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**HUMAN RIGHTS IN NEGOTIATING PEACE AGREEMENTS:
BOSNIA AND HERZEGOVINA**

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GENERAL CONTEXT AND BACKGROUND TO THE AGREEMENT

Basic information on the General Framework Agreement for Peace in Bosnia and Herzegovina

1. The General Framework Agreement for Peace in Bosnia and Herzegovina (hereafter: the GFAP, or the Dayton Peace Agreement) was agreed in Dayton on 21 November 1995 and signed in Paris on 14 December 1995. The GFAP comprises 11 annexes, of which Annex 4 is the Constitution of Bosnia and Herzegovina, and Annex 3 (Agreement on Elections), Annex 6 (Agreement on Human Rights) and Annex 7 (Agreement on Refugees and Displaced Persons) govern constitutional matters.
 - Annex 1A: Military Aspects of Peace Settlement and Appendices to Annex 1A
 - Annex 1B: Regional Stabilization
 - Annex 2: Inter-Entity Boundary Line and Related Issues
 - Annex 3: Elections
 - Annex 4: Constitution
 - Annex: 5: Arbitration
 - Annex 6: Human Rights
 - Annex 7: Refugees and Displaced Persons
 - Annex 8: Commission To Preserve National Monument
 - Annex 9: Establishment of Bosnia and Herzegovina Public Corporations
 - Annex 10: Civilian Implementation of Peace Settlement
 - Annex 11. International Police Task Force
2. The Dayton Peace Agreement was signed by the representatives (presidents) of three states: the Republic of Bosnia and Herzegovina, the Federal Republic of Yugoslavia (now Serbia &

Montenegro), and the Republic of Croatia, as a final and binding agreement. This means that it made no provision for the legislature of the states signatories to endorse and ratify the GFAP.

3. This paper deliberately avoids considering the issues raised by the manner in which the Constitution was adopted,¹ since this is outside the scope of this paper. It remains to be noted that the GFAP, and the Constitution itself, are the expression of a political compromise designed to bring the war to an end, as is clear from several of the provisions of the Constitution.²

Events preceding the GFAP which affected the nature of the Agreement

4. The context in which the origins, features and content of the Dayton Peace Agreement should be analysed is the dissolution of Yugoslavia, the wars in the Balkans, the war in Bosnia and Herzegovina, the aims of the war against Bosnia and Herzegovina, and the state of affairs at the time it was signed, general factors that relate to the aftermath of the war in Bosnia and Herzegovina.

Dissolution of Yugoslavia and the wars in the Balkans

5. There is a close link between the dissolution of Yugoslavia and the wars in this part of the world. Since there is no single view in either the political or the academic community here on the causes of the break-up of the Socialist Federal Republic of Yugoslavia and the way it occurred, the views set out in late 20th century works in local and foreign languages dealing with the history of Yugoslavia are here referred to.
6. In his *To End a War*, an account by the author from the perspective of the negotiating team, Richard Holbrooke cites five factors that explain the tragedy of this part of the world: a misreading of Balkan history; the end of the Cold War; the behaviour of the Yugoslav leaders themselves; the inadequate American response to the crisis; and the mistaken belief of the Europeans that they could handle their first post-Cold War challenge on their own (R. Holbrooke: 1998:21,22)
7. What Holbrooke calls a misreading of history could be subsumed under the deeply entrenched stereotype of the Balkans as a region dominated by centuries of ethnic and religious hatred between different ethnic groups, where each conflict merely exacerbates these hatreds.
8. This stereotype is reinforced by Rebecca West's *Black Lamb and Grey Falcon*,³ Robert Kaplan's *Balkan Ghosts: A Journey Through History*,⁴ and the "Eastern Question" and the associations of the words Sarajevo and Bosnia with the start of World War I.⁵

¹ The Report of the International Commission for the Balkans (*Unfinished Peace*, 1996) says of the Dayton Peace Agreement that it marked the end of the war, but merely the beginning of peace. It is by no means a perfect agreement. For all that, in the Commission's view, Dayton is not Versailles, where the victors imposed their terms on the vanquished. It would be fairer to say that it is the outcome of extended negotiations and of the compromises necessary to reach consensus. (6:1996)

² The views and reflections in the following works serve as the basis for a comparative analysis: Richard Holbrooke, *To End a War*; International Commission for the Balkans (Leo Tindemans, Chair; Lloyd Cutler, Bronislaw Gernik, John Roper, Theo Sommer, Simone Weil and David Anderson, ex officio), *Unfinished Peace*; Brendan Simms, *Unfinest Hour: Britain and the Destruction of Bosnia*; Miloš Minić, *Dogovori u Karadordevu o podeli Bosne i Hercegovine* (the Karadordevo Agreements on the Partition of Bosnia and Herzegovina; Nebojša Popov, *Srpska strana rata* (The Serbian Side of the War)

³ Of which Holbrooke notes that "West's openly pro-Serb attitudes and her view that the Muslims were racially inferior had influenced two generations of readers and policy makers." (R. Holbrooke 1998:

9. Regardless of whether they were the expression of real ignorance and extreme oversimplification of historical events in the Balkans, these works and the stereotypes based on them did influence the western politicians who made the decisions or influenced the decision-making process and the formation of views on the Yugoslavia crisis. Bosnia and Herzegovina is an example of a victim of this kind of stereotypical view of the reasons for the conflict.⁶
10. All works dealing with the wars in this part of the world highlight the role of the media in disseminating violence and ethnic and religious hatred and in creating an atmosphere of fear and insecurity.⁷
11. There are critical texts on the influence of the print media, and particularly on that of the prestige political news programme *Politika* in Serbia. The print media contributed to people's sense of being threatened for their ethnicity and to the idea of an international conspiracy against Serbia and the Serbian people, and disseminated racist and xenophobic views of others.⁸

⁴ Robert Kaplan's book is described as leaving "most of its readers with the sense that nothing could be done by outsiders in a region so steeped in ancient hatreds." (R. Holbrooke, 1998:22). Holbrooke quotes Warren Christopher as saying: "Back in 1993. . . the President was given a copy of *Balkan Ghosts*, Mr Kaplan's book, and apparently had a change of heart. . . after reading about history's cauldron into which we might be stepping, and I think that particular book needs re-reading as we ponder exactly where we are going with this policy." (R. Holbrooke, 1998: 22fn)

⁵ "As one might expect, the contemporary Bosnian problem was seen through the prism of the old 'Eastern Question', which every English schoolboy used to know about. This was not just – as we shall see later – a matter of the obvious comparisons between Gladstone's preoccupation with the Turkish atrocities in Bulgaria in 1876 and the public agitation for intervention in Bosnia. It was also about the neuralgic associations which the words 'Sarajevo' and 'Bosnia' formed for generations of diplomats and statesmen schooled to believe that the First World War had been triggered by an obscure Balkan spat." (B. Simms 2001: 13).

⁶ Analysis of the events and views given in Noel Malcolm's *Bosnia: A Short History*, which seriously undermined the conviction that the war was the inevitable result of ancient hatreds. The members of the International Commission for the Balkans also failed to find any support for the notion of ancient hatreds, but agreed that religious and cultural differences were exploited and abused by political leaders. Writing of the history of Bosnia, they concluded that this was a similar case; even though there had long been ill-feeling between the Croats and Serbs as a result of the so-called opportunistic defection by the Bosnian Slavs who converted to Islam following the Ottoman conquest of the 15th century, most hostilities prior to 1990 were caused by socio-economic factors (primarily the Christian peasantry versus Muslim landowners, the rural versus the urban), imperial rivalries (the Habsburgs versus the Turks) and, more recently, by Serbian and Croatian nationalist ambitions. After 1878, when Bosnia came under Austro-Hungarian rule, these three communities lived peacefully together. Two more significant features of violence are associated with the two World Wars, and their causes lie largely beyond Bosnia's borders (International Commission for the Balkans 1996: 15).

⁷ US Ambassador to Yugoslavia at that time, Warren Zimmerman, "wrote in his memoir of his ambassadorship: "Those who argue that "ancient Balkan hostilities" account for the violence that overtook and destroyed Yugoslavia forget the power of television in the hands of officially provoked racism. While history, particularly the carnage of World War Two, provided plenty of tinder for ethnic hatred in Yugoslavia, it took the institutional nationalism of Milosevic and Tudjman to supply the torch. . . Yugoslavia may have a violent history, but it isn't unique. What we witnessed was violence-provoking nationalism from the top down, inculcated primarily through the medium of television. . . Many people in the Balkans may be weak or even bigoted, but in Yugoslavia it is their leaders who have been criminal. The virus of television spread ethnic hatred like an epidemic throughout Yugoslavia. . . An entire generation of Serbs, Croats, and Muslims were aroused by television images to hate their neighbours.'" (R. Holbrooke 1998: 24)

⁸ "The pamphlet-style, pseudo-patriotic and chauvinist offensive, directed not only at political opponents and persons of different views in Serbia, but also at entire peoples outside the country, was to last for almost three years (from July 1988 to March 1991). The blameless, traditionally strictly neutral feature of *Politika* known as 'medju nama' [among ourselves] was to be gradually distorted and driven into a corner. With a new title, 'Odjeci i reagovanja' [repercussions and reactions], and greatly expanded, *Politika*'s name and reputation was to be hijacked by the proponents of spontaneous and bespoke anger in the name of the defence of Serbia and the Serbs, fighting for the inviolable project of Yugoslav and Serb development set out by the historic Eighth Session (Aleksandra Nenadovica, "POLITIKA" in the nationalist storm", N. Popov 2002: 154)

12. It is closer to the truth to say that xenophobia, racism, intolerance and the sense of being under threat were generated by the destructive influence of the media made to serve a given policy rather than that these were historical constants in this part of the world.
13. Setting Yugoslavia in the global context in the early 1990s, Holbrooke draws attention to the loss of its strategic importance and the waning interest of the international community in events in this part of the world. The factors that led to this waning of interest included the fall of communism, the unification of Germany, the break-up of the Soviet Union, and the Gulf War.⁹
14. The loss of international interest in Yugoslavia and institutional incitement of ethnic and religious intolerance by the political establishment in the former Yugoslavia were the mobilising factors of the war.
15. The background to the war in the former Yugoslavia was the intention to form nation-states,¹⁰ but both territory and borders were in dispute. As the Karađorđevo agreements of March 1991 between Milošević and Tuđman showed, the idea of dividing Bosnia and Herzegovina between Croatia and Serbia was very much present.¹¹
16. Miloš Minić's book may serve to illustrate this, although it is not the only one dealing with the March 1991 Karađorđevo talks between national leaders Tuđman and Milošević on the partition of Bosnia and Herzegovina.¹²
17. There are already numerous documents and works in support of the thesis that the background to the war in the former Yugoslavia is associated with achieving the greater-state ambitions of the

⁹ "In the rest of Central and Eastern Europe, democracy and democratic ideals had been the strongest weapon in the struggle against communism. But in Yugoslavia it proved to be extreme nationalism. Thus racists and demagogues – often communists or former communists – rallied people on the basis of ethnic consciousness. Those who wanted to retain a multiethnic state or work out a peaceful new arrangement giving more autonomy to the republics were either driven out of the country or silenced – sometimes brutally." (R. Holbrooke 1998: 26).

¹⁰ The Report of the International Commission for the Balkans notes, in addition, that the national equilibrium was disrupted and that competing nationalisms, both external and internal, had an impact on internal instability in Bosnia and Herzegovina.

¹¹ Minić's analysis is of interest since it concerns a close association of President Tito and Yugoslav Foreign Minister, author of *Četnici i njihova uloga u vrijeme Narodnooslobodilackog rata 1941-1945* (The Chetniks and their role in the 1941-1945 War of National Liberation), Belgrade 1992, and of *Oslobodilacki i gradjanski rat 1941-1945* (War of Liberation and Civil War 1941-1945), Novi Sad 1992. Analysing the available information on these talks, Minić concludes that "the war in Croatia was waged for 'new borders' to reduce the size of Yugoslavia, or more accurately for new territory and new borders for 'Greater Serbia,' while the war in Bosnia and Herzegovina was designed to partition the republic between Serbia and Croatia, to create 'Greater Serbia' and 'Greater Croatia.' It may be objected that such a view of the war in Croatia and Bosnia is over-simplified, that the causes and aims of these wars were much more complex, and that the wars broke out as a result of the unresolved national issues of the Serbs, Croats and Bosnian Muslims. I cannot deny that there is an element of truth in this objection, but the greater-state war aims of the leader and top echelons of Serbia and Croatia, and their policy of resolving the Serbian or Croatian national issue respectively by the use of force and war designed to bring about their Greater Serbian or Greater Croatian nationalist programmes and plans were what gave these wars their principal features." (M. Minić 1998: 26)

¹² The publication of 36 authentic and mainly previously unpublished transcripts and shorthand notes on the partition of Bosnia is expected shortly. The announcement of this publication by *Feral Tribune* and *Dani*, due in February 2005, quotes Franjo Tuđman as saying: "One shouldn't deal with Bosnia and Herzegovina as with some God-given entity that should survive. The survival of Bosnia and Herzegovina as an independent sovereign state, even if it were possible, would in any case be at the expense of the Croatian people, prevent the normal territorial formation of the Croatian state, and create the conditions for the disappearance of the part of the Croatian people currently living in Bosnia and Herzegovina. . ." (27.12.1991), and "We have reached the point where we have not only Herceg-Bosnia, which we had, but we have, between ourselves, half of Bosnia, if we manage to rule it intelligently. The whole of that half of Bosnia will be pushed in a pro-Croat direction, as it was. Just think if some time, I don't know when, ten or twenty years maybe, the situation in the whole of Bosnia were to be as it is now in western Bosnia, in the Bihać-Cazin border region. . ." (24.11.1995)

Serbian and Croatian political leadership, which in the context of Bosnia and Herzegovina entailed its disappearance as an independent sovereign state.

18. The relationship between the United States of America and Europe in their attitude to the Yugoslav crisis had far-reaching consequences. As Holbrooke puts it, the question of the Yugoslav crisis and of security in the region was, for the first time since World War II, turned over entirely to the Europeans. As memoirs relating to this period show, Europe was incapable of acting as a unified power.¹³ What is meant by the international community proved itself, in the case of Bosnia and Herzegovina, to be an extremely vague notion backed by no consistent international policy. What in fact lay behind the term “international community” was bungling incompetence, conflicting interests, and the weakness of international organizations (first and foremost the United Nations), which became obvious in the “case of Bosnia.”¹⁴
19. Bearing in mind the complexity of the wars in this region on the one hand, and the attitude of the international community to the issue on the other, the Commission sets out the lessons that could be learned from the case of Bosnia and Herzegovina.
20. The first is that the United Nations, despite being the body that can confer legitimacy on specific international actions, is being torn apart by mutually contradictory interests that means it is unable to mount such actions in time.
21. The second lesson is that the United States and Europe must cooperate if they want to influence a given state of affairs. If they fail to work together they will meet with stagnation and failure, and if they have different objectives they will provoke disaster.
22. The third lesson, which even many unwavering pacifists are reluctant to accept, lies in the fact that diplomacy that is not backed by force comes down to mere empty gesticulation. The well-meaning are left to the mercy, or lack of it, of the ruthless, and the final outcome of conflict is determined not by reason backed by power, but by brute force. (International Commission for the Balkans 1996: 7).
23. This by no means exhausts the analysis of the reasons for the dissolution of Yugoslavia, leaving out as it does many of the perspectives from which the question could be debated, but that would go beyond the requirements of this paper. Such arguments and explanations are determined by the following:
 - the powerful presence of the international community in Bosnia and Herzegovina put in place by the Dayton Peace Agreement

¹³ In a documented analysis of British policy towards the Balkan wars, and particularly the war in Bosnia and Herzegovina, “Britain was not receptive to the idea of involving Nato in the wars of the Yugoslav secession. ‘Nato,’ the Foreign Office explained in November 1991, ‘will not have a military role in central Europe in the event of instability in the region. Nato is a defensive alliance, and has made clear that none of its weapons will ever be used except in self-defence.’” (B. Simms 2001: 101). Holbrooke writes of a “grievous miscalculation” on the part of Europe, which believed that it would resolve the Yugoslav crisis without the United States, and Washington’s equally fateful miscalculation that with the Cold War over, it could leave Yugoslavia to Europe (R. Holbrooke 1998: 28).

