will not have real value in the foreseeable future.²³ If a property covered by the law of restitution is in the ownership of a third party and that party gained ownership on the basis of valid obligation, then the person, who gained the property without obligation and later received compensation for its transfer, is considered to be obligated to provide compensation.
3. *By Agreement of the Parties* - the Law keeps this possibility open up to the moment of a legal decision regarding the restitution.

The imprecision of this decision leaves open the possibility of discretionary evaluation of the matter and room for manipulation without any particular criteria governing restitution!

²² When defining this form of restitution, the one propounding it did not keep in mind that Banking Institutions, wherein the damages sought could be deposited by citizens, were abolished.

²³ The value of Certificates can serve us as an example: At present, their value stands at 1.5% of their nominal value.

As we can see, the former owners of property will achieve their rights under very undesirable conditions with the enactment of this Proposal. The Proposal does not foresee monetary compensation for confiscated resources for which natural restitution is no longer possible. Of particular difficulty is the restitution of real estate. Real estate, to a large degree, will be the matter under consideration by this Proposal.

The Proposal foresees an undesirable “compensation” in place of natural restitution of real estate, for the following reasons:

1. The work of particular organizations would be made difficult under the Proposal's requirement of restitution of real estate, such as: governmental bodies, health-care facilities, schools, places of higher education, science or culture.
2. At the request of a business firm, when the restitution of buildings or spaces occupied by the business would endanger the continued operation of the business.²⁴
3. With the return of farmland, to the extent that the operation of the farm would suffer significantly or the work of the holder of the land would be made difficult, compensation, instead of natural restitution, would be given also at the request of the holder of the farm property.
4. With the return of forests or forestland, if the return of said land would significantly endanger the stewardship of the complex, also at the request of the holder of the property.
5. With the return of a developed construction site, as well as those sites parceled-out for construction up to the very time the Law on Restitution takes effect.

For those entitled to restitution, the legal solution offered for restitution of goods is undesirable. The solution is somewhat mitigated by the directive that gives the owner whose

property was confiscated priority over other persons in receiving shares or co-owner privileges from the party in possession of the property, that is the party who last was entitled to make use of it.

In an attempt at solving the problems surrounding restitution of apartments covered by dweller's rights for social reasons, the advocate of the changes to the law decided to protect the rights of those dwelling in the units by granting them the right to lease them. This would apply to those living in apartments now owned by the City or State. This right would assure

²⁴ In the event that such burdensome conditions do not exist, and that the building is leased to a third party, the building or business space does not return to the owner. In such cases, the person leasing the property is obligated to the owner. The lease relationship ceases within one year from the day the law takes effect.

that the person covered by tenant's rights and his spouse would have lifetime right to live in the apartment covered by the law of restitution. This right, according to *The Proposal for a Law on Restitution*, could not be transferred to a third party - including members of the immediate family. The apartment would be returned to the former owner. However, he is obligated to grant a lease to the bearer of tenant's rights and to his spouse to live in the apartment for life. A separate law would regulate such leases. Inasmuch as the owner of the apartment would wish to sell the apartment, he would be bound to give first-offer rights to the tenant under lease. Interpreting this formulation of the law proposed as a legal solution, the spouse of the bearer of the right to possession of the apartment would not have first-offer rights to purchase the apartment. The author of *The Proposal for a Law on Restitution* resolves the problem of restitution of real estate that has cultural, artistic, or historical significance in Solomon-like fashion. He keeps in mind that the protection and preservation of cultural and historical resources is in the interest of the common good. To the extent that such objects are an integral part of museum collections, galleries, and similar institutions, the property is returned to the former owner - however, not placed in his possession. Meanwhile, to the extent the rightful owner has the means to care for and present to public view such objects, the goods could be returned to him. The conditions under which one may keep such goods would also come under a special law. The possibility is left standing that, at the request of the former owner, just compensation could be made in place of returning the property to him.

5.3. Legal solutions which limit the rights of lawful owners with the goal of protecting the common good and the position of religious communities

As can be clearly seen from all that was stated above, the initiator of *The Proposal for a Law on Restitution* looking for a solution to this problem, demonstrates a clear conformist tendency. In view of the difficult economic and social conditions facing Bosnia and Herzegovina, this is entirely understandable. The Nation, as a poverty stricken Restitution Debtor, wishes to assume as few obligations as possible. In doing so, the Nation wishes to maintain some semblance of social stability and fiscal liquidity.

Meanwhile, some particular solutions being offered are incompatible with the principles upon which modern democratic nations found their market economy - the direction, at least, that this Nation declares to be its goal.

As a relic of past times, the intention of retaining state monopoly over particular profitable jurisdictions remains. To the extent the State has the will to return the unjustly confiscated property of others, it must first be consistent in recognizing the problem. Next, the State must be prepared to assume the obligation of equivalent compensation - even if that would mean that the State would have to assume a long-range debt obligation.

