

Cluster of Competence  
**The rehabilitation of war-torn societies**  
A Project co-ordinated by the  
Centre for Applied Studies in International Negotiations (CASIN)

**STRATEGIC APPROACHES  
TO INTERNATIONAL INTERVENTION  
IN BOSNIA AND HERZEGOVINA**

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Sarajevo, October 1998

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The Cluster of competence *Rehabilitation of war-torn societies* is a project of the Swiss Interdepartmental Co-ordination Committee for Partnership for Peace which is part of the activities of Switzerland in the Partnership for Peace. This Cluster is co-ordinated by Jean F. Freymond, Director of the Centre for Applied Studies in International Negotiations (CASIN).

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## EXECUTIVE SUMMARY

This paper explores the strategies behind the international intervention in Bosnia and Herzegovina and the Dayton peace process. It forms a part of the Rehabilitation of War-Torn Societies Project undertaken by CASIN on behalf of the Swiss Interdepartmental Co-ordination Committee for the Partnership for Peace. The first draft of the paper was discussed and extensively revised at a two-day seminar held in Geneva in September 1998, at which a range of experts, - Howard Adelman, Hrair Balian, Andrew Bearpark, Wolfgang Amadeus Brühlhart, Jean F. Freymond, Robert Gersony, Jean-Pierre Hocké, Brunson McKinley, Saumya Mitra and Steven Segal - present in a private capacity, made their contributions. Its revised version was then presented at the Third International Security Forum held in Zürich, 19-21 October 1998.

The paper examines the two areas of the intervention in Bosnia and Herzegovina which present the most acute strategic dilemmas. The first area is the role of the international community in establishing the Bosnian State. The Dayton Agreement is one of the most major experiments ever undertaken in the constitutional engineering of ethnic conflict. Implementation of the model has proved to be a difficult challenge, and the constitutional structures to date have performed poorly. The international community has been taking an increasingly aggressive role in order to implement the Dayton Agreement in the face of obstruction by the ethnic elites. In recent times, it has resorted to experiments with various forms of limited international trusteeship. The practicality and legitimacy of these strategies are assessed.

The second area concerns international strategies for dealing with ethnic separatism. The international community has made its first priority in Bosnia the reversal of ethnic cleansing through the return of refugees and displaced persons to their homes of origin. After two and a half years of sustained efforts, however, the results are marginal, and there is no sign of a sustained movement towards ethnic reintegration. The paper examines the different strategies which have been used to promote minority return in the face of widespread obstruction from the national authorities, and the reasons for their failure. The relationship between development and ethnic reconciliation is considered, together with an introduction to the problem of property rights.

The paper concludes that strategic planning for the peace process in Bosnia and Herzegovina requires a commitment to international military and civilian involvement over a period of ten years. The current pattern of aggressive international intervention into national politics should be moderated in favour of smaller numbers of higher quality interventions. The international community should resist the temptation to be drawn too deeply into national politics, defining a more limited role for itself. The international military and civilian presence should gradually be reduced, to be replaced by permanent engagement of European institutions.

The paper recommends that the international community focus on the longer-term goal of ethnic reconciliation, rather than the immediate objective of ethnic

reintegration. Ethnic reconciliation needs to occur from the ground up, in response to gradual changes in the political and social environment. To this end, strategy on refugees and displaced persons should be directed towards normalising living conditions for the greatest number of people as soon as possible. Minority return should remain the favoured solution wherever it is feasible. However the international community should be wary of trying to force returns in the face of popular hostility, which tends to increase ethnic tension and retard the process of ethnic reconciliation. Minority return is unlikely to solve the bulk of the displacement problem, and the international community will have to take a role in resettling displaced persons and returning refugees in areas offering physical and economic security. Where they choose to do so, displaced persons should be assisted with selling or exchanging their pre-war properties, to assist with their resettlement.