¹⁴ The International Commission for the Balkans was of the view that the “international community” was a flawed term – at best, a euphemism reflecting the hopes of the downtrodden and those on whom it had inflicted damage, not a reality of global politics. The history of the wars that accompanied the break-up of Yugoslavia, it noted, teaches us that there is a clear limit to what we can expect of the international community. It is not the world’s policeman, nor is it even a moral authority. It is a fiction turned to by those who have been the victims of evil, appealed to by those who want to sanction their crimes, and used as an excuse for inactivity used by all those countries that do not wish to become involved and that use countries keen for battle as a pretext for action. (Report of the International Commission for the Balkans 1996: 4).

- the prospects for future constitutional dispositions depend largely on the views of the international community
- the implementation of the Dayton Agreement is linked to politics and policies in the region
- the potential for the exercise and protection of human rights still depends on local and international policy.

Agreements preceding the Dayton Peace Agreement

24. The Dayton Peace Agreement was the last in a series of attempts by the international community to bring to an end the war in this part of the world. It was preceded by:

- in February 1992 Lord Carrington convened a special conference chaired by Jose Cutilheiro. This was one of the first plans to divide Bosnia and Herzegovina into cantons (a proposal to turn Bosnia and Herzegovina into a state of three constituent entities based on national principles)
- the Contact Group plan – the Contact Group consisted of Britain, France, Germany, the USA and Russia
- the January 1993 Vance-Owen peace plan, which came to nothing. This plan was the outcome of the 1992 London Conference, which agreed the following principles: no recognition for territorial changes brought about by force, unconditional release of civilian prisoners, protection of minority rights, closure of prison camps, declaring a no-fly zone over Bosnia and Herzegovina, international supervision of the border between Serbia and Bosnia, recognition of Bosnia and Herzegovina by all the former Yugoslav republics, acceptance of existing borders, and upholding all international treaties and agreements. The draft agreement provided for Bosnia and Herzegovina to be a decentralised state of three constituent nations, with ten provinces, special status for Sarajevo, and a weak central government. The Bosnians would hold power in four provinces, the Serbs in three, and the Croats in two. The tenth province would be mixed Croat-Bosnian
- the July 1994 Owen-Stoltenberg plan, later transformed into the European Union Action Plan, was based on a proposal by France and Germany (33.5% of the territory to the Muslims [Bosnians], 17.5% to the Croats, and 49% to the Serbs).

25. Since much has been said about the failure of the international community to bring the war to an end by political means, these agreements will not be analysed in more detail. The only relevant common feature of all these attempts was the division of Bosnia and Herzegovina on ethnic principles.¹⁵

The Washington Agreement (1994)

26. The first relevant international agreement was the first framework agreement on the Federation of Bosnia and Herzegovina, signed on 18 March 1994 in Washington under the auspices of the USA, and known as the Washington Agreement. The agreement established a Bosnian-Croat federation, and provided for the areas controlled by the Army of Bosnia and Herzegovina and

¹⁵ Any peace plan for Bosnia and Herzegovina had to find a serious solution to the following dilemma: how to reconcile the conflicting interests of the tri-national community while also preserving the sovereignty of Bosnia and Herzegovina. In fact, the starting point for all these plans, from first to last, was the ethnicity that had already been agreed – as a result of which, each new plan for Bosnia and Herzegovina reflected a new state in ethnic division. (International Commission for the Balkans: 47)

the Croatian Defence Council (HVO) to consist of federal units with a high degree of decentralisation. The Federation was to be divided into ten cantons governed by constitution. The agreement provided for the incorporation of international human rights instruments, refugee return, and the protection of property. To avoid division between Bosnians and Croats on ethnic principles, the Constitution stipulated that the cantons “be named solely after the cities which are the seats of the respective Cantonal governments or after regional geographic features,” and government was established on the basis of parity.

27. Pursuant to this agreement, the Constitution of the Federation of Bosnia and Herzegovina was adopted at the Constituent Assembly of the Federation of Bosnia and Herzegovina, held on 30 March 1994.¹⁶ The Constitution also states that “Decisions on the constitutional status of the territories of the Republic of Bosnia and Herzegovina with a majority of Serb population shall be made in the course of negotiations toward a peaceful settlement and at the ICFY [International Conference on the Former Yugoslavia].”
28. This was the first agreement to set out international human rights instruments, and to introduce the institution of the Ombudsman, a Constitutional Court and a Human Rights Court.

The Constitution of the Federation of Bosnia and Herzegovina, II: Human Rights and Fundamental Freedoms, Article 1, states that “the rights and freedoms provided in the instruments listed in the Annex¹⁷ are to be applied throughout the territory of the Republic of Bosnia and Herzegovina,” and Article 2, concerning the Federation, specifically sets out certain rights:

All persons within the territory of the Federation shall enjoy the rights:

¹⁶ The preamble to the Constitution reads:

“*Holding* that democratic institutions for human rights and freedoms best produce harmony between themselves and their communities,

Rejecting the violence of war,

Wishing to promote peace,

Desiring to support individual liberty and to develop a free market,

Guided by the principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the Statement of Principles by the International Conference on the Former Yugoslavia (ICFY) at its session in London, as well as the decisions of the United Nations Security Council relating to the former Yugoslavia; and

Based on the sovereignty and territorial integrity of the Republic of Bosnia and Herzegovina,

The peoples and citizens of Bosnia and Herzegovina, determined to ensure full national equality, democratic relations, and the highest standards of human rights and freedoms, hereby create a Federation.

¹⁷ Annex: Human Rights Instruments to be Incorporated into the Federation Constitution:

1. 1948 Convention on the Prevention and Punishment of the Crime of Genocide

2. 1948 Universal Declaration of Human Rights

3. 1949 Geneva Conventions I-IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I-II thereto

4. 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Protocols thereto

5. 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto

6. 1957 Convention on the Nationality of Married women

7. 1961 European Social Charter and the Protocol 1 thereto

8. 1961 Convention on the Reduction of Statelessness

9. 1965 International Convention on the Elimination of All Forms of Racial Discrimination

10. 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto

11. 1966 International Convention on Economic, Social and Cultural Rights

12. 1979 International Convention on the elimination of All Forms of Discrimination against Women

13. 1981 [UN] Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief

14. 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

15. 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

- to life
- to liberty; with arrest and detention authorized only by the law
- to equality before the law
- to freedom from discrimination based on race, colour, sex, language, religion or creed, political or other opinions, and national or social origin
- to fair criminal proceedings
- to freedom from torture and cruel or inhuman treatment or punishment
- to privacy
- to freedom of movement
- to asylum
- to protection of the family and of children
- to property
- to fundamental freedoms: free speech and press; freedom of thought, conscience and belief; freedom of religion, including private and public worship; freedom of assembly; freedom of association, including to form and belong to labour unions and the freedom not to associate; and freedom to work
- to education
- to social protection
- to health
- to nutrition
- to shelter, and
- to protection of minorities and vulnerable groups.

All citizens shall enjoy the rights:

- to form and belong to political parties; and
- to political rights: to participate in public affairs; to have equal access to public services; to vote and stand for election.¹⁸

29. The international human rights instruments were for the most part reiterated in the Dayton Peace Agreement.

“In Geneva, on 8 September 1994, under pressure from the international community, the Bosnian government and the Bosnian Serb government agreed on the basic principles for the internal structure of the state of Bosnia and Herzegovina, supplemented by further agreed basic principles in New York on 26 September 1995. These principles legitimated the Serb parastate entity by the name of Republika Srpska. After the NATO bombing of Bosnian Serb positions in late August and early September, Croatia’s *Oluja* (Storm) action that cleared the Knin Krajina of Serbs, and the Bosnian Army offensive that broke the blockade of Bihać, the Bosnian Army and the HVO settled the 51% of the territory of BiH that constituted the Federation of BiH, while the 49% that was Republika Srpska in line with the Contact Group concept, the Peace Conference could begin in Dayton on 1 November 1995.” (O. Ibrahimagić, *Dejton = Bosna u Evropi* 2001 p. 37, VKBI)

Statistical data on the war in Bosnia and Herzegovina

30. Before the war, Bosnia and Herzegovina had a population of 4.4 million. The 1991 census figures showed that the Muslims (later to be known as Bosnians) constituted 43.7% of the population, Serbs 31.3%, and Croats 17.3%, while the rest of the population described itself mainly as Yugoslav or by some other name. The main feature of the country was that these ethnic groups did not occupy ethnically homogeneous territories. After the war, according to the Report of the Commission, the situation in Bosnia was as follows:

¹⁸ Constitution of the Federation of Bosnia and Herzegovina, II, Article 2.

The International Commission for the Balkans noted that the peoples of Bosnia and Herzegovina – the Bosnians, Croats and Serbs – had paid an appallingly high price. Before the war four million four hundred thousand people lived in Bosnia, but when the war was over, only three million remained. During the conflict, 145,000 people were killed or died, 174,000 were wounded, two and a half million were driven from their homes, and 1,100,000 had gone to live in other countries, among them a high percentage of the intelligentsia, including many scientists and professionals. Sixty percent of the total housing stock and 28% of the roads had suffered serious damage. The suffering endured by Sarajevo symbolised the painful experience of the rest of the country. During the 1,000-day siege 10,500 citizens were killed and 60,000 injured, and during the war or, like the Serbs, after it had ended, 150,000 people left the city. The killing fields of Bosnia and Herzegovina, agriculture and stock-keeping blown sky-high throughout the country, cities turned into rubble, like Sarajevo and Mostar – all this, the Commission Report noted, sends a chill through the marrow and irresistibly reminds one of Europe at the end of World War II. (International Commission for the Balkans 1996:7)

31. The Commission for the Balkans cited these facts immediately after the end of the war in Bosnia and Herzegovina. Summing up the losses in Bosnia and Herzegovina, the Statistics Agency published the following data in 1999:¹⁹
32. “During the 1992-1995 war, 278,800 people were killed, died or went missing. Of the total, 55% or 140,800 were Bosnians, 34% or 97,300 were Serbs, 10.2% of 28,400 were Croats, and 4.4% or 12,300 were others. The agency claims that the margin of error is up to 5%. Before the war 4.3 million people lived in Bosnia. By mid May 1999, the names of 70,000 deceased Bosnians and Herzegovinians had been identified. According to the International Red Cross, 20,143 people in Bosnia and Herzegovina are listed as missing.”

Identification of the basic human rights problems prior to the signing of the Dayton Agreement and their treatment at the local and international level

33. The international intervention in Bosnia and Herzegovina and the signing of the Dayton Peace Agreement were preceded by, to put it briefly: mass violations of human rights, international war crimes,²⁰ crimes against humanity,²¹ violations of humanitarian law, ethnic cleansing, genocide,²² ethnically-based sexual violence, and the destruction of religious, cultural and historical monuments.

¹⁹ Publication of the Helsinki Committee of BiH “Deset godina borbe za ljudska prava” (Ten years of the struggle for human rights), February 2005, -. 24

²⁰ As defined by the Nuremberg Tribunal Charter, war crimes consist of “violations of the laws and customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.” Quoted in Norman Cigar, *Genocide in Bosnia: The Policy of “Ethnic Cleansing”*, Texas A M University Press, College Station, 1995, p.7

²¹ Defined by the Nuremberg Tribunal Charter as “murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.” (quoted in *ibid.*, p. 7)

²² According to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, Article 2, “genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a) killing members of the group;
- b) causing serious bodily or mental harm to members of the group;
- c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) imposing measures intended to prevent births within the group;
- e) forcibly transferring children of the group to another group.

34. "Ethnic cleansing" is a term that was used by the international community mainly in regard to the violations of human rights and war crimes in Bosnia and Herzegovina until the country filed its case against Serbia in the International Court of Justice in The Hague on the grounds of genocide. The definition of the term can be found in the Final Report of the Commission of Experts headed by Cherif Bassiouni.²³ Essentially, it is the ethnic homogenisation of a given area by the use of force or intimidation designed to eradicate persons of other ethnic or religious groups from that area. Ethnic cleansing includes not only murder and forced expulsions, but also incarceration, torture, sexual violence, the destruction of the property, educational or religious institutions of a given ethnic group, and other measures such as restrictions on freedom of movement, removal from positions of power in the institutions of local government and the police, dismissal from employment, withholding medical assistance and searching homes.²⁴
35. Human rights violations in Bosnia and Herzegovina constitutes a vast topic that cannot be fully addressed in this paper. It is therefore necessary to draw attention to the literature containing detailed information on all facets of human rights violations.
36. A major study dealing with the destruction of the cultural heritage is Andras J. Reidmayer's *Killing Memory: Bosnia's Cultural Heritage and Its Destruction*. The author was a witness at the trial of Slobodan Milošević at which he gave details from this study.
37. The documents to which the International War Crimes Tribunal in The Hague has access contain a mass of information, but from the point of view of identifying the crimes perpetrated, the judgements of the Tribunal constitute a valuable source. The term genocide began to be used by the international public, in addition to that of ethnic cleansing, only when certain individuals were indicted for genocide and the first verdicts were issued (confirmed in the Krstić case). From the point of view of an analysis and documentation of genocide in Bosnia and Herzegovina, an important work is Norman Cigar's *Genocide in Bosnia: The Policy of "Ethnic Cleansing"*.²⁵
38. There is detailed information on human rights violations in the reports by Tadeus Mazowiecki, Special Rapporteur of the United Nations Human Rights Commission for the period 1992-1995.²⁶
39. These reports recount ethnically-based expulsions, arrests and incarceration in concentration camps, killings, physical torture, rape, destruction for non-military purposes, the humanitarian crisis provoked largely by the paramilitary units under SDS control, the ethnic cleansing perpetrated by the HVO in the Vitez area, the collapse of the rule of law and the disregard for the law, the destruction of property, warmongering and rabble-rousing by the media, the problem of missing persons, the situation in Sarajevo, Mostar, Bihać, Banja Luka and other towns and cities in Bosnia and Herzegovina. Particular attention is paid to the "UN Protected Zone of Srebrenica and Žepa," of which Srebrenica became the symbol of the worst European tragedy since World War II.

²³ Final Report of the United Nations Commission of Experts established pursuant to Security Council Resolution 780 (1992) – Annex IV, the Policy of Ethnic Cleansing, UN document S/1994/674/Add 2 (Vol.I) 28 December 1994, Introduction

²⁴ The International Criminal Tribunal for the Former Yugoslavia, The Prosecutor of the Tribunal Against Vojislav Seselj, case IT -03-67, para. 17.g, <http://www.un.org/icty>

²⁵ Norman Cigar is an associate researcher at the Balkan Institute in Washington DC and senior associate in the Public International Law and Foreign Policy programme. Until recently he was professor of national security studies at the US Marine Corps School of Advanced War-fighting in Quantico, Virginia, where he remains an honorary professor. He is the author of several other works on the former Yugoslavia, including *The Right to self-defence: Thoughts on the Bosnian arms embargo*.

²⁶ 28.08. 1992, 27.10 1992 , 17.11. 1992, 10.02. 1993, 5.05. 1993, 19.05.1993, 26.08.1993, 6. 09.1993, 17.11.1993, 21.02.1994. 10.06. 1994 ,4 .08. 1994, 4.11.1994, 13.12.1994, 9.01.1995, 21.04.1995, 5 .07.1995).