The above-mentioned *Proposal for a Law on Restitution* does not take into consideration the lost-profit factor (*lucrum cessans*), which is the result of institutionalized expropriation, nor the pain, suffering, and poverty that resulted from the brutal and callous act of expropriation.

Hence, it is incomprehensible that solutions are offered such as the one covered by *Article 17*. The aim of this article is to attempt to prevent the return of real estate that is an integral part of infrastructure, namely, energy producing objects, watersheds, municipal utilities, roadways and the like. Even though the former owners - *pro forma*, at least - are given first-right-to-buy preference in the purchase of shares, or the right of co-ownership with the party now in possession of the property, it is clear that this will not be possible based on the solutions offered in the proposal. This is so because the State has excluded such real estate jurisdictions from the privatization process. Besides, as a counter-value to the property that was confiscated, most frequently only a fictive "compensation" is being offered - in such manner that compensation will not be given even for the actual damages (*damnum emergens*) done to the owner.

A particular problem with the Proposal is the exclusion from the right of compensation of "former owners from whom property or rights have been confiscated, and who have received "*just compensation*", or to whom other goods or rights were given in exchange of their property."²⁵ A resolution in law that states what compensation is to be considered just, is defined on the basis of the *very* same law by which property was confiscated, and as such, is unacceptable. The former Authorities most often compensated owners for their property by giving them worthless Government Bonds, or some symbolic compensation. According to the Proposal, both real and legal persons who come under this regulation would, once again, be short-changed.

It is entirely certain that the process of restitution will stagnate in the procedural sphere. Taking into consideration the strength of the legal Nation and "the rule of rights" in Bosnia and Herzegovina, we can project in advance problems which will arise with the attempt to realize rights - already lame, at best, that are being offered as restitution to former owners. According to *The Proposed Law on Restitution*, legal action must be initiated by the plaintiff within 120 days of the Law being put into effect. The body responsible for the case is bound to deliver an adequate solution within 60 days from the day the legal action was taken. One cannot be convinced that this time frame can be met by the Administration in Bosnia and Herzegovina, if one bears in mind the scope and complexity of the matter.

Regretfully, standards that carry over from times past, continue to be in place throughout Bosnia and Herzegovina and are found to be universally acceptable. All activities of a Democratic nation should be geared toward the realization of Freedom and toward an affirmation of each individual in society. As we have seen, many regulations in the Proposal are not aimed in that direction. In instances when it is impossible to make natural restitution, the State - which made use of the property for many years - would finally have to give just compensation to those who suffered damage because of confiscation. The compensation should be proportional to the market value of that property at the time of its expropriation.

On principle, it is unacceptable to once again deny the same rights confiscated previously. The protection of the State does not automatically result in protection of the common good.

²⁵ Article 5, Paragraph 1, *A Proposal for a Law on Restitution*.

The denial of rights to legal and real persons, using the common good as an excuse, does not lead society toward general progress. To the extent the solutions offered to solve the problem of restitution are adopted, the present authorities, if they wish to be consistent, must keep in mind that the action of Religious Communities is also of interest to the common good. As a result, the Religious Communities should receive a special status on the basis of the regulations, which would give a modicum, at least, of satisfaction for the wrongs suffered and for the humiliation heaped upon them. The Religious Communities and Churches of Bosnia and Herzegovina, in the meanwhile, are not seeking any sort of privileged position relating to the measures taken toward restitution. Their only aim is to achieve a legal status that would guarantee them to have rights equal to all others in the process of restitution. Party activist Authorities in the former Yugoslavia went out of their way to tread on the rights of Believers, most especially Church Pastors. As a result of a decades-long assault on religion, a collapse in the moral structures of society took place. With the collapse of the former State, this moral decay bore fruit in the form of a bestial war. The Faith Communities of Bosnia and Herzegovina have the obligation and responsibility of fostering a culture of peace, tolerance, and social justice. For this reason, it is necessary that this be made possible.

The State Authorities have the obligation and burden of correcting the historical injustices brought on by the Communist rule. Restitution is the obligation of the State. It took upon itself this obligation when it assumed the International role as the Successor State of the former SR BiH. This role also extends from the Dayton Constitution for BiH, which guarantees all rights and freedoms based on the standards outlined in the European Convention on Human Rights and Freedoms and all its associated protocols.²⁶

The return, or the just compensation for expropriated property to its former owners would mean, not only the return of material goods taken from them, but also the moral satisfaction for suffering and humiliation endured while in the grist mill of socialistic totalitarianism.

From all that was said above, and because of the objective difficulties surrounding the act of restitution, it would be most appropriate for the obligated party to establish consistently positive regulations based on principles of justice when returning confiscated property. In cases where it is still possible to return such property, the method of doing so should be one of natural restitution along with the eventual possibility of natural compensation, as well.

Unreasonable insistence on urgent payment of just compensation for property that was expropriated would bring this Nation to a state of complete chaos and collapse. This would be in no one's interest.

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²⁶ Article II, annex 4, *General Framework Agreement for Peace in Bosnia and Herzegovina*.

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