Sarajevo, October 1998

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## **PART 1      The challenge of intervention in Bosnia and Herzegovina**

### **1      Introduction**

This study explores the strategies and methods of the post-war intervention in Bosnia and Herzegovina. From the design of the peace agreement to the establishment of a major civilian and military implementation mechanism, the intervention to build a State of Bosnia and Herzegovina and restore a society torn apart by ethnic conflict is the most ambitious of its kind in the post-Cold War era. The complexity and range of problems involved, and the number of different actors engaged in the search for solutions, makes the operation a major experiment in the reconstruction of war-torn societies. While there have been important successes, progress in most areas of the intervention has been consistently disappointing. The return of refugees and displaced persons has progressed very slowly, the effectiveness of the new constitutional structures is limited, and Bosnian society is still overwhelmingly divided along ethnic lines. While international intervention has prevented the resumption of armed conflict, it is not yet clear if or when the international military and civilian presence could be withdrawn without risk of renewed armed conflict and state collapse.

The paper takes as its theme the centrality of ethnic identity and conflict in the formation of the new State of Bosnia and Herzegovina. Although the international community is as heavily engaged in other aspects of the reconstruction of Bosnian society – the physical repair of war damage, for instance, or the transition of the former communist system into a market economy – it is the sharp divisions among the ethnic groups which provides the frame for all international programs. The first Part of the paper provides an introduction to the issue, with a brief history of international involvement in the dissolution of the former Yugoslavia, and the complex role of ethnic identity in post-war society. Within the theme of ethnic identity and conflict, the remainder of the paper addresses the two areas of the international intervention in Bosnia which present the most acute strategic dilemmas. First, the paper addresses the role of the international community in establishing the State of Bosnia and Herzegovina. The Dayton Agreement used the foundation of an uncertain cease-fire to establish a sophisticated constitutional structure. This represents perhaps the most major experiment ever undertaken in the constitutional engineering of ethnic conflict, and offers many interesting lessons. The formal structures of the State have so far performed extremely poorly, drawing the international community into an increasingly interventionist role. The paper examines the strategies of the international community in assisting, supervising and even overruling the national political institutions in order to keep the peace process intact. It examines both the practicality and the legitimacy of current experiments with forms of international trusteeship.

Second, the paper addresses international strategies for dealing with the results of ethnic cleansing. Intervention into an environment of ethnic separatism raises extremely difficult moral and strategic questions. The international community has made its principal goal the reversal of ethnic cleansing through the return of refugees and displaced persons to their pre-war homes. The last two and half years of minority return programs, however, have produced very marginal results, and there is no sign of a sustained movement towards ethnic reintegration. The paper examines the

different strategies which have been used to force ethnic reintegration in the face of widespread obstruction from local authorities, and the reasons for their failure. It analyses the relationship between ethnic reintegration and reconciliation, and suggests that international policy should focus on promoting the conditions required for grass-roots reconciliation over a longer period of time. The relationship between economic development patterns and ethnic reconciliation is considered, together with an introduction to the complex problems of property rights.

The material in this paper is gathered from interviews with a large number of key informants in international and non-governmental organisations operating in Bosnia, and a survey of reports and other literature on various aspects of the intervention. It builds on an earlier study carried out by the author on refugee return and post-war demographics, which incorporated an extensive survey of attitudes among displaced persons and refugees.<sup>1</sup> The first draft of the paper was discussed and extensively revised at a two-day seminar held in Geneva in September 1998, at which a range of experts, present in a private capacity, made their contributions. The author has been an adviser to the Property Commission in Sarajevo, and is now carrying out research at the University of Cambridge on aspects of the intervention in Bosnia.