40. The framework of the indictments so far issued by The Hague Tribunal consists of crimes against humanity, violations of the laws and customs of war, serious violations of the conventions of war, genocide, complicity in genocide, extermination and murder.²⁷ So far, guilty verdicts have been issued for serious violations of the Geneva Conventions, violations of the laws and customs of war, crimes against humanity, and genocide.²⁸

Catalogue of human rights in the Dayton Peace Accord

41. The catalogue of human rights recognised and protected by the Constitution of Bosnia and Herzegovina is not limited to the rights listed in Article II.3, Enumeration of Rights; it also includes the rights protected by the international instruments forming an integral part of the Constitution. These are the rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, which apply directly in Bosnia and Herzegovina,²⁹ as well as those guaranteed by:

- 1948 Convention on the Prevention and Punishment of the Crime of Genocide
- 1949 Geneva Conventions I-IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I-II thereto
- 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto
- 1957 Convention on the Nationality of Married women
- 1961 Convention on the Reduction of Statelessness
- 1965 International Convention on the Elimination of All Forms of Racial Discrimination
- 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto
- 1966 International Convention on Economic, Social and Cultural Rights
- 1979 International Convention on the elimination of All Forms of Discrimination against Women
- 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- 1989 Convention on the Rights of the Child
- 1990 International Convention on the Protection of the Rights of All Migrant workers and Members of Their Families
- 1992 European Charter for Regional or Minority Languages
- Framework Convention for the Protection of National Minorities

42. All these instruments are also listed in Annex 6, Agreement on Human rights. The rights enumerated in Article II.3 are:

- the right to life
- the right not to be subjected to torture or to inhuman or degrading treatment or punishment

²⁷ Momčilo Krajišnik – trial under way, Radoslav Krstić – verdict confirmed, Radovan Karadžić and Ratko Mladić, Duško Sikirica (governor of the Keraterm camp), Damir Došen, Dragan Fuštara, Dragan Kulundžija, Nenad Banović, Predrag Banović, Nikica Janjić, Dušan Knežević, Dragan Kondić – guards in Keraterm

²⁸ Hague Tribunal, Bulletin no.16, Humanitarian law fund, February 2002.

²⁹ “The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law.” Constitution of BiH, Article II.2, International Standards.

- the right not to be held in slavery or servitude or to perform forced or compulsory labour
 - the rights to liberty and security of person
 - the right to a fair hearing in civil and criminal matters, and other rights relating to criminal proceedings
 - the right to private and family life, home, and correspondence
 - freedom of thought, conscience, and religion
 - freedom of expression
 - freedom of peaceful assembly and freedom of association with others
 - the right to marry and to found a family
 - the right to property
 - the right to education
 - the right to liberty of movement and residence.³⁰
43. Taking as a whole the international human rights instruments forming an integral part of the Constitution, the list of human rights set out by the Constitution, and the constitutional provision that “Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms,”³¹ the list of recognised rights and freedoms is very extensive.

Political rights

44. The human rights enumerated by the Constitution of Bosnia and Herzegovina do not include a full list of political rights. However, in the light of the international instruments incorporated into the Constitution, the list would consist of:
- rights that include freedom of thought, conscience and belief
 - freedom of expression and of the press
 - active and passive electoral rights
 - right to democratic elements and political representation.
45. All these rights have to be understood in conformity with the principle of equality, or in other words non-discrimination as stipulated by Article II.4 of the Constitution of BiH: “The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”
46. The Constitution of Bosnia and Herzegovina thus confirms the view that democracy and human rights are interdependent; a relationship in which democracy is perceived as a human right, and only a democratic state can secure the enjoyment of human rights. The right to political opinion and the free expression of their political will belongs to the people, by which is meant all citizens regardless of the differences enumerated, as those in whom sovereignty is vested. The notion of democracy as a form of political authority in which the people have a genuine opportunity to express their political will without impediment, as an indispensable component of human rights, is directly associated with the idea of sovereignty and the idea of freely expressed political will. The political will of the majority of citizens is exercised in parliament, in which legislative

³⁰ Constitution of Bosnia and Herzegovina, Article II. 3. Enumeration of Rights

³¹ Constitution of Bosnia and Herzegovina, Article II. 1. Human Rights.

authority is vested, because active and passive electoral rights – the right of free expression of political will in democratic, general, equal elections held at intervals in which individual ballots are secret – are a classic civil political right. This means that all citizens, in conditions of universal equality – regardless of ethnic, religious or sexual affiliation, political or other opinions, or other status – have the right to elect and be elected to electoral political bodies. Political rights guarantee citizens the opportunity of participating in public affairs without discrimination, either directly or indirectly through their freely elected representatives, and to hold public office on universal, equal terms.

47. Annex 3 of the General Framework Agreement for Peace in Bosnia and Herzegovina sets out the intention to promote free, fair and democratic elections as the foundation for achieving democratic aims in Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and Republika Srpska, in line with relevant OSCE documents. To this end, the parties (BiH, FBiH, RS) “shall ensure that conditions exist for the organisation of free and fair elections, in particular a politically neutral environment; shall protect and enforce the right to vote in secret without fear or intimidation; shall ensure freedom of expression and of the press; shall allow and encourage freedom of association (including of political parties); and shall ensure freedom of movement.” Further, “the Parties shall comply fully with paragraphs 7 and 8 of the OSCE Copenhagen Document, which are attached to this Agreement.” These are:

(7) To ensure that the will of the people serves as the basis of the authority of government, the participating States will:

(7.1) hold free elections at reasonable intervals, as established by law;

(7.2) permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote;

(7.3) guarantee universal and equal suffrage to adult citizens;

(7.4) ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public;

(7.5) respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination;

(7.6) respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities;

(7.7) ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution;

(7.8) provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process;

(7.9) ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures;

(8) The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite

observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law. They will also endeavour to facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings.

48. It follows from all this that the citizens of Bosnia and Herzegovina are to enjoy political rights and freedoms regardless of the entity in which they live, on equal conditions and without discrimination on any grounds. The state and both entities are under an obligation to ensure the enjoyment and protection of these rights.
49. These provisions conflict with the constitutional provisions set out in Article IV.1 (elections to the House of Peoples) and Article V.1 (election of members of the Presidency). Pursuant to this constitutional provision, “The House of Peoples shall comprise 15 delegates, two-thirds from the Federation (including five Croats and five Bosnians) and one-third from the Republika Srpska (five Serbs).” The fact that the House of Peoples is to be so constituted makes it plain that Croats, Bosnians and Serbs are privileged ethnic groups, and that the members of other ethnic groups have no opportunity to be represented politically, which means that they suffer discrimination on the grounds of ethnic affiliation. Describing the procedures of both chambers of parliament,³² the House of Peoples and the House of Representatives, the Constitution recognizes solely the ethnic interests of the Bosnians, Croats and Serbs as legitimate political interests; all others are excluded.
50. The next form of discrimination, this time against people belonging to the same ethnic group, is territorial affiliation. If the protection of ethnic interests is in question – and in line with international instruments, this relates to the protection of language, script, culture and religion – the assumption is that the interest is the same regardless of the entity in which the member of a given ethnic group lives. This raises the question of why the ethnic Serbs from Republika Srpska are privileged over the Serbs in the Federation, and conversely, why Bosnians and Croats in the Federation are privileged over Bosnians and Croats in Republika Srpska. They can be assumed to have the same vital interests regardless of the part of Bosnia and Herzegovina in which they live.
51. This exclusively ethnic political representation has led to the disappearance of the political citizen in the pluralism of his or her identity and political interests. Identity is not confined solely to ethnic affiliation, but also includes sexual affiliation, social origin and status, regional affiliation, political convictions, education, profession: all those elements, in short, that define a specific individual civil physiognomy. As is clear from the nature of the international human rights instrument forming part of the Constitution of Bosnia and Herzegovina, almost all guarantee individual rights, which belong to “everyone,” in this case to all citizens under the jurisdiction of BiH.³³ Although the preamble to the Constitution states that “Bosnians, Croats, and Serbs, as constituent peoples (along with others) and citizens of Bosnia and Herzegovina, hereby determine the Constitution . . .” the other constitutional provisions deal only with Bosnians, Serbs and Croats, taking into consideration collective rights and collective identities.
52. Pursuant to its constitutional powers, the Presidency of Bosnia and Herzegovina exercises the executive political function of head of state.³⁴ Article V begins with the words: “The Presidency

³² Article IV.3 (b): “Each chamber shall by majority vote adopt its internal rules and select from its members one Serb, one Bosnian, and one Croat to serve as its Chair and Deputy Chairs, with the position of Chair rotating among the three persons selected.”

³³ The exceptions are the 1002 European Charter for Regional or Minority Languages and the 1994 Framework Convention for the Protection of National Minorities, which form an integral part of the Constitution

³⁴ Constitution of Bosnia and Herzegovina, Article V.3, Powers: “The Presidency shall have responsibility for: a) conducting the foreign policy of Bosnia and Herzegovina, b) appointing ambassadors and other international

of Bosnia and Herzegovina shall consist of three Members: one Bosnian and one Croat, each directly elected from the territory of the Federation, and one Serb directly elected from the territory of Republika Srpska.” By predetermining the ethnic affiliation of members of the Presidency, the Constitution directly discriminates against citizens who are members of other ethnic groups, restricting their passive electoral rights, the right of citizens to seek political or public office without discrimination.

53. Article V.1. (a), however, states: “Members of the Presidency shall be directly elected in each Entity (with each voter voting to fill one seat on the Presidency) in accordance with an election law adopted by the Parliamentary Assembly. . .” thus indicating that, indirectly, ethnic elections are to be established. The assumption is that the representatives of ethnic groups will vote for their own member of the Presidency. Ethnic elections are contrary to the requirement for universal, equal suffrage to be granted, all the more so in that Bosnia and Herzegovina is a multi-ethnic state in which not only Bosnians, Croats and Serbs but also other ethnic groups live. Since the Presidency is a body whose powers extend to the entire territory of Bosnia and Herzegovina, but is not elected by all the citizens constituting the electorate of Bosnia and Herzegovina, this raises the question of its full legitimacy on the one hand, and restrictions to both active and passive voting rights on the other.

CURRENT PROTECTION OF HUMAN RIGHTS IN THE PEACE AGREEMENT

The aim of the agreement as regards the enjoyment of human rights.

54. Since one of the aims of the war against Bosnia and Herzegovina was to dismantle the state and forcibly to destroy its social, political, cultural and ethnic fabric by resorting to crimes and atrocities, genocide, and mass human rights violations, the General Framework Agreement is imbued with the idea that it is democracy and human rights that constitute the factors with which the Bosnian state can be rebuilt and the ravaged fabric of state and society rebuilt; that they are the mechanisms that will lead the state of Bosnia and Herzegovina to European integration.
55. This is evident from the international human rights instruments that constitute an integral part of the Constitution of Bosnia and Herzegovina, and from the official mandate of the international community in Bosnia and Herzegovina. Bosnia and Herzegovina is required to promote and encourage the effective operation of non-governmental, inter-governmental and international organizations involved in human rights issues, to enable them to study and monitor human rights, and to cooperate with all the bodies referred to in the Dayton Accord and with organisations authorised by the UN, including the International Tribunal in The Hague, with a mandate concerning human rights and humanitarian law.

representatives of Bosnia and Herzegovina, no more than two-thirds of whom may be selected from the territory of the Federation, c) representing Bosnia and Herzegovina in international and European organizations and institutions and seeking membership in such organizations and institutions of which Bosnia and Herzegovina is not a member, d) negotiating, denouncing, and, with the consent of the Parliamentary Assembly, ratifying treaties of Bosnia and Herzegovina, e) executing decisions of the Parliamentary Assembly, f) proposing, upon the recommendation of the Council of Ministers, an annual budget to the Parliamentary Assembly, g) reporting as requested, but not less than annually, to the Parliamentary Assembly on expenditures by the Presidency, h) coordinating as necessary with international and non-governmental organizations in Bosnia and Herzegovina, i) performing such other functions as may be necessary to carry out its duties, as may be assigned to it by the Parliamentary Assembly, or as may be agreed by the Entities.”

Mechanisms for the protection of human rights

56. Chapter Two Article II of Annex 6 of the Dayton Agreement establishes the Commission on Human Rights, which consists of the Ombudsman and the Human Rights Chamber.
57. Their basic role is to consider alleged or apparent violations of the human rights guaranteed by the European Convention on Human Rights and its Protocols and “discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status arising in the enjoyment of the rights and freedoms provided for in the international agreements listed in the Appendix to this Annex, where such violation is alleged or appears to have been committed by the Parties, including by any official or organ of the Parties, Cantons, Municipalities, or any individual acting under the authority of such official or organ.”
58. The *Office of the Ombudsman for BiH* is tasked with protecting the human rights set out in the European Convention and the fifteen international instruments forming an integral part of the Constitution, as well as those set out individually in the Constitution. It is an independent public institution responsible for hearing applications from citizens concerning alleged violations of human rights and mismanagement of public bodies operating in accordance with the BiH Law on the Human Rights Ombudsman.
59. Complaints can be submitted against any public authority in BiH. The Ombudsman deals with questions of employment and employment-related matters, including pensions; the problems of the mentally ill and disabled, the issue of documents, the conduct of the police and prison staff, delays in judicial proceedings (criminal, civil and administrative), education, including enrolment and tuition fees, freedom of religion, freedom of information, and other administrative matters; issues recommendations to the relevant authorities to take steps to rectify proven violations of human rights; and exercises an advisory role to ensure the most effective legal remedies. The public authorities are required to issue written notification of the manner in which they intend to implement the recommendations of the Ombudsman. In the event that the authority in question fails to react to the recommendations, the Ombudsman may notify the High Representative. The Office of the Ombudsman is in Sarajevo. The first Ombudsman for BiH was Gret Haller, appointed by the OSCE.
60. The *Office of the Ombudsman of the Federation of BiH* was established by the Constitution of the Federation, where Chapter II.B provides for the appointment of three ombudsmen responsible for protecting human dignity and the rights and freedoms guaranteed by the Federation Constitution. The first ombudsmen were appointed on 20 January 1995. On 30 July 2002 the Parliament of FBiH adopted a decision appointing the Federal ombudsmen, who report to the Federation, Cantonal and municipal authorities and international bodies (the Prime Minister, Deputy Prime Minister, Presidents of the ten cantons, OSCE, the House of Representatives and House of Peoples of the Parliament of the Federation of BiH). The Ombudsman’s report sets out the number and nature of applications received and the applications that have not been the subject of investigation, with an explanation.
61. In 2001 the authorities accepted 70% and in 2002 83% of the Ombudsman’s recommendations. Previously, complaints concerned the right to property, specifically the right of refugees to return to their pre-war homes. In 2003, the majority of complaints concerned the right to return, and violations of the right to equality before the law in judicial and administrative disputes and before the executive authorities. There was also a rise in complaints in the domain of social rights (the International Covenant on Economic, Social and Cultural Rights) – violations of the right to work, and the rights deriving from health insurance and social security. These were followed by complaints concerning violations of the right to effective judicial protection, violations of the

right to a fair and public hearing within a reasonable time, and the right to fair criminal proceedings. A lesser number of complaints related to violations of the right to free speech, political rights, or the right to freedom of religious belief.

62. The *Office of the Ombudsman of Republika Srpska* was established by the Law on the Ombudsman of RS, enacted by the National Assembly on 8 February 2000. It protects the rights deriving from the Constitution of BiH, the RS Constitution and the European Convention.
63. In 2001 the authorities accepted 48% of its written recommendations, and in 2002 this rose to 58%. Mediation was successful in 85% of cases.
64. The Human Rights Chamber is a judicial body established by Annex 6 of the Dayton Agreement. Pursuant to Article XIV of this Annex, on 10 November 2000 (five years after the signing of the Agreement), the Chamber's mandate came to an end with effect from 31 December 2003, to be taken over in 2004 by the Human Rights Commission of the Constitutional Court of BiH. The Commission is authorised to adjudicate on cases remaining unresolved by the Chamber as of 31 December 2003. Pursuant to the powers of the Constitutional Court set out in Annex 4 of the Dayton Agreement, the Court adjudicates on new human rights cases received by the Court after 1 January 2004.
65. The Chamber had fourteen members, four from the Federation of BiH and two from Republika Srpska, with the remainder nominated by the Council of Ministers of the Council of Europe, including the President, who could not be citizens of Bosnia and Herzegovina or any neighbouring state. They were appointed for a five-year term and could be reappointed.
66. The Chamber was tasked with considering alleged or apparent violations of the human rights set out in the European Convention and its Protocols, and apparent discrimination in the enjoyment of the rights and freedoms set out in the Convention and the other fifteen international human rights instruments listed in the Appendix to Annex 6.
67. The Chamber received complaints, either by referral from the Ombudsman or from a non-governmental organisation, or direct from individuals or groups of individuals claiming to be the victim of a violation or acting on behalf of alleged victims who were deceased or missing, concerning alleged or apparent violations of human rights by the authorities. It could receive cases within the jurisdiction of the signatories to Annex 6 (Bosnia and Herzegovina, Republika Srpska and the Federation of Bosnia and Herzegovina) on matters occurring since the entry into force of the Dayton Agreement on 14 December 1995.
68. The Chamber followed a procedure similar to that of the European Human Rights Commission and European Court of Human rights (the applicant must have demonstrated that effective remedies, if they exist, have been exhausted and that the application was filed with the Chamber within six months of the date on which a final decision was taken, the matter must not be substantially the same as one already examined by the Chamber or submitted to another procedure or international investigation or settlement, it must not be manifestly ill-founded nor constitute an abuse of the right of petition, and the application must not concern a matter pending before any other international human rights body or any other Commission established by the annexes to the Dayton Agreement).
69. On completion of the proceedings, the Chamber could issue decisions that were final and binding and that the Parties were required fully to implement. The measures included amendments to the law or to the organisation of the administration, the return of property, and property compensation, depending on the nature of the case. Its deliberations were public and decisions were forwarded to the parties to the case, the High Representative, the General Secretary of the Council of Europe, and the OSCE.

Constitutional Court

70. The Court was established by Article VI of the Constitution, which sets out not only its jurisdiction but also its composition and procedures, and specifies that its decisions are final and binding. The Constitutional Court was established to uphold the Constitution and to serve as the institutional guarantor of the protection not only of the human rights and freedoms enumerated in Article II of the Constitution but also those listed in Annex I to the Constitution. The Constitution operates on the basis of its Rules of Procedure, the Constitution, and the European Convention on Human Rights and other international human rights instruments.
71. The Constitutional Court consists of nine judges, six of whom are appointed by the entity parliaments (the FBiH House of Representatives appoints four and the National Assembly of Republika Srpska two judges). The remaining three judges are appointed by the President of the European Court of Human Rights after consultation with the Presidency of BiH; these judges may not be citizens of BiH or any neighbouring state.
72. The Court was constituted on completion of the appointments procedure in May 1997. The office of judge is incompatible with holding office in a political party or political organisation of Bosnia and Herzegovina or in the executive or other judicial authority in BiH or the entities, or with any other office that could influence the judge's impartiality. The Court is based in Sarajevo.³⁵

BiH Ministry for Human Rights and Refugees

73. This Ministry was established in April 2000, and is responsible for taking over all activities required for the enjoyment and enforcement of human rights, refugee issues, emigration, immigration and asylum, in line with the Constitution of Bosnia and Herzegovina and the Dayton Peace Accord, international conventions and laws, and other acts of relevant institutions dealing with the rights of refugees. Its programmatic activities emphasise the wish to advance and promote human rights and freedoms and diversity, to promote and develop a European cultural identity, and to resolve problems relating to the return of displaced persons and refugees, gender equality, the protection of children, discrimination, minorities, trafficking in persons, and AIDS.
74. In line with these aims, it drafts bills, takes part in drafting bilateral agreements, works on the application of international human rights instruments, issues reports, and considers petitions from citizens.
75. The laws adopted pursuant to a motion by this Ministry are the Law on the Protection of the Rights of Members of National Minorities in BiH, the Law on the Equality of the Sexes in BiH, the Framework Law on Primary and Secondary Education in BiH, and the Law on the Use and Protection of the Red Cross logo and the name of the Red Cross Society in BiH.
76. Others still in the drafting stage are a Bill on Freedom of Religion and the Legal Position of Religious Communities in BiH and a Bill on the Search for Missing Persons in BiH.

³⁵ Bosnia and Herzegovina acquired a Constitutional Court for the first time in 1964, pursuant to the 1963 Constitution; the Court was retained by the 1974 Constitution. It had jurisdiction over abstract normative control such as ruling on the compliance of the laws of the republics with the Constitution and on the constitutionality and legality of other general normative acts. It ruled on disputes between the Republic (of BiH) and other social and political entities. The Law on the Constitution governed the composition, jurisdiction and procedures of the court.

77. The Minister has produced or is working on the following reports:

- Report on implementation of the Framework Convention for the Protection of National Minorities
- Report on implementation of the Convention on the Elimination of All Forms of Discrimination against Women
- Report on implementation of the Convention on the Elimination of All Forms of Racial Discrimination
- Report on combating AIDS
- Report on implementation of the Covenant on Civil and Political Rights in BiH
- Report on implementation of the Covenant on Economic, Social and Cultural Rights in BiH
- Report on implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

78. Action plans have been adopted to combat trafficking in persons and for the rights of the child in Bosnia and Herzegovina, and a Committee to combat HIV and a Roma Committee have been set up.

79. The Ministry cooperates with the entities, the Council of Europe, the OSCE and other international institutions dealing with human rights.

International supervision of human rights in Bosnia and Herzegovina

80. OSCE observers operate throughout Bosnia and Herzegovina, charged with cooperating with the authorities in the exercise of human rights, cooperation with the Ombudsmen and non-governmental organizations in support of their activities. They assist the state in ensuring that it has firmly-entrenched, independent, financially sustainable and effective human rights institutions. This entails political support, support for state and entity representatives, strengthening these institutions, and drafting submissions in the capacity of *amicus curiae* in cases relating to key human rights. It also assists in the transfer of jurisdiction from the Human Rights Chamber to the Constitutional Court, and in stepping up the execution of decisions of the Human Rights Chamber and the recommendations of the Ombudsman. It has also assisted the work of the Ministry for Human Rights.

Special Rapporteurs of the UN Human Rights Commission

81. Following the resignation of Tadeuz Mazowiecki because of the failure to apply the recommendations contained in his reports, the Commission appointed Elizabeth Rehn as his successor. She continued reporting to the Commission on the state of human rights in Bosnia and Herzegovina after gathering information.

82. The Commission appointed another Special Rapporteur for missing persons resulting from ethnic cleansing, Manfred Nowak, who also resigned in protest over inadequate funding for the technical aspects of his work of identification.

International Red Cross Committee

83. This organisation is concerned with upholding international humanitarian law. It was involved in the search for persons reported as missing during the war in Bosnia and Herzegovina.

UNHCR – UN High Commission for Refugees

84. This body is charged with protecting the rights of refugees. It played a major part in the return of refugees in Bosnia and Herzegovina.

Amnesty International

85. Amnesty's annual reports included an assessment of the state of human rights in Bosnia and Herzegovina.³⁶

Helsinki Committee for Human Rights in Bosnia and Herzegovina

86. Founded in 1995 to monitor human rights throughout Bosnia and Herzegovina. Notifies the general public on the state of human rights with its periodic reports, bulletins and press releases.

Human Rights Watch

87. Investigates and reports on human rights violations. Human rights violations in Bosnia and Herzegovina have been the subject of investigation and reports by this organisation.

Transparency International

88. An international non-governmental organisation dedicated to combating corruption.
89. The Dayton Peace Agreement directly established entirely new human rights bodies that had not previously existed either in Bosnia and Herzegovina or in the former Yugoslavia – the Commission on Human Rights, the Office of the Ombudsman and the Human Rights Chamber. Pursuant to the Agreement, the Constitutional Court acquired a new role and greater jurisdiction than those it had had prior to the Dayton Agreement. Once reconstituted, it had appellate jurisdiction in human rights matters, and after the abolition of the Human Rights Chamber, the Constitutional Court took over its role as well. The Commission for Human Rights of the Constitutional Court of BiH continues to adjudicate on cases received prior to 31 December 2003, while cases received since that date are taken over by the Constitutional Court.
90. The Dayton Agreement also accorded a major role to the international community: the institution of the High Representative for civilian affairs, with very broad powers, and international organizations – the Office of the UN High Commissioner for Human Rights, UNHCR, UNDP, UNESCO, UNICEF, OSCE, the office of the Council of Europe – with an important role in human rights matters. Nor should one overlook the fact that there are foreign nationals with considerable powers in the state institutions dealing with human rights – no decision adopted by majority vote can be adopted without their assent. It was so in the Human Rights Chamber, it is still so as regards the composition of the judges of the Constitutional Court, and at first it was so with the Ombudsman for BiH (only in its new complement does it consist solely of BiH citizens).
91. The European Convention on Human Rights, which applies directly in BiH and takes priority over all other constitutional and legislative norms and over the other international human rights

³⁶ Reports: Between 1985 and 2004, Bosnia and Herzegovina is referred to in 174 publications, either as the subject of analysis, or as part of the regional situation, or an item of news.

instruments forming part of the Constitution, is an important mechanism. Many positive processes have been set in motion on the basis of these.

92. A critical analysis of the work of all these institutions and the decisions that have been adopted is a separate issue, and one that goes beyond the scope of this paper.
93. The Dayton Peace Agreement led to the introduction of the Ministry for Human Rights of the state-level executive of Bosnia and Herzegovina, while in the legislature, there is a Parliamentary Commission for Human Rights.
94. The work of these bodies, too, could be the subject of critical analysis, but the very fact of their establishment is significant for the institutionalisation of protective human rights mechanisms.

Economic, social and cultural rights

95. In line with international documents forming an integral part of the Constitution of Bosnia and Herzegovina, and in this instance the International Covenant on Economic, Social and Cultural Rights above all, the Constitution of Bosnia and Herzegovina recognizes:

- the right to property,³⁷
- the right to work,
- the right to fair wages and equal remuneration for work of equal value,
- the right to a decent living in line with the provisions of the Covenant,
- the right to safe and healthy working conditions,
- the right to equal opportunity for promotion at work in line with seniority and competence,
- the right to rest, leisure, and reasonable limitation of working hours and periodic holidays with pay,
- the right to form trade unions (labour union rights and freedoms),
- the right to social security,
- the rights of the family, children and young persons to protection,
- the right to an adequate standard of living and freedom from hunger,
- the right of the individual to the highest attainable standard of physical and mental health,
- the right to education,
- the right of parents to ensure the religious and moral education of their children in conformity with their own convictions,
- the right to take part in cultural life,
- the right to enjoy the benefits of scientific progress and its applications,
- the rights arising from authors' rights,
- the right to freedom in scientific research and creative activity,
- the right to the conditions necessary for the conservation, the development and the diffusion of science and culture.

96. From an analysis of the Constitution of Bosnia and Herzegovina and of the entity constitutions of the Federation of Bosnia and Herzegovina and Republika Srpska, it may be concluded that the

http://www.b92.net/info/emisije/katarza.php?nav_id=145901&yyyy=2004&mm=06&version=print

³⁷ The subjects of the right to property are rights in rem, the right to the ownership of movable and immovable property, author's rights, and the right to industrial property.

Entities have no EXCLUSIVE authority in the fields of public services in health, education, social and police protection of citizens of BiH.

97. On the basis of the agreement between the Entities, Bosnia and Herzegovina may receive some additional responsibilities in addition to the exclusive ones. We should keep in mind the fact that the state of BiH and the entities are obliged to respect the international standards concerning human rights, while education, health, social protection, security of citizens fall within the human rights guaranteed by the state of BiH and its Entities. The civil, political, economic, social and cultural rights of the state of BiH are guaranteed to all citizens without any discrimination on the basis of race, colour, sex, ethnicity, language, religion, political or any other conviction, social origin, property status or any other basis. It arises from this that the state of BiH has the responsibility in these fields on the basis of its obligations toward respecting international standards of human rights within its territory.
98. The Federation of BiH has a common responsibility which it shares with the cantons in regulating the relations in the field of health, education, social policy, security of citizens. This obligation is realised in accordance with the BiH Constitution, the Federation Constitution and the Cantonal constitutions. In regulating the relations, there is an obligation to comply with the international instruments for the protection of human rights contained in the BiH Constitution and the Annex to the BiH Constitution.
99. The establishment of the policies in the fields of education, social policies, health, protection of citizens are mainly the responsibility of the cantons within the BiH Federation.
100. The municipalities in the BiH Federation cantons are tasked with protecting the rights and freedoms of citizens, functioning of public services within their territories, implementing Cantonal policies and acting in accordance with the BiH Federation Constitution and the Cantonal constitution and the municipal statutes.
101. The RS entity is responsible for the regulation of the system of public services, employment relationships, protection at work, employment, social insurance and other forms of social protection, health, protection of veterans and invalids, care for children and the young, education, culture and protection of cultural goods and physical culture. The implementation of the regulations and insurance of the needs of citizens in the field of culture, education, health and social protection, physical structure, information, trade, tourism, catering, environment protection and other fields are assigned to the municipalities.

Narrower and broader interpretation of the BiH responsibilities in the above areas

102. The state of BiH **narrow interpretation:** on the basis of the analysis of the Constitution (BiH Constitution, Federation Constitution, RS Constitution, constitutions of all 10 cantons in the Federation) in terms of the responsibilities in the fields of education, health, social protection of citizens, municipal services, the following can be concluded:
 - that the responsibility in these areas is not assigned solely to BiH
 - that the responsibility for these issues is given to the entities
 - that the regulation and implementation of policies and regulations in the RS are the responsibility of the entity (RS) and the municipalities
 - that the regulation and implementation of policies and regulations in the BiH Federation are divided between the entities, cantons, municipalities where the biggest responsibility concerns the formation of policies and regulation of these areas at the level of the cantons and at the level of the municipality to a lesser degree.

103. **Broader interpretation:** a broader interpretation of the BiH Constitution in terms of the responsibilities in the fields of education, health, social protection, police protection of citizens, the responsibility of the state of BiH in these areas is derived from the human rights. The said areas belong to civic, political, economic, social, cultural rights the recognition, enjoyment and protection of which are recognised by the BiH state to all citizens without any form of discrimination. Since the state of BiH is a signatory of international instruments for the protection of human rights and since 16 documents on human rights are an integral part of the BiH Constitution, the state of BiH has the right and obligation and (responsibility) to take lawful and other measures so that the BiH citizens may enjoy these rights without discrimination. This means that the state of BiH may prescribe by the laws at the state level the minimal standards in recognising and enjoying the rights in the fields of education, health, social protection, mode of functioning of municipal resources etc. In that way equality of all citizens and minimal rights which the entity, Cantonal or municipal authorities must comply with are ensured.
104. As a consequence of a narrow interpretation of the BiH Constitution, arising from the lack of knowledge of the international documents regulating human rights or from the lack of political will, the situation in BiH is the following:
- the absence of the law at the state level which would regulate or provide frameworks for their regulation by prescribing the minimal conditions and standards for the realisation of these rights
 - different entity legislation
 - different Cantonal legislation treating the same area
 - as a consequence, there is an unequal treatment of citizens in BiH in terms of their realisation of the basic rights and freedoms guaranteed to them by the BiH Constitution
 - Irrational use of economic funds and the lack of efficiency of the state and state authorities in meeting its rights and obligations.
105. A political initiative to regulate at the level of BiH the areas of health, education, social protection, police protection, definition of responsibilities and the mode of functioning of general public services by prescribing the framework for the regulation of this area and minimal standards in realising these rights within the whole of BiH. This responsibility may be derived from the responsibility of BiH for the realisation of civil, political, economic, social and cultural rights within the whole territory including the territory of the entities. In this way the discrimination of citizens in realising their social minimum which is guaranteed by the state is avoided and the entities are given the possibility to exceed in accordance with its possibilities the prescribed the minimum, guaranteed by the state.
106. The existence of the laws at the state level implies the harmonisation of the entity legislation and harmonisation of the regulation of that field. In that way BiH is coming closer to the European standards.
107. The regulation of this area at the state level under the principles of constitutionality and legality obliges the cantons to regulate the issue. In view of different economic possibilities of the canton, their resources and economic potentials, it is possible for this field to be regulated differently at the Cantonal level while the social minimum for the whole territory would be retained. The framework agreement would also require that the same matter is regulated within the BiH territory be regulated in the same or similar way with a view to strengthening the social function of the state on the one hand and rationalisation of costs on the other.
108. The signing of the minimal standards in realising the social rights in BiH should be followed by the appropriate economic measures for their materialisation by applying the principle of solidarity (more allocations by richer cantons, municipalities for the assistance to the poor

cantons and municipalities). The distribution of the funds may be done either from the state or entity level.