## **2 The strategic background to the intervention**

International involvement in the Bosnian war was a fragmented affair, characterised by reluctance, uncertainty, and disputes among the different actors of the international community. The dissolution of Yugoslavia posed the first substantial threat to European public order in the post-Cold War era. Western nations were extremely concerned by the implications of the collapse of the Yugoslav federation, and determined to resist any further fragmentation below the level of the former Republics. They feared the spread of ethnic separatism throughout the Balkans, and the creation of a potentially militant Islamic state within Europe. Over the course of the conflict, however, it became clear that the fighting, and even the flow of refugees, could be contained within the borders of the former Yugoslavia. Without an immediate security threat, the complexity and localised nature of the conflict was a major disincentive for close international engagement. This ambivalence among Western nations led to a pattern of gradually increasing international involvement, through successive unsuccessful peace plans and the use of international forces to protect humanitarian aid deliveries. Tension between the United States and Europe, and the failure of the common European foreign and security policy, made consensus very difficult to obtain, while the cumbersome United Nations-NATO 'dual key' command over international forces hampered strategic planning. Ultimately, the United States seems to have been forced into action almost inadvertently, through its commitment to provide US forces in support of any UNPROFOR evacuation.<sup>2</sup> Faced with that grim prospect, taking over diplomatic and military leadership in order to bring about the end of the war was the more palatable alternative, particularly following the public attention given to the fall of Srebrenica and the market-place shelling in Sarajevo. This rather confused mixture of security, humanitarian and

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<sup>1</sup> CRPC & UNHCR, "Return, relocation and property rights: a discussion paper" (December 1997).

<sup>2</sup> Bass, "The triage of Dayton" (1998), 99-101.

regulatory considerations set the tone for the subsequent international involvement in Bosnia after the cease-fire took effect.

The US initiatives, first in creating an alliance between the Croat and Muslim parties, and then negotiating an overall cease-fire at Dayton, were an extraordinary achievement in all the circumstances, and have successfully maintained order in the region against considerable odds. What in retrospect appears less convincing is the attempt to use the fragile consensus at Dayton to create an entire constitutional structure for the new State. It is now clear that the Bosnian war was not so much concluded as suppressed, with the underlying issues left unresolved. At Dayton, the same nationalist leaders who were responsible for the war negotiated over the peace treaty. Their involvement ensured that the Dayton Agreement<sup>3</sup> took the form of a territorial bargain: the division of Bosnia through the trading of percentages, borders and areas of strategic or economic importance. The price of retaining a single State of Bosnia and Herzegovina within the old republican borders was the creation of a loose federation with an extremely weak central government, leaving each ethnic group substantially autonomous within its own territory. This formula may have been essential to achieving a cease-fire, but it has proved to be a very weak foundation for a peace process. The three war-time regimes remain intact, and the ideology of ethnic separatism remains the dominant political force. The parties have consistently obstructed the creation of the State institutions, preferring to preserve their own autonomy and extra-constitutional power structures. The impetus for State-building has therefore come almost solely from the international community, through a massive military and civilian implementation operation. In this environment, it is proving extremely difficult to initiate a self-sustaining peace process, or to engineer political and social changes that will outlast the period of international involvement.

The most difficult challenge for the international community in Bosnia is dealing with the results of ethnic cleansing. The military and political campaigns of nationalist leaders were extremely effective in separating the populations into the three principal ethnic groups, and Bosnian society remains overwhelmingly divided along ethnic lines. International revulsion towards the goals and methods of the war has given the intervention in Bosnia a very prominent moral element, with the international community determined to reverse ethnic cleansing through the return of refugees and displaced persons to their original homes. Progress in doing so, however, has been extremely limited, and there is currently no sustained movement towards ethnic reintegration. The goal of reversing ethnic cleansing is proving difficult to reconcile with the basic structure of the Dayton Agreement, with its pragmatic acceptance of ethnic separation. Many of the local authorities now being pressured into accepting the return of minorities are the same war-time leaders responsible for ethnic cleansing, now strengthened and legitimated through internationally sponsored elections. International programs to promote minority return have been consistently obstructed throughout the country. The lack of progress poses the international community with an ethical and strategic dilemma of considerable difficulty: should ethnic separatism be opposed at all cost, or is it necessary to tolerate existing levels of

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<sup>3</sup> The General Framework Agreement for Peace in Bosnia and Herzegovina, which was agreed in September 1995, and entered into force on 14 December 1995 (hereafter "the Dayton Agreement"). For an account of the negotiations leading to the agreement, Richard Holbrooke, *To End a War* (1998).



ethnic separation for the time being in order to achieve a self-sustaining peace process? There is no consensus among the international community on this question.