109. Like the International Covenant on Economic, Social and Cultural Rights, the European Social Charter also forms an integral part of the Constitution of Bosnia and Herzegovina.
110. Taking international instruments governing economic, social and cultural rights as a basis, major reform projects have been agreed in Bosnia.³⁸ One of the most important of these is the Poverty Reduction Strategy in BiH, part of the Medium Term Development Strategy (2002-2007). Work on the strategy began in April 2002 and lasted 18 months, with contributions from all the authorities in BiH.³⁹ The strategy covers the following areas: the macroeconomic and fiscal framework, the business environment, privatisation, the financial sector, the labour market, combating corruption, the foreign trade regime, public sector reform, statistics, education, social security, health care, agriculture, forestry, water resources management, the environment, infrastructure, the energy sector, information technology, demining and industry. Priority areas are reforms in the social sector, education, health care and the environment.

MATTERS OF SPECIAL PROTECTION

Protection of women and women's rights

111. In line with the ideology of human rights, the recognition, enjoyment and protection of human rights are universal and belong to all, regardless of differences. The Constitution of Bosnia and Herzegovina confirms the equality of men and women through the provision prohibiting discrimination, and also directly by means of international human rights instruments, in line with Article II.2.
112. As the foregoing indicates, both the state of Bosnia and Herzegovina and its Entities (the Federation of Bosnia and Herzegovina and Republika Srpska) recognise and protect human rights without any distinction and an anti-discrimination provision has been introduced.⁴⁰
113. The Convention on the Elimination of All Forms of Discrimination against Women is an integral part of the Constitution of Bosnia and Herzegovina. It is also part of the Constitution of the Federation of Bosnia and Herzegovina, while in Republika Srpska it is applicable on the basis of the principles of constitutionality and legality.
114. The Convention is applicable in Bosnia and Herzegovina pursuant to:
 - the international obligations of the state of Bosnia and Herzegovina as a signatory to this Convention,
 - the internal obligations in the field of human rights arising from the Constitution of BiH, of which the Convention is an integral part.

³⁸ The Independent Bureau for Humanitarian Issues has adopted the following projects: Support to Social Sector Project in BiH, Youth Initiative Assessment, Qualitative Survey: Gender and Poverty.

³⁹ 213 government representatives from all levels of government, representatives of civil society in BiH, scholars and experts took part in the definition of priorities for the Medium-Term Development Strategy for BiH, in working groups and other ways. The strategy is the product of local institutions and local know-how.

⁴⁰ The Convention on the Elimination of All Forms of Discrimination against Women, Article 1, Discrimination, defines discrimination as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

115. It may be concluded from the constitutional provisions and the provisions of the Convention that the state of BiH and its entities guarantee that women shall enjoy political rights on a basis of equality with men – equal active and passive electoral rights, to vote and stand for election to state political electoral bodies on equal terms, and to represent the state in international organizations.
116. As regards the recognition of the political rights of women, next after the state and entity Constitutions is the Election Law of Bosnia and Herzegovina.⁴¹ In the case of the political rights of women, the Election Law of BiH follows not only the prohibition of discrimination on the basis of sex (all citizens of BiH aged 18 or over enjoy universal suffrage, with the sole exception of persons accused of war crimes and violations of humanitarian law), but also the provisions of the Convention that require States Parties to take all appropriate means, legislative and other, to ensure that both men and women may enjoy political rights on an equal basis. The Election Law thus incorporates provisions relating to electoral quotas, prescribing the principles for the gender make-up of the election lists of political parties. The Law uses gender-neutral terminology, referring to “the less represented sex,” although in practice electoral quotas relate to women, who are under-represented at all levels of government.⁴²
117. As may be seen, the Election Law requires political parties to have at least one third of women candidates on their election lists, in line with the agreed view that one third of the total number of members of a given parliament is the smallest critical mass needed to influence the work of parliament. The challenge in the case of Bosnia and Herzegovina is open election lists that reduce women’s chances of being elected to parliament even though they figure on the lists of candidates.
118. An analysis of the provisions of the statutes of a number of parliamentary parties indicates that they contain no discriminatory provisions as regards women becoming members of political parties or involved in the work of party bodies.
119. However, the vocabulary of these statutes generally uses the masculine gender for all forms of political involvement. References to a member or members of the political party, the election of members to the party’s governing bodies, to candidates for political office within the party, to the chair and deputy chairs of the party, to the general secretary, to the recording secretary, to a parliamentary deputy, etc., in the masculine, without using parallel feminine forms (in the local languages, these would be, for example, članovi/članice, kandidati/kandidatkinje, predsjednik/predsjednica stranke), which would imply equal opportunities for women and men and equal access to all functions within the party. The use of such vocabulary assumes that men are the political subjects.
120. The next feature of these statutes is reference to women alongside youth in the provisions concerning the organisation of interest groups within the party. As politically marginalized groups, most of these statutes provide the opportunity for young people and women to organise separately, with a slight preference for young people as regards involvement in the party’s political bodies.

⁴¹ Election Law of Bosnia and Herzegovina, Official Gazette of BiH 23701 of 19 September 2001

⁴² Article 4.19 of the Election Law of Bosnia and Herzegovina states: “Every list of candidates shall include male and female candidates. Candidates of the less represented sex shall be deployed on the list of candidates as follows: at least (1) one candidate of the less represented sex among the first two candidates, (2) two candidates of the less represented sex among the first five candidates, and (3) three candidates of the less represented sex among the first eight candidates. The number of candidates of the less represented sex must be at least equal to the total number of candidates on the list divided by three and rounded up to the nearest whole number.”

121. As a rule the statutes of political parties include no protective mechanisms or quotas to ensure the political participation of women in party bodies. The exception is the Statute of the Social Democratic Party, which explicitly states that all functions in the party are open equally to men and to women, requires the governing board of the party to include at least 30% of women, and stipulates that the party's list of candidates must include equal numbers of men and women.
122. A number of parties list the achievement of equality in their programme objectives and include sex as an unacceptable basis of distinction. However, there are others that refer to discrimination on the basis of religion, race, social origin and status, or education as unacceptable, but not to sex.
123. The state of Bosnia and Herzegovina has adopted certain measures that should make it possible to achieve political equality of men and women in Bosnia and Herzegovina.
124. Parliamentary Commissions for sexual equality have been set up at the state and entity levels. In the executive, at the entity level, government bodies have been set up to make it possible to achieve equality policies at the legislative level and in real life.
125. The work of these bodies is hampered by the fact that though women's rights are recognised, insufficient consideration is given to the exercise of these rights, and that men and women do not perceive the existing inequality between men and women in society. This is why there is no solid network of cooperation between men and women designed to rectify these existing inequalities.
126. To further the protection of the rights of women in Bosnia and Herzegovina, a Sexual Equality Law has been enacted, which stipulates judicial protection measures in the event of discrimination, and a Law on Protection against Violence.

Protection of the rights of the child

127. With the introduction and definition of the rights of the child as a separate area of human rights, the philosophical, ideological and legal concept of human rights was completed, making them a significant feature of human life. The adoption of the Convention on the Rights of the Child world-wide, and its incorporation into the human rights instruments of the Constitution of BiH, means the promotion of the full recognition of human rights.
128. The list of rights of the child set out in the Convention are very similar to civil and, one might say, to political, economic, social and cultural rights, suitably adapted. On this basis, there emerges an image of the child whose physical, mental, moral and social integrity of person is protected, who has a developed identity, who grows up in a family that enjoys social care and security, has proper protection on the part of society if it has no parents, has the opportunity for balanced physical, mental and moral development, is protected socially, enjoys an education, and has the benefit of the cultural, scientific and technological achievements of civilisation.
129. As this shows, the protection of the rights of the child derives from a number of distinctive features concerning children's physical and mental immaturity and special needs as the prerequisite for the stable and balanced development of the child's personality. The protection of the rights of the child therefore entails concomitant support for the family, as the basic and natural cell, particular when it has the duties and responsibilities implied by parenthood, and the social protection of the child who is, for any reason, deprived of family care.

Refugees and displaced persons ⁴³

130. The aim of the war in Bosnia and Herzegovina was to create ethnically “pure” territories, which was the starting-point for the partition of Bosnia and Herzegovina on ethnic grounds. As a result, the return of refugees and displaced persons is of the greatest importance. The Dayton Peace Agreement, the outcome of political compromise, upheld the existence of Republika Srpska, which until the signing of the Agreement was almost entirely ethnically pure, and the Federation of Bosnia and Herzegovina where ethnic cleansing had also taken place.
131. Table 1 shows the dispersal of population in Bosnia in 1991 i.e. prior to the war when the division did not exist.

Table 1⁴⁴

Territory ⁴⁵	Bosnians	Croats	Serbs	Others	Total
HVO	120,704	353,215	83,807	28,206	585,932
B-H Army	1,312,959	255,081	397,383	196,041	2,161,464
Serbian Army	450,382	149,763	877,008	116,169	1,593,322
Total	1,884,045	758,059	1,358,198	340,416	4,340,718

132. Table 2 shows the placement of population in 1996 after the war.

Table 2⁴⁶

Territory	Bosnians	Croats	Serbs	Others	Total
HVO	20,000	340,000	11,000	18,500	389,500
B-H Army	1,230,000	65,000	133,000	163,500	1,591,500
Serbian Army	32,000	15,000	823,500	60,000	930,500
Total	1,282,000	420,000	967,500	242,000	2,911,500

133. The inclusion of Annex 7, entirely dedicated to the return of refugees and displaced persons, was designed to reverse the results of ethnic cleansing and to restore the multiethnic nature of Bosnia and Herzegovina.
134. Annex 7 sets out the right of all refugees and displaced persons to return to their homes, to the restoration of property of which they were deprived in the course of hostilities, and to compensation for property that cannot be restored to them. It also guarantees their security and the enjoyment of their human rights. Annex 7 requires the Parties to ensure that refugees and displaced persons are permitted to return in safety, without risk of harassment, intimidation, persecution or discrimination; to prevent the dissemination of hatred through the media, and to full judicial protection in the exercise of their rights. Protection against discrimination is enshrined in the requirement to repeal all domestic legislation and administrative practices with discriminatory intent or effect. Annex 7 also provides for any returning refugee or displaced person charged with a crime other than a serious violation of international humanitarian law to enjoy an amnesty on return.

⁴³ A detailed analysis of the implementation of Annex 7 and the question of refugee return is given in Adnana Mahmutčehajić's masters' thesis, OBSTRUCTIONS TO THE RETURN OF REFUGEES AND DISPLACED PERSONS AS A CONTINUATION OF ETHNO-NATIONALISTIC PROJECTS IN BOSNIA AND HERZEGOVINA, defended at the regional masters' course on Democracy and Human Rights in South East Europe, October 2002.

⁴⁴ Quoted from Mahmutčehajić, Rusmir. *The Denial of Bosnia*, 2000, pp. 75-76.

⁴⁵ In 1996 these areas were controlled by three different armed forces. The abbreviation HVO stands for the Croat Defense Council, and B-H Army stands for the Army of Bosnia and Herzegovina in which Bosnians were majority.

⁴⁶ Quoted from Mahmutčehajić, Rusmir. *The Denial of Bosnia*, 2000, pp. 75-76.

135. Along with the requirement that the authorities in Bosnia and Herzegovina create conditions suitable for the return of refugees and displaced persons and their harmonious reintegration, broad powers are accorded to international organizations to ensure that the local authorities carry out their obligations.
136. The Agreement established a Commission for Displaced Persons and Refugees, later renamed the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC).⁴⁷ It was established in 1996 to support and assist returns through making possible to everyone to repossess their pre-war property of which they were deprived under threat and pressure during the course of hostilities. The Commission consists of nine members – three are appointed by the President of the European Court of Human Rights, four by the Federation and two by Republika Srpska.⁴⁸
137. The Commission operated in both entities, and cooperated with international organizations dealing with reconstruction. The CRPC was also a partner of the Provisional Election Commission (Election Commission⁴⁹) in the implementation of the provision that illegal occupants cannot stand for office, as well as a partner of UNMIBH/IPTF by ensuring that there were no illegal occupants among local police members.
138. The Office of the High Representative (OHR) is a central constituent of the return process in Bosnia. In accordance with Annex 10 of the Dayton Peace Agreement the High Representative oversees the realisation of the peace settlement by maintaining contact with the parties to the Dayton Peace Agreement. The High Representative also co-ordinates the activities of civilian organizations and agencies in Bosnia thus facilitating the implementation of civilian aspects of the peace agreement.⁵⁰ Refugee return is one of OHR's three priority areas. A particularly important contribution by OHR to the return process is the decisions issued by the High Representative in regard to property: over 80 decisions in all, designed mainly to facilitate and encourage return, as well as laws passed by the Entities. To that end, in January 1997 OHR and UNHCR set up the Reconstruction and Return Task Force (RRTF) which functions as an OHR department.
139. The RRTF is an inter-agency body responsible for the synchronization of work of international agencies and organizations dealing with the return of refugees and displaced persons to their homes. The members of the RRTF are CRPC, International Organization for Migration (IOM), Stabilization Forces (SFOR), United Nations Mission in Bosnia and Herzegovina (UNMIBH), UNHCR, World Bank, etc. and their work on this issue is conducted under OHR management.⁵¹ It defines the implementation of property legislation as the most important mechanism for the return. It also focuses on facilitating the progress of returns by seeking donors for the reconstruction of returnees' devastated property. It recognizes the importance of the security issue and therefore promotes the recruitment of police officers from the ethnic group which is in a minority in the area of return. The RRTF is aware of the significance of employment for

⁴⁸ Commission for Real Property Claims of Displaced Persons and Refugees (CRPC). What is the CRPC? accessed on 9 September 2002 at <http://www.crpc.org.ba/new/en/html/information/whatisthecrpc.htm>.

⁴⁹ The Provisional Election Commission of Bosnia and Herzegovina was renamed the Election Commission of Bosnia and Herzegovina after the adoption of the Election Law by the Parliamentary Assembly of Bosnia and Herzegovina in 2001.

⁵⁰ GFAP, Annex 10: Agreement on Civilian Implementation, Article 2.