Differences in interest among the different international actors during the Bosnian war have been reflected in a rather incoherent institutional structure in the post-war phase. Early proposals for an international presence powerful enough to take control over reconstruction and institution building proved unfeasible. Mistrust between American and European policy makers made it impossible to bring the intervention within a single institutional structure. Troop-contributing countries would not accept a single chain of command over the military, nor place their forces under civilian control.<sup>4</sup> IFOR and SFOR have remained as separate national contingents, rather than an integrated force, each with their own methods and force protection rules. The High Representative, appointed by the Security Council and answering to the Peace Implementation Council, has an ambiguous role. He is responsible for co-ordinating civilian aspects of the peace process, but without direct authority over other international agencies, he lacks the resources to co-ordinate effectively.<sup>5</sup> He has been unable to achieve policy coherence in the provision of international aid, where the major actors – the World Bank, the European Commission, UNHCR as lead agency on humanitarian assistance, and the major bilateral donors – have not only their own interests and responsibilities, but also greater resources than he has. It is also unclear what powers the High Representative has as against the national authorities. He may rule on the parties' compliance with the Dayton Agreement, and in December 1997 received additional powers from the Peace Implementation Council to issue interim laws when the national authorities have become deadlocked. These powers are sufficient to make him a central player within the national political process, but it is unclear to what extent he can or should supplement or overrule the legitimate constitutional structures.

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<sup>4</sup> The Dayton Agreement provides: "The High Representative...shall remain in close contact with the IFOR Commander or his designated representatives and establish appropriate liaison arrangements with the IFOR Commander to facilitate the discharge of their respective responsibilities.... The High Representative shall have no authority over the IFOR and shall not in any way interfere in the conduct of military operations or the IFOR chain of command." Annex 10, Article II(5) and II(8).

<sup>5</sup> "The High Representative shall respect their autonomy within their spheres of operation while as necessary giving general guidance to them about the impact of their activities on the implementation of the peace settlement." Annex 10, Article II(1)(c).

### 3 Ethnic identity and Bosnian society

There has never been a modern State of Bosnia and Herzegovina, nor a national identity associated with its territory, nor a single economic space within its borders. When the international community recognised the independence of Bosnia in the midst of political and social breakdown, it created something profoundly new. The former Yugoslavia was a complex structure – a federation built along both geographical and ethnic lines, with each of the principal ethnic groups holding the status of ‘constituent nation’ under the 1974 Constitution. Its precarious inter-ethnic structure was balanced by an official ideology of state socialism, the personality cult of Josip Broz Tito, and a unique geo-political position between East and West. When Yugoslavia broke apart, it took with it the structures that supported the ethnic balance within Bosnia. With no common experience except war and atrocity, and no genuine consensus behind the project of nation building, there is not yet a Bosnian identity to counteract the centrifugal forces of ethnic separatism, and national ties across the borders with Croatia and Serbia are far stronger than civil identity within Bosnia. The most basic challenge of the peace process is to create a single society out of three sharply defined ethnic groups.

All international strategies in Bosnia are based on assumptions as to the extent of these ethnic divisions, and whether they are a permanent or transient feature of the social environment. Every international program has an ethnic dimension to it, whether the program is expressly designed to promote ethnic reconciliation or merely meets with obstacles presented by ethnic conflict. International strategic planning can be analysed along a spectrum from ethnic reintegration on the one side, which assumes that ethnic identity can ultimately be removed from the political process, to ethnic accommodation on the other, whereby ethnicity is assumed to be a quasi-permanent feature of the region, to be controlled or contained within political structures. To increase the coherence of international strategy, these assumptions need to be examined and made explicit. Literature on the dissolution of Yugoslavia and the war in Bosnia contains three different accounts of the origins and nature of ethnic conflict, which are presented briefly here. The purpose is not to make a case for any one of the alternatives, but to show the multi-dimensional nature of ethnic conflict.