⁵¹ Office of the High Representative, Reconstruction and Return Task Force (OHR/RRTF), accessed on 15 September 2002 at <http://www.ohr.int/ohr-dept/rrtf/mem-struct/>.

returnees and thus tries to further the development of small businesses.⁵² The regulation of the health and education issues necessary for sustainable return is also one of their concerns.⁵³

Impediments to return⁵⁴

140. Property laws were enacted in both Entities and harmonised by the Office of the High Representative in 1999 (and are still in force). The property laws govern the legal procedures for the return of pre-war socially-owned and private property, give precedence to the right of pre-war occupants to repossess their property over the right of current occupants to remain, and determine the deadlines within which local authorities must process applications and temporary occupants must vacate the property. The implementation of the property laws, as part of the Property Law Implementation Plan, met with serious obstruction on the part of local authorities,⁵⁵ and with opposition on the part of the new occupants of the properties. A major problem arose with evictions, with cases of families unable either to return to their pre-war homes (either because they were uninhabitable or because they were being lived in by new occupants) or to remain in the property they were currently occupying. This problem was exacerbated by the varying rates at which the property laws were implemented in the two entities.
141. Donor funds for the renovation of devastated housing. Data from 2002 indicated waning interest on the part of donors in funding this project, with the result that the mounting tide of refugees since 2000 has been facing serious difficulties.⁵⁶
142. Creating conditions for sustainable return.⁵⁷ This is the weak point in the activities of the international community and local authorities. The economic crisis, unemployment levels

⁵² The RRTF focuses on creating economic opportunities e.g. giving credits to returnees for opening small and medium enterprises.

⁵³ OHR/RRTF web site.

⁵⁴ Report of the International Crisis group no. 137, 13 December 2002. "The Continuing Challenge of Refugee Return in Bosnia and Herzegovina"

⁵⁵ The High Representative, using the powers conferred on him by the Bonn and Petersburg PIC conferences, dismissed more than 30 mayors and other local officials who were identified as having obstructed the implementation of the property laws and the enjoyment of the right to the restoration of property.

⁵⁶ UNHCR and OHR estimated that there was interest in return for some 66,500 damaged properties, but that there were funds available to renovate only 20% of the total. Internal OHR document, "Housing Reconstruction Needs, 2002" – ICG Report.

⁵⁷ *KRSTIĆ*. "I don't think anyone believes the story about sustainable return, other than politicians and government representatives, who believe in it officially, and representatives of the international community. Privatisation following which thousands of workers are left without a job – is that sustainable return? The daily scandals and frauds for which no one is ever held accountable – is that sustainable return? Granting loans for which guarantees are required, so that only people who already have money can borrow – is that sustainable return? The mass of red tape and complications to be dealt with if you want to become involved in the most ordinary of business activities – is that sustainable return? When so many years after the war people from Serb Sarajevo get their medical treatment in Belgrade even though the Clinical Centre in Košovo is only a few kilometres away, or someone injured in a traffic accident in Lapišnica is taken either to Košovo or Kasindol depending on what his name is – is that an environment conducive to return? Or that a patient from Herzegovina gets treated in Zagreb or Split, and a patient from Prijedor is driven to Sarajevo? What does it mean when thousands of children who have completed secondary education in RS have never seen the capital city of BiH, the country in which they live and the city in which many of them were born, nor have they ever been even on a day trip or outing to the other entity? It depends on which entity they are from whether they have seen Greece, Hungary, Italy or Spain, visited the whole of Croatia or of Serbia & Montenegro. I am aware that progress has been made in return – quite a lot of progress – but only by comparison with earlier years. No one will compare it – or dares compare it – with the amount of money spent for the purpose. Has it cost us too much, and has the money been spent for the purpose it was earmarked for? Then again, given the present constellation of political relations, with widespread plunder and extortion, our government representatives kow-towing to political parties and representatives of the international community, and differing political concepts, there will be ever fewer genuine returns, let alone

standing at 40%, and inadequate social security are obstacles to sustainable return. According to the entity statistics offices, approximately 40 per cent of the available workforce in Bosnia is officially unemployed.⁵⁸ Close to one fifth of people live below the general poverty line, 15.6 per cent in the Federation and 24.8 per cent in the Republika Srpska.⁵⁹ According to the Economic Structure Overview of the Foreign Trade Chamber of Bosnia and Herzegovina, the recorded unemployment rate in 2001 was extremely high throughout Bosnia: in the Federation it was 39.9 per cent and in the Republika Srpska it was 43.4 per cent.⁶⁰ Therefore, in Bosnia the high rate of unemployment and discrimination in employment are closely interlinked. Consequently, it is returnees who are first to be affected by the lack of job opportunities. Returnees are among the most disadvantaged groups in regard to employment. According to data from the International Organization for Migration (IOM) – 89 per cent of all professionals and 92 per cent of all skilled people who have returned to Bosnia from Germany are unemployed.⁶¹ The RRTF gives some of the reasons why returnees experience greater difficulties in finding jobs, especially in areas where they do not belong to the ethnic majority group:

- returnees usually have no access to social networks, which play a very important part in finding jobs
- most corporations are still state-owned, and local authorities always prioritise the employment of the members of their own ethnic group
- animosity towards returnees also hampers their integration into the labour market
- members of minorities are invariably discriminated against, especially in the allocation of public jobs⁶²
- returnees, particularly in RS, have been unsuccessful in regaining possession of their former business premises and expropriated land plots⁶³
- the restoration of properties which are then sold. There is a marked tendency for restored property to be sold or exchanged for places where the owners are the majority ethnic group.⁶⁴ There are no precise data on the exact number of citizens who have

sustainable ones.” From Radio Free Europe, broadcast dedicated to the implementation of the returns process in Bosnia and Herzegovina.

<http://www.danas.org/programi/imovina/2004/01/20040104111203.asp>

⁵⁸ Office of the High Representative (OHR), “Economic Newsletter,” Vol. 5, Issue 2, July 2002, accessed on 4 September 2002 at http://www.ohr.int/ohr-dept/econ/newsletter/default.asp?content_id=27443.

⁵⁹ UNDP, “Human Development Report 2002 for Bosnia and Herzegovina,” p. 50.

⁶⁰ Foreign Trade Chamber of Bosnia and Herzegovina, Economic Structure Overview, accessed on 12 September 2002 at <http://www.komorabih.com/en/economybih/economy-bih.html>.

⁶¹ United Nations High Commissioner for Refugees (UNHCR), “Extremely Vulnerable Individuals: The Need for Continuing International Support in Light of the Difficulties to Reintegration Upon Return,” November 1999, accessed on 21 August 2002 at <http://www.unhcr.ba/publications/evif1.pdf>, p. 26.

⁶² Office of the High Representative, Reconstruction and Return Task Force (OHR/RRTF), “An Action Plan in support of the return of refugees and displaced persons in Bosnia and Herzegovina,” 30 March 1998, accessed on 15 August 2002 at http://www.ohr.int/ohr-dept/rtrf/key-docs/reports/default.asp?content_id=5617.

⁶³ “The decision by the international community not to insist on the return of business premises and land plots with the same tenacity as residential properties has threatened the sustainability of thousands of returns. While PLIP statistics do not contain information on the repossession of these types of property, the CRPC does collect statistics on the basis of claims made to that agency for business premises. It has found that the authorities have returned a mere 450 of the 2,489 claimed through CRPC. The situation with land repossession is even more disturbing because of the number of claims (over 80,000 to CRPC) and the fact that the international community does not require municipalities even to collect, let alone to submit, data on resolved claims.” ICG Report

⁶⁴ Minister Ramiz Mehmedagić “We already have property laws one hundred percent implemented in most of the Federation and RS. Unfortunately, the number of people is not equal to or proportionate to the restoration of property. The most telling example is Sarajevo, and I always advance it as a paradigm. According to the results of property returns, about 80,000 Serbs are currently living in Sarajevo. Data from the Serb Civic Council and certain intellectuals in Sarajevo paint an entirely different picture of about 22,000 Serbs currently living in Sarajevo, which at the end of the day is a highly damaging policy both for Sarajevo and for BiH as a whole. I am afraid there is nothing more to be done, given that the international community wants to see Annex 7 dealt with

regained possession of their homes and then sold or exchanged them. Commenting on this practice, the International Crisis Group writes that “Nationalist politicians and pundits, as well as some self-proclaimed realists among the international community, have been quick to assert that this behaviour proves that Bosnia’s several nations will never be able to live together again. Others argue in mitigation that, after four years of war and ten years of living apart, many people have naturally made new lives for themselves. In any case, a moribund economy rather than a hostile political climate or inveterate national antagonism is the main reason why many people opt not to return.”⁶⁵

- The mononational institutions set up during the war have contributed to municipal institutions (the administration, schools, courts, public corporations) being staffed by the majority ethnic population. This has had the effect of hampering returns, with discrimination in employment and unfortunate experiences with the local authorities,⁶⁶ where people who could be associated with the perpetration of crimes are working.

Rate of returns, 1996-2002

143. The following Table 3⁶⁷ presents the situation with the minority returns throughout Bosnia from 1996 to 30 June 2002.

Year	Federation of BiH	Republika Srpska	Brcko District ⁶⁸	Total BiH
1996 - 1997	44,398	1,125		45,523
1998	32,605	8,586		41,191
1999	27,987	13,020		41,007
2000	34,377	27,558	5,510	67,445
2001	46,848	40,253	4,960	92,061
2002	29,575	18,697	4,478	52,750
Total	215,790	109,239	14,948	339,977

as soon as possible simply by means of the restoration of property. I doubt if any of the efforts of the state Minister for Refugees and Displaced Persons, Mr Kebo, to change things at the last moment has any realistic prospect of success, and the final outcome will, after all, be three ethnic areas in BiH, which will be demographically self-contained and which the first census will confirm. Unfortunately, it was much easier to restore property than to return people. The restoration of property is something that is usually a matter of paperwork, of office work, of an administrative nature. Returning people is a much more complex and more important business, because it entails not only the restoration of their property, but also, necessarily, ensuring conditions for normal life. From Radio Free Europe, broadcast dedicated to the implementation of the returns process in Bosnia and Herzegovina

<http://www.danas.org/programi/imovina/2004/01/2004010411203.asp>

⁶⁵ ICG Report p.3

⁶⁶ In places such as Prijedor, Bratunac and Srebrenica, where people involved in running concentration camps or paramilitary units are still working in the courts, schools and police. ICG Balkans Report no. 103. War Criminals in Republika Srpska, 2 November 2000.

⁶⁷ UNHCR, “Total Minority Returns in/to BiH from 1996 to 30 June 2002.”

⁶⁸ At the 1995 Dayton Conference, the Federation of Bosnia and Herzegovina and Republika Srpska did not reach agreement regarding the control of the area in north-eastern Bosnia. The area was assigned to temporary custody of Republika Srpska. It was agreed by all parties that it would be left to the Arbitral Tribunal for Dispute over Inter-Entity Boundary in Brcko Area to decide where to place responsibility for the future governance of this area. In March 1999 the Final Award was passed stating that each entity will hand over all powers of governance within the pre-war Brcko municipality to a multi-ethnic democratic government to be known as the Brcko District of Bosnia and Herzegovina which will be under the sovereignty of Bosnia and Herzegovina. The territory of the Republika Srpska will cover the Brcko District as well as the territory of the Federation of Bosnia and Herzegovina. However, the entities cannot exercise any authority in the Brcko District - Brcko Final Award, 1999, accessed on 3 September 2002 at http://www.ohr.int/ohr-offices/brcko/default.asp?content_id=5356.

144. By decision of the High Representative for BiH (Paddy Ashdown), the Reconstruction and Return Task Force ceased operations on 31 December 2003, and the official institutions of Bosnia and Herzegovina assumed responsibility for the returns process. This decision was preceded by the conclusion that the implementation of the property laws was almost complete, that almost a million people had returned to their homes, and that the institutions of Bosnia and Herzegovina were under an obligation to protect the human rights of the country's citizens and the corresponding constitutional mechanisms and international human rights instruments.
145. The Ministry for Human Rights and Refugees assumed responsibility for the continuation of the returns process. The Ministry is implementing the programme through regional centres in Bosnia and Herzegovina.
146. At the Peace Implementation Council meeting in Brussels, the Ministry adopted a Strategy for the Implementation of Annex 7 of the Dayton Peace Agreement, which was also adopted by the Presidency of BiH and the Council of Ministers of BiH. In parallel with this, the strategy was considered by the entity governments and, with minor amendments, approved in full. As part of the strategy, four basic strategic objectives were identified. The first was to complete the return process, meaning the physical return of refugees and displaced persons to their homes. The second was to complete the process of reconstruction of returnees' housing units. The third was to implement the property laws in BiH. The fourth and perhaps most important strategic objective was to create conditions for sustainable return in BiH. These are thus the four elements that are essential if Annex 7 is to be regarded as fully implemented. Strategically, it was envisaged in BiH that the relevant activities would be carried out up to 2006. To say that the property laws have been implemented does not mean that the Dayton Peace Agreement itself has been implemented – only one of the objectives of the strategy for the implementation of Annex 7 to the Agreement.
147. The returns process is faced with many challenges, from the lack of funds to reconstruct the housing stock, the grave economic situation and high unemployment levels, and problems with education (there is still ethnic segregation in schools) to the involvement in local government of extreme nationalists or people with a criminal war-time past. For all that, it can be said that returns have to some extent altered the structure of Bosnia and Herzegovina as it was in 1996.

ATTITUDES TO THE PAST

Treatment of the recent past in the Peace Agreement

148. The Dayton Peace Agreement takes the "situation on the ground" as its starting point. In 1995, this meant the existence of Republika Srpska and the Federation of Bosnia and Herzegovina.
149. Republika Srpska was a parastate creation of the Bosnian Serbs, founded on 9 January 1992 and defined in its 28 February 1992 Constitution as a state of the Serb people and citizens. Given the policy and execution of "ethnic cleansing," by the time the Dayton Peace Agreement was signed it had a totally altered ethnic structure. The Agreement legalised its existence.
150. The Federation of Bosnia and Herzegovina came about as a federation of Bosnians and Croats pursuant to the Washington Agreement. At the time the Dayton Agreement was signed, the constitutional provisions governing the return of refugees, the restoration of property, and the enjoyment of human rights had not been implemented.
151. Prior to both the Washington and the Dayton Peace Agreement, the International Criminal Tribunal for the Former Yugoslavia (The Hague Tribunal) was established pursuant to UN

Security Council Resolution 827 of 25 May 1993. The Tribunal is charged with prosecuting persons responsible for serious violations of the 1949 Geneva Conventions (Article 2), violations of the laws and customs of war (Article 3), genocide (Article 4), and crimes against humanity (Article 5).

152. The Dayton Peace Agreement does not deal directly with the past. Its provisions refer to the work of The Hague Tribunal, and relate mainly to banning persons indicted or to be indicted by The Hague Tribunal or serving a sentence imposed by the Tribunal, from standing as a candidate or holding any appointive, elective or other public office in Bosnia and Herzegovina, including the bodies established by the Dayton Agreement: the Standing Committee on Military Matters,⁶⁹ and the Commission to Preserve National Monuments.⁷⁰ Then there are the provisions relating to free access to the sites of mass graves,⁷¹ and the evacuation of and recovery of bodies from such sites to the order of the Tribunal. All the relevant authorities in BiH are required to cooperate with The Hague Tribunal.
153. Amnesty is referred to in Annex 7 Article VI of the Dayton Peace Agreement.⁷² This article provides for “any returning refugee or displaced person charged with a crime, other than a serious violation of international humanitarian law as defined in the Statute of the International Tribunal for the Former Yugoslavia since January 1, 1991 or a common crime unrelated to the conflict, . . . upon return [to] enjoy an amnesty. In no case shall charges for crimes be imposed for political or other inappropriate reasons or to circumvent the application of the amnesty.” In 1999 the Federation of BiH adopted an Amnesty Law.⁷³ No amnesty is permitted for crimes against humanity and crimes under international law, criminal offences defined in the Statute of the International Tribunal for the Former Yugoslavia, or the criminal offences of murder, offences against the dignity of the person and against morality, and aggravated burglary or robbery.

Mechanisms concerning responsibility for crimes

154. As part of considering who is responsible for the war in Bosnia and Herzegovina, analysis has focused on work of The Hague Tribunal, which deals with individual responsibility for war crimes committed in the territory of the former Yugoslavia, on the work of local courts in determining individual responsibility for war crimes, and on the social processes in the region dealing with the recent past.
155. The *International Criminal Tribunal for the Former Yugoslavia* (The Hague Tribunal) was established – as already noted – pursuant to UN Security Council Resolution 827 of 25 May 1993. It has jurisdiction over the prosecution of persons responsible for serious violations of the 1949 Geneva Conventions (Article 2), violations of the laws and customs of war (Article 3), genocide

⁶⁹ Constitution of BiH, Article V.5, Standing Committee

⁷⁰ Annex 8, Agreement on Commission to Preserve National Monuments, Article II

⁷¹ Annex 1A, Agreement on the Military Aspects of the Peace Settlement, Article IX, Prisoner Exchanges, para. 2

⁷² Annex 7.VI, Amnesty

⁷³ This law provides for all persons who between 1 January 1991 and 22 December 1995 committed any of the crimes specified in the relevant criminal codes applicable in the Federation of Bosnia and Herzegovina (hereinafter: the Federation), to be free of criminal prosecution, with the exception of crimes against humanity and international law as set out in Chapter XVI of the assumed Criminal Code of SFRY, criminal offences defined in the Statute of the International Tribunal for the Former Yugoslavia, and the criminal offences of murder (Article 36), rape (Article 88), offences against the dignity of the person and morality (Articles 90, 91 and 92) and aggravated burglary or robbery (Article 151, and Article 186 para. 2 in regard to Article 182 of the Criminal Code of the Republic of Bosnia and Herzegovina, if that law or other relevant law applicable in the territory of the Federation provides for penalties to be imposed on persons for such criminal offences (Amnesty Law of FBiH, Article 1 – Official Gazette of FBiH no.48/99)

(Article 4), and crimes against humanity (Article 5). The Court is located in The Hague, in the Netherlands.⁷⁴

156. The list of persons indicted for war crimes includes almost the entire political and military leadership of former Yugoslavia and Republika Srpska,⁷⁵ part of the military leadership of the Republic of Croatia,⁷⁶ commanding officers of the Army of BiH at one point in the war, and a number of military commanders.

157. The Hague Tribunal is of great importance in shedding light on events in the former Yugoslavia.

- establishing individual responsibility for criminal offences
- establishing the truth about the wars in former Yugoslavia
- establishing the truth about the crimes perpetrated in BiH and who is responsible for them
- facing up to the past
- stability in the region – the truth and reconciliation process

158. Two of the signatories to the Dayton Peace Agreement are no longer alive (Croatia's President Franjo Tuđman and BiH's President Alija Izetbegović), while the third, Slobodan Milošević, is currently on trial before The Hague Tribunal.

⁷⁴ Bulletin no 16 of the Fund for Humanitarian Law in Belgrade (2002) notes that "since the Tribunal was established, 117 individuals have been publicly indicted (pursuant to Rule 53, indictments may remain sealed until served on the accused). Nine of the indicted persons are no longer alive. Indictments against 17 accused have been withdrawn. In 5 cases, the Tribunal issued a verdict of not guilty. Currently there is a total of 75 accused. The trial is under way against 50 persons, with 44 in custody, 6 have been released on bail, and 30 have yet to be arrested.

⁷⁵ SR Yugoslavia: Slobodan Milošević, President of Serbia, charged with crimes against humanity and violations of the laws and customs of war – Kosovo and BiH. Milan Milutinović, Foreign Minister of SRY, President of Serbia, charged with crimes against humanity and violations of the laws and customs of war – Kosovo and BiH. Nikola Šainović, Deputy Prime Minister of Serbia, Prime Minister of Serbia, Vice President of SPS, charged with crimes against humanity and violations of the laws and customs of war – Kosovo and BiH. Vlado Štefanić, Deputy Prime Minister of Serbia, Interior Minister of Serbia, charged with crimes against humanity – Kosovo and BiH. General Dragoljub Ojdanić, Chief of General Staff of the Army of Yugoslavia, charged with crimes against humanity and violations of the laws and customs of war – Kosovo and BiH. Željko Ražnatović Arkan, commanding officer of the special unit known as the "Tigers", charged with crimes against humanity and violations of the laws and customs of war – Kosovo and BiH. General Nebojša Pavković, Chief of General Staff of the Army of Yugoslavia, charged with crimes against humanity. General Vladimir Lazarević, Commandant of the Third Army of the Army of Yugoslavia, charged with crimes against humanity. Republika Srpska: Radovan Karadžić, President of RS, charged with genocide and crimes against humanity. Ratko Mladić, Commandant of the RS Army, charged with genocide and crimes against humanity. Momčilo Krajišnik, Speaker of the RS Assembly, member of the Command of the RS Army, charged with genocide, complicity in genocide, extermination, murder. Biljana Plavšić, member of the RS Presidency, charged with genocide, crimes against humanity, and serious violations of the Geneva Conventions. Radislav Krstić, Commandant of the Drina Corps of the RS Army, charged with genocide and crimes against humanity. Milan Kovačević, Premier of Prijedor Municipality, charged with crimes against humanity et.al. Stanislav Galić, Commandant of the Sarajevo-Romanija Corps of the RS Army, charged with crimes against humanity, serious violations of the Geneva Conventions et.al. Blagoje Simić, Chair of the Assembly of Bosanski Šamac, charged with crimes against humanity, serious violations of the Geneva Conventions, et.al. Milan Simić, President of the Municipality of Bosanski Šamac, charged with crimes against humanity, serious violations of the Geneva Conventions, et.al. Momir Talić, Chief of General Staff of the RS Army, charged with crimes against humanity. Radoslav Brdanin, Deputy Prime Minister of RS, charged with crimes against humanity. Darko Kordić, President of HDZ BIH, charged with serious violations of the Geneva Conventions and violations of the laws and customs of war. Tihomir Blaškić, Commanding Officer of HVO central Bosnia, deputy Chief Inspector of the Army of Croatia, charged with serious violations of the Geneva Conventions and violations of the laws and customs of war.

⁷⁶ General Ante Norac, Ante Gotovina, and the political leadership of the HDZ in BiH, Dario Kordić, Jadranko Prlić

159. The indictment against Slobodan Milošević charges him with “the intention of permanently eradicating the non-Serb population (Bosnians and Croats) from large areas of Bosnia and Herzegovina and cooperating with the political leadership of the SDS in Bosnia and Herzegovina to this end.”⁷⁷
160. Biljana Plavšić⁷⁸ (who was sentenced to 11 years and is currently serving her sentence) confessed to certain charges. Her confession reveals that the aim of the war in Bosnia and Herzegovina was to create conditions for all Serbs to live in a single state. The way this was to be achieved was by separating the ethnic communities in Bosnia and Herzegovina, permanently eradicating non-Serb ethnic groups, and deciding to enforce this policy by the use of force.⁷⁹ This is corroborated by Miroslav Deronjić’s confession,⁸⁰ which reveals the intention to partition Bosnia and Herzegovina and eliminate the non-Serb population from the areas regarded as Serb.⁸¹
161. From the point of view of establishing the facts and responsibility for war events in Bosnia and Herzegovina, the verdict in the cases of Dario Kordić (a 25-year prison sentence) and Mari Čerkez (sentenced to a 6-year prison term by decision of the Appeals Panel) are significant. These verdicts confirm the involvement of the Republic of Croatia in the armed conflict in central Bosnia,⁸² thus conferring on it the nature of an international conflict. The purpose of the

⁷⁷ Indictment against Slobodan Milošević, Individual criminal responsibility, charges 6 and 7 for “taking part in a criminal enterprise the purpose of which was forcibly and permanently to eradicate the non-Serb, and primarily the Bosnian Muslims and Bosnian Croats, from large areas of the territory of the Republic of Bosnia and Herzegovina by the perpetration of crimes in violation of the provisions of Article 2,3,4,5 of the Statute of the International Tribunal. This joint criminal enterprise came into existence on 1 August 1991 and lasted until 31 December 1995. Among the individuals who take part in this joint criminal onslaught were Slobodan Milošević, Radovan Karadžić, Momčilo Krajišnik, Biljana Plavšić, General Ratko Mladić, Borisav Jović, Branko Kostić, Veljko Kadijević, Blagoje Adžić, Milan Martić, Jovica Stanišić, Franko Simatović known as Frenki, Radovan Stojičić known as Badža, Vojislav Šešelj, Željko Ražnjatović Arkan and other accomplices known and unknown.”

⁷⁸ Biljana Plavšić was a member of the Serb Democratic Party (SDS) from the date of its formation in July 1990. As a prominent member of the academic community of Bosnian Serbs, she was the SDS candidate in the elections for membership of the Presidency of the Socialist Republic of Bosnia and Herzegovina (SRBiH) held in November 1990. From her election as Serb member of the Presidency of RBiH on 11 November 1990 until the end of 1992 she was an active SDS member both in the Presidency of SRBiH and the Presidency of the Republic of Bosnian Serbs. From 1990 to 1992 she was elected to many senior-most positions in SRBiH: she was acting co-President of the Serb Republic of Bosnia and Herzegovina from 28 February to 12 May, and a member of the collective, enlarged Presidency of Republika Srpska from May to December 1992. Hague Tribunal VI – admissions of guilt, Fund for Humanitarian Law, Belgrade, 2003.

⁷⁹ “There was also the intention that the separation of the ethnic communities should incorporate the permanent eradication of certain ethnic groups, whether by agreement or by force, with the awareness that any such forcible elimination of the non-Serb population from the areas to which the Serbs claimed the right would include a discriminatory policy of expulsion.” (Factual basis for confirmation of guilty plea).

⁸⁰ From September 1990 to the end of April 1992 Miroslav Deronjić was Chair of the Municipal Committee of SDS BiH for Bratunac. On 6 September 1991 the SDS Executive Committee appointed him as a member of the Party’s Committee for Personal Affairs and Organization. He was Chair of the Bratunac Crisis HQ from April 1992, when the Crisis HQ took over the powers of the executive committee of the municipality and the bodies of the Municipal Assembly until it was transformed into a War Presidency, pursuant to an order of the Presidency of the Serb Republic of Bosnia and Herzegovina in June 1992. In the summer of 1993 he became a member of the SDS main board. (Factual basis for admission of guilt.)

⁸¹ The Bosnian Serb leadership, which included Radovan Karadžić, Momčilo Krajišnik, Biljana Plavšić, and Nikola Koljević, was aware that the purpose was to create Serb national territories, which entailed the partition of Bosnia and Herzegovina and the separation and permanent eradication of the population of other nationalities from the municipalities that were declared as Serb by agreement or the use of force. (Factual basis for admission of guilt)

⁸² Let us now turn to the facts. The part of the history that interests us begins in 1990 with the founding of the political party of the Bosnian Croats, the Croatian Democratic Union of Bosnia and Herzegovina or HDZ BiH. This was a branch of the Croatian party, the nationalist HDZ party. At the end of 1991, the HDZ BiH created a separate Croatian entity, HZ H-B, which the Investigative Panel concludes was founded with the aim one day of becoming part of the Republic of Croatia. Following this the HZ H-B established yet another body, the Croatian Defence Council or HVO, as the executive and defence authority in the community of Bosnian Croats. Local

conflict was the “ethnic cleansing of Muslims in the Lašva valley.”⁸³ Dario Kordić was political leader of the Croatian Democratic Union (HDZ) and organizer of the ethnic cleansing campaign. His political involvement was described not as a conceptual matter but as involvement in carrying out the plan.⁸⁴ Mario Čerkez was military commander of the Vitez Brigade.⁸⁵ The Hague Tribunal completed the indictments for ethnic cleansing and the expulsion of the Bosnian population and others with the aim of merging the territory with Croatia.⁸⁶

162. Indictments were issued against BiH Army Commandants Enver Hadžihasanović and Amir Kubura for war crimes (Central Bosnia),⁸⁷ Naser Orić (Srebrenica)⁸⁸ and Sefer Hadžihalilović.⁸⁹

municipal HVO organizations were then set up as the executive and military authorities of the municipalities. Press Release 26 February 2001, <http://www.un.org/ICTY/bhs/latest/press/p567-t.htm>

⁸³ The three judges, chaired by British Judge Richard May, confirmed the prosecution’s claim that the aim of founding the HVO and the Croatian Community of Herceg Bosnia was one day to merge that region with the territory of Croatia, and that the armed conflict between Croats and Muslims in the Lašva valley was in fact the implementation of this objective by the most brutal methods of population expulsions, attacks on villages, killings and arson, with the aim of ethnically cleansing the Muslims from the area. The defence’s claim that this was a civil war, and that the HVO and HZ Herceg Bosnia were founded to defend the Croats in BiH, was wholly rejected by the judges. <http://www.hsp1861.hr/vijesti/010227vs.htm>

⁸⁴ “Dario Kordić, your role in these crimes was a major one. As regional political leader in central Bosnia, with particular authority in the Lašva valley, you were in effect the political leader in the area where the majority of these crimes were committed,” said Judge May just before pronouncing The Hague Tribunal’s first verdict against a senior politician, and adding, “But you will not be punished as the architect of the expulsions or their instigator. You wholeheartedly joined in the campaign and played a major role in part of the offensive in the Lašva valley in 1993, particularly in ordering the attack on Ahmići and other villages in April 1993.” <http://www.hsp1861.hr/vijesti/010227vs.htm>

⁸⁵ The indictment contains 44 charges, in which the two are charged with eight serious violations of the Geneva Conventions, ten violations of the laws and customs of war, and four crimes against humanity. The first two charges are for expulsion, which is a crime against humanity. The remainder of the charges concern the offences of murder, inhumane treatment, incarceration and destruction. The indictment notes that the accused took part in a widespread or systematic campaign of expulsion of the Bosnian Muslims in the region, culminating in a series of attacks, lasting more than two years, on the towns and villages of the Lašva valley and its environs. Many Muslim civilians were killed, seriously wounded, or incarcerated. Meanwhile, their houses were set on fire, their towns, villages and religious buildings laid waste, and their property plundered. <http://www.nacional.hr/index3.php?broj=2005-02-01&kat=dnevne&id=5360>

⁸⁶ The Hague Tribunal issued an indictment against Jadranko Prlić, former BiH Foreign Minister; former Chiefs of General Staff of the HVO Slobodan Praljak and Milivoj Petković – now an inspector in the Croatian Army; former Defence Minister of Herceg Bosna Bruno Stojić; and former HVO Military Police Commander and Interior Minister of the Herzegovina-Neretva Canton Valentin Čorić. They are charged, writes a Split daily newspaper, with the ethnic cleansing of Herzegovina with the aim of merging it with Croatia, founding camps to incarcerate civilians, and the torture and abuse of Bosnians. They are charged with war crimes in certain camps, with the destruction of the Old Bridge in Mostar, and so on. The indictment charges them on 26 counts with individual and command responsibility for crimes against humanity, serious violations of the Geneva Conventions and violation of the laws and customs of war committed by expelling several tens of thousands of Muslims and other non-Croats. <http://www.nacional.hr/index3.php?broj=2005-02-01&kat=dnevne&id=5360>

⁸⁷ for the murder of at least 200 Croats and Serbs in central Bosnia in 1993.

<http://www.nacional.hr/index3.php?broj=2005-02-01&kat=dnevne&id=5360>

⁸⁸ Naser Orić is charged with violating the laws and customs of war in the Srebrenica area between 1992 and 1995. The indictment charges Orić on six counts with individual and command criminal responsibility. Orić commanded the BiH Army during the time of the Serb attacks on and occupation of Srebrenica, and is charged with leading retaliatory campaigns in Serb villages around Srebrenica during that time. He is also charged with having ordered the arrest of a number of Serb inhabitants of Srebrenica and the surrounding villages in 1992, whom members of the Army of BiH brutally ill-treated during interrogation. Foreign sources estimate as particularly brutal the slaughter in Kravice, a village that Orić’s men laid waste at Orthodox Christmas 1993, as to which there is archive evidence. Immediately before the fall of Srebrenica in 1995, Orić and his closest associates succeeded in escaping by helicopter from the enclave. Left without their commanding officer, the Bosnians were rapidly overpowered. The massacre committed by members of the Serb Army following the fall of Srebrenica was the worst massacre in Europe since World War II. The indictment against Orić was issued in March 2003, and members of SFOR arrested him in his gym in Tuzla in April that year.