The first account is sometimes called ‘**primordialism**’: the idea that ethnic hatred is embedded deeply within the history and culture of the Balkans.<sup>6</sup> According to this view, extreme ethnic consciousness is a function of the religious fault-line between Catholicism, Orthodox Christianity and Islam which runs through the region, and of a long history of repression and manipulation of identity by the Ottoman and Austro-Hungarian empires. The ancient hatreds which are endemic to Yugoslavia were suppressed during the communist regime by the personality cult and considerable political skills of Tito, but exploded following the collapse of communism. Recent wars are a continuation of ethnic conflict which was unresolved at the end of the Second World War, and which has continued in a more or less unbroken chain since the Battle of Kosovo Polje in 1389. This is a highly ideological account, echoing the rhetoric used by nationalist politicians to mobilise the population along ethnic lines.

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<sup>6</sup> This view is often associated with Robert Kaplan’s book *Balkan Ghosts: A Journey Through History* (1993).

However this perspective appeared frequently during the Bosnian war in statements of Western leaders, who used it as an argument for the futility of engaging directly with the conflict.

The second position ascribes the rapid descent into ethnic conflict to '**elite manipulation**'.<sup>7</sup> Ethnic mobilisation was a political strategy used by former communist leaders, especially Slobodan Milosevic, to sustain their power following the collapse of communism. It was imposed from the top down, and is essentially an artificial creation. The techniques by which political elites were able to foment ethnic hatred are well documented, and included the manipulation of emotionally charged historical material, and massive media propaganda to convince each ethnic group that its survival was threatened by coexistence with the others.<sup>8</sup> This position is favoured by those who attribute responsibility for the conflict to a small number of unscrupulous individuals. One should add to this perspective the phenomenon that ethnic extremism, once it takes hold, may be impossible to reverse. However artificial the heightened ethnic identity which fed the conflict, ordinary people in Bosnia now have very real memories of recent atrocities to sustain their hostility.

The third approach focuses on the **political economy** of the region,<sup>9</sup> and accounts for the conflict in terms of competition for economic and political capital during the declining years of the communist regime in Yugoslavia. It describes the dynamics of a highly unwieldy federation, where poor management of national resources through centralised investment decisions caused a crisis of legitimacy and control in the federal structure. Over a period of some 15 years, increasing decentralisation to republican level with no corresponding democratisation presented regional elites with incentives to compete to secure a greater share of dwindling national resources, in a struggle that became increasingly nationalistic in tone. Once communism collapsed as the official state ideology, ethnic nationalism was the only ideology capable of mobilising support for regional elites, and last minute attempts at free elections, before any genuine democratic alternatives were able to organise, left the nationalist parties able to dominate the political scene. Ascribing the conflict to structural features and incentive patterns is an important analysis, but does not easily explain the rapid escalation of violence. Some combination of the second and third explanation seems necessary, whereby elite manipulation is a 'tipping phenomenon' that turns structural competition into violence.

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<sup>7</sup> Glenny, *The Fall of Yugoslavia* (1992); Woodward, *Balkan Tragedy: Chaos and Dissolution after the Cold War* (1995); Bennett, *Yugoslavia's Bloody Collapse: Causes, Course and Consequences* (1995).

<sup>8</sup> Doubt, Keith, "On the latent function of ethnic cleansing in Bosnia" (1995); Gutman, *A Witness to Genocide* (1993); Thompson, *Forging War: The Media in Serbia, Croatia and Bosnia-Herzegovina* (1994); Hampson, *Incitement and the Media: Responsibility of and for the Media in the Conflicts in the Former Yugoslavia* (1992); Hayden, "Recounting the dead: the rediscovery and redefinition of wartime massacres in late and post-communist Yugoslavia" (1993); Igantieff, *Blood and Belonging: Journeys into the New Nationalism* (1993); Petrovic, "Ethnic cleansing - an attempt at methodology" (1994); Vuckovic, *Ethnic Cleavages and Conflict: The Sources of National Cohesion and Disintegration* (1997).

<sup>9</sup> Bojicic & Kaldor, "The political economy of the war in Bosnia-Herzegovina" (1997); Ramet & Adamovich (eds), *Beyond Yugoslavia: Politics, Economics, and Culture in a Shattered Community* (1995); Magas, *The Destruction of Yugoslavia* (1993).