<http://www.nacional.hr/index3.php?broj=2005-02-01&kat=dnevne&id=5360>

The indictments concern the killing of civilians or command responsibility for the murder of civilians.

163. Certain political conclusions may be drawn from an analysis of The Hague trials held so far which confirm individual responsibility for war crimes. Based on the facts as so far identified, the war in Bosnia and Herzegovina was of an international character, in which SR Yugoslavia and the Republic of Croatia were involved. It was waged for the purpose of partitioning Bosnia and Herzegovina and merging part of its territory with Serbia & Montenegro or the Republic of Croatia respectively. This aim was achieved by the policy and crimes of ethnic cleansing, genocide, expulsions, killings, and the destruction of cultural and religious buildings. Nationalism in Bosnia and Herzegovina was implanted from its neighbouring countries, and was associated with political and military events in Bosnia and Herzegovina itself. The policy of ethnic cleansing perpetrated in Bosnia by the SDS, with the full backing of and in cooperation with Belgrade, was directed against the Bosnians and Croats, while the policy of ethnic cleansing and the campaign led by the HDZ (Central Bosnia) and executed by the Croatian Defence Council (HVO) was directed against the Bosnians and Serbs. The crimes perpetrated by the Army of Bosnia and Herzegovina were in revenge and not in the execution of a policy of ethnic cleansing.

Reactions to the work of The Hague Tribunal

164. The work of The Hague Tribunal is of major importance in the process of facing up to the past and beginning the process of reconciliation, cooperation and stability in the region.

165. Racism, xenophobia, ethnic exclusivity, and religious intolerance were deliberately promoted by the political elite, with the backing of part of the academic community, the religious elite and the media. This is also demonstrated by the reactions to the work of The Hague Tribunal, indictments, testimony and verdicts.

166. As a result of the policies they conducted and the ideology they advocated, The Hague indictees still enjoy a high degree of support among their followers. This is shown by the unwillingness of part of the general public to face up to the consequences of the policy of creating exclusive national areas. This is evidence of the powerful indoctrination to which the population was exposed in the final decades of the twentieth century.

167. In the case of Serbia, this takes the form of regarding The Hague Tribunal as the extension of an international conspiracy against the Serbs. In a mythological-style classification into good and evil, the Tribunal features against a mythological background that is contrary to all that is Serb,

⁸⁹ The indictment states that from 18 July 1993 to November 1993 Sefer Halilović was deputy commander of the HQ of the Supreme Command of the Army of BiH and Chief of Staff of the Army of BiH Supreme Command. From 21 August 1993, he was head of the inspection team and commander of the NERETVA 93 operation, and as such, Sefer Halilović was the senior military officer for that operation. The main objective of the NERETVA 93 operation was to launch an offensive to recapture territory in the hands of Bosnian Croat forces (HVO) from Bugojno to Mostar, which would raise the siege of Mostar. It states that despite his duties as commanding officer, Sefer Halilović took no effective measures to prevent the killing of civilians in Grabovica nor did he take steps to conduct a true investigation with the aim of identifying the perpetrators of the killings in Grabovica and Uzdol, nor to punish them accordingly, as commandant of the operation. Further, Sefer Halilović planned and was responsible for implementing military operations by the troops taking part in the NERETVA 93 operation. The accused is charged on the basis of criminal responsibility by a superior (Article 7(3) of the Statute of the Tribunal for violations of the laws and customs of war (Article 3 of the Statute of the Tribunal – murder), <http://www.un.org/icty/bhs/latest/press/p650-t.htm>

traditional, associated with St Sava, and good.⁹⁰ It is hard to deny the crimes that were perpetrated, so the strategy is now to minimise the number of victims, claim equal responsibility by all sides, and blame the victims.⁹¹ The avoidance of public debate on the crimes and on support for The Hague Tribunal is justified by the fear of losing political support.⁹² Testimonies in The Hague have prompted a critical analysis of the Memorandum of the Serbian Academy of Science and the Arts (SANU), which is now being seen by part of the Serbian public as the platform for the war.⁹³ All this points to the conclusion that it is impossible to ignore the work of The Hague Tribunal, which has as its consequence the need to take a position vis-à-vis the trials. Once this encouraged democratic forces to problematise “unquestionable matters”, but also prompted nationalists to evolve mechanisms to minimise the importance of the work of the Tribunal.

168. In the case of Croatia, or the Bosnian Croats, there are also two tendencies. One is to support the work of the Tribunal, to embark on a critical analysis of HDZ policy (in Croatia) towards Bosnia and Herzegovina, and to address the most sensitive topics (the camps, crimes and atrocities, behaviour towards refugees); the other is to accuse the Tribunal of operating to double standards.⁹⁴

⁹⁰ Aleksandar Bošković: *Srbija između Evrope i Centra Sava* (Serbia between Europe and the Sava Centre), on the web site of the Fund for Humanitarian Law, column “The Hague among us”.

⁹¹ The same author cites “several examples concerning the war in Bosnia and Herzegovina. Now (following a number of legally-binding judicial verdicts, as well as the explicit recognition by leading politicians from Republika Srpska in Banja Luka), it is rather hard to deny that the atrocity in Srebrenica ever took place. However, now the strategy is changing, with relativization at work (there were not really 7,800 victims) or blaming the victims (the Serbs were merely defending themselves since the Muslims burned down countless villages). This follows the line of denying the possibility that Serbs committed any crimes – so that it is almost a commonplace among the general public of today to deny responsibility for the atrocity in Markale, which goes with the constant discovery of new ‘conspiracy theories.’” www.hlc.org.yu

⁹² Milanka Šaponja Hadžić: *Svi smo mi pomalo zločinci – Zašto se političari plaše haških tema* (We are all criminals to some extent – why politicians are afraid of Hague topics): “There is a rich treasury of procedures and euphemisms used by Serbian politicians to avoid talking about those weeks. One of the most common pretexts for politicians’ not condemning crimes is their ostensible fear that they could lose the support of the electorate, poisoned by Milošević’s anti-Western propaganda.” Column “The Hague among us” on the web site of the Fund for Humanitarian Law www.hlc.org.yu

Andrej Nosov: on war crimes trials and the media: “The authorities in Serbia talk incessantly about war crimes trials in the local courts, admittedly to avoid The Hague Tribunal and the facts that are being confirmed there and so as not to be obliged genuinely to face up to the past. However, the trials, and informing the general public in Serbia about the serious crimes committed in former Yugoslavia, and particularly those perpetrated by Serb forces, are not yet a “matter of state, at least not as much as the siege of Vukovar or some other crime.” www.hlc.org.yu

⁹³ This is addressed in a piece by Dragoljub Todorović in the column “The Hague among us”, with the title “The Act that Began the Drama of the Yugoslav Peoples – the SANU Memorandum as the Platform for the War”.

“The testimony of Mihajl Marković and Academician Kosta Mihajlović before The Hague Tribunal, in the capacity of witnesses proposed by Slobodan Milošević, once again topicalized the question of the SANU document known as the Memorandum, issued in October 1986. Academicians Marković and Mihajlović are among the few academicians who can be regarded as the actual authors of the memorandum. . . . In essence, taken to its ultimate conclusion, the SANU Memorandum is a call to the Serbian people to rise up and declare war on all those who do not agree with the very precisely and clearly formulated and defined objectives of finally constituting a Serb state with the motto ‘All Serbs in a single state.’ The conclusion that the Memorandum was a project for the final solution to the Serb national question and the formation of a single unified Serb state in the Balkans is one that indubitably, and without the least dilemma, is to be drawn from a brief analysis of this text . . .” (analysis follows). www.hlc.org.yu

⁹⁴ Reactions to the sentence pronounced on Dario Kordić VITEZ – “The prison term of 25 years, pronounced on Friday on Dario Kordić, was received in the Lašva valley and central Bosnia with immense disappointment and bitterness. In this region, Kordić is a favourite, a political leader, a war hero whose honours are beyond peer in the bloody battle of the Croats to survive in their age-old homeland. In our hearts, Dario Kordić remains what he has always been – our friend and leader – and so he will remain whether he is released from prison today, tomorrow or in ten years’ time. We shall wait for him, pray for him, and give him a hero’s welcome, for that is what Dario is” – said Anto Jakić, previous chair of the central Bosnian Association of Volunteers and Veterans of the Patriotic War, and organiser of numerous protests against The Hague Tribunal. The subheading to this piece

169. In Bosnia and Herzegovina, facing up to the past is a very slow and painful process. One example is the public reaction to the appearance of the Report by the Government of Republika Srpska on the crimes in Srebrenica. The first report that dealt with this minimised the atrocities and the number of victims. Among the general public, this was seen as a shameful attempt to manipulate the events and the victims. It was only this second report, generated under international pressure, that gained the backing of the international community (in June 2004). Seen as a courageous reversal of policy by the Government of Republika Srpska in regard to Srebrenica, the report includes expressions of sympathy for the families of the victims, gives lists and locations of mass graves, and complies with the decision of the Human Rights Chamber.⁹⁵
170. In Republika Srpska, the general public is split between those who encourage an end to the silence on Serb crimes in BiH, and those who are unwilling to face up to these crimes. Others link them with the sufferings of the Serbs in Srebrenica and shift the blame onto the other side.
171. Among the women of Srebrenica, this is seen as an insincere political move, and among the professional public, as historical reductionism, with all the crimes perpetrated in Bosnia and Herzegovina reduced to the atrocity in Srebrenica.⁹⁶ This extreme example of the atrocity in Srebrenica reveals the situation in Bosnia and Herzegovina as regards facing up to the past. The truth is still featuring through the interpretations of political, academic and religious elites.
172. The Truth and Reconciliation Commission set up as a citizens' association remains inactive.
173. The activities of non-governmental organizations concerning truth and reconciliation seek to raise the question of the recent past and the restoration of inter-ethnic trust through television broadcasts, public lectures and other projects. The conclusion might be that these projects are easier to carry out and that exchanges of experiences and contacts between citizens are easier than among the political elite.⁹⁷
174. The attitude towards the past of Bosnia and Herzegovina cannot be seen in isolation from the overall context (Serbia, Montenegro and Croatia). As a result, tendencies in the region and

reads, "Regardless of the sentence pronounced, Kordić is a favourite among the Croats of central Bosnia, the personification of the courage, resolve and strength of the less numerous and militarily inferior but undefeated Croats. Many think that that all this is in fact Dario Kordić's worst 'sin,' for which he received the draconian sentence of 25 years imprisonment. By way of comparison, Biljana Plavšić, who had the power of life and death over much of BiH, received a sentence of 11 years imprisonment. Where is the justice in that?" Article by Zvonimir Čilić published in *Slobodna Dalmacija*, 19.12.2004. <http://www.slobodnadalmacija.hr/20041219/bih01.asp>

⁹⁵ The Belgrade publication *Vreme* no. 704 wrote, in a piece dedicated to the Report, that "the Report on Srebrenica submitted by the government commission to ascertain the truth had divided both politicians and the general public in BiH, and in particular in Republika Srpska. Part welcomed the end to institutional silence on Serb crimes, but part was angry with the President of Republika Srpska for having described that page of Serb history as a black one. As they see it, he had no right to do so. These same people now find 'justification' for the crimes in Srebrenica in the fact that they were 'determined' by the earlier suffering of Serbs in the town; about 1,700 Serbs were killed in Srebrenica, mainly civilians."

<http://www.vreme.com/cms/view.php?id=384060>

⁹⁶ Mirsad Tokača: "In fact, what worried me about that entire speech by Mr. Čavić and his address to the general public is his utter lack of awareness of what happened in Bosnia and Herzegovina during those almost four years. In fact, he said, and I quote: 'Those nine days of crimes against the people of Srebrenica were black pages in the history of the Serb people.' I wanted to tell him that this is classic historical reductionism. The black pages of the history of the Serb people were not inscribed merely during the nine days of genocide of the people of Srebrenica. They began to be written at the moment in 1992 when the invasion of Bosnia and Herzegovina began and the Serb people, unfortunately, took part en masse in the criminal enterprise inspired, created and led by an academic and religious, military and political establishment in Belgrade, headed by Slobodan Milošević. This is how I should like to remind Mr Dragan Čavić that in fact avoiding telling the whole truth about what happened in Bosnia and Herzegovina and attempting to reduce it merely to Srebrenica is of no use to us."

⁹⁷ Heinrich Boll produced a serial TV broadcast in Bosnia and Herzegovina on truth and reconciliation.

attempts to reach a “common story” about the past, are important and could have a positive impact on the stability of the region.

RELATIONSHIP BETWEEN HUMAN RIGHTS AND THE PEACE AGREEMENT

175. When the Dayton Peace Agreement was signed, Bosnia and Herzegovina was in a paradoxical situation. It was an ethnically divided state; war criminals were in power and were now supposed to implement the peace agreement with a Constitution incorporating a wide range of human rights and almost every relevant international human rights instrument. The next paradox was the contradiction between the normative sections of the Constitution and the provisions of the European Convention on Human Rights and other international instruments. The state is a signatory to these international human rights instruments and is under an obligation to implement them, but is accorded no jurisdiction at the state level on the basis of which it could fulfil its international and domestic obligations to its citizens to ensure them the equal enjoyment and protection of their human rights.

176. However, the existence of these instruments has shown to be a useful mechanism, since the process of change has been launched on the basis of their provisions:

- freedom of movement within Bosnia and Herzegovina has been achieved
- the results of ethnic cleansing have been reversed in part by the implementation of Annex 7
- many of the war criminals indicted by the International War Crimes Tribunal for the Former Yugoslavia have been arrested and are facing trial
- state institutions for the protection of human rights have been established (the Ombudsman, the Constitutional Court, the Ministry for Human Rights and Refugees, the state Gender Equality Agency)
- the Decisions of the Constitutional Court (on the constituent nature of the peoples) and the Human Rights Chamber, and the Reports of the Ombudsman, have had an impact on the authorities as regards the protection of human rights
- laws have been enacted that further govern the human rights of certain categories of the population (women, national minorities)
- laws have been enacted that make it possible to implement the Dayton Peace Agreement (property laws)
- reforms have begun of the judiciary, education, and the economic and social sectors
- studies have begun in Bosnia and Herzegovina itself on human rights and the problems of discrimination
- human rights have been introduced into the education system of Bosnia and Herzegovina (the CIVITAS programme)
- the process of facing up to the past has begun
- public debate on the possibility of amending the Constitution has begun

177. Existing weaknesses generated by the Dayton Peace Agreement have been identified:

- the impossibility for BiH to join the Partnership for Peace and the European Union as long as it remains the dysfunctional, ineffective state that is thereby created
- constitutional discrimination against citizens not belonging to the main ethnic groups of Bosnians, Serbs and Croats
- discrimination against minority ethnic groups in the parts of BiH where they are not in a majority

- restrictions to active and passive electoral rights
- support for parties politically responsible for the implementation of ethnic cleansing and the consequent obstacles to the reintegration of Bosnia and Herzegovina
- failure to arrest indicted war criminals Radovan Karadžić and Ratko Mladić
- insufficiently effective reform processes
- insufficiently developed civil society

178. The situation in Bosnia and Herzegovina as a whole shows that it has made significant advances by comparison with 1995, when the Dayton Peace Agreement was signed, but that its constitutional provisions must be re-examined if it is to be transformed into a stable, democratic state.