International strategic thinking has oscillated among these alternatives. At times, ethnic identity is treated as an artificial phenomenon which can be countered through education and democratisation, and which will ultimately disappear through the exercise of free choice in the ballot box by ordinary citizens. At other times, it is treated as a lasting structural feature, which can at best be channelled into non-destructive competition through constitutional engineering. The Dayton Agreement itself is ambivalent on the point. It demands ethnic reintegration through the return of refugees and displaced persons to their original homes, but at the same time creates constitutional structures which assume continuing ethnic separation. Both the State and the Federation Constitutions describe the different ethnic groups as 'constituent peoples'. Both provide for highly decentralised distribution of functions, giving ethnic groups the greatest possible autonomy. Both make ethnicity the explicit criteria for representation in parliament and in executive posts. Both give ethnic groups broad powers of veto over legislative or executive measures which they consider destructive of their vital interests. These structures would become obsolete if Bosnia were to achieve a significant degree of ethnic reintegration. By way of example, in the House of Peoples of Bosnia and Herzegovina, each ethnic group is entitled to elect five members. The Constitution provides that all five members elected from Republika Srpska must be Serbs, even though before the war Serbs were only 53% of the population in that area. If significant levels of minority return to Republika Srpska took place, these provisions would amount to discrimination under international human rights law.

The lack of a coherent approach to managing ethnic conflict is the greatest weakness of the intervention. To date, the chief political actors among the international community have held out for ethnic reintegration through minority return, fearing that any weakening of the international position will close off all possibility of further returns. There is a tendency to equate ethnic reintegration (return of refugees and displaced persons into ethnically mixed living areas) with the longer-term goal of ethnic reconciliation. Attempts to force reintegration through international pressure have been counter-productive, tending to increase insecurity among the displaced population and strengthen the hand of nationalist leaders. The experience of the peace process to date shows that reconciliation needs to occur from the bottom up. A more appropriate role for the international community may be to work at creating the environment in which reconciliation can occur autonomously, in the meantime using international force to prevent fresh outbreaks of open conflict. In a stable and secure environment, the passage of time, physical reconstruction and economic development, demographic pressures, public education and democratisation may gradually reduce the power of nationalist ideology, allowing alternative political and social movements to emerge. This process can be supported by the international community, but cannot be imposed from outside.

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## **PART 2      Building the State of Bosnia and Herzegovina**

### **1      Modelling ethnic conflict**

Constitutional modelling of ethnic conflict has become an important field of international expertise in the post-Cold War era, offering a system of techniques that can be applied across a range of practical cases. Conflict resolution in the Balkans, the Caucasus, Africa and Northern Ireland is being approached through the use of constitutional models to create a stable environment in which grass-roots reconciliation can take hold. There are various models in use, based on certain common principles. They offer constitutional protection to the vital interests of each group, in order to decrease the risks of co-operation. Usually based on a federal system, they aim to create incentives for ethnic elites to co-operate within a State structure, breaking down the monolithic nature of ethnic group behaviour. In theory, they work by establishing a framework in which ordinary political, economic and social activity will create social bonds and divisions which are not exclusively ethnic in nature. As the complexity of social life increases over time, the risk that ethnic divisions will lead to open conflict gradually diminishes.

The peace process in Bosnia offers important lessons in this field. The Dayton Constitution contains a number of techniques for dealing with ethnic conflict, including a highly decentralised federation, a structure of representation in parliament, the executive and the judiciary based on ethnic quotas, mutual veto over legislative and executive measures, and minority rights protection mechanisms. However the Bosnian experience suggests that the fundamental obstacle in constitutional modelling lies in implementing the model. At both State and Federation levels, the Constitutions were annexed to peace treaties under heavy international pressure, were drafted in English by international lawyers, and were adopted by war-time leaders with no constitutional mandate.<sup>10</sup> As the handiwork of external actors, the constitutional structures are weakly legitimated. So long as they lack popular support, they are easily obstructed or manipulated by nationalist leaders, diluting or nullifying their contribution to ethnic reconciliation.

Considerable international efforts have been devoted to making the new institutions operational, but there is little sign of them becoming self-sustaining. They remain subordinate to war-time power structures, and have not become a genuine forum for decision-making or policy formulation. Because of the poor progress of the institutions, and their regular obstruction of international policy goals, the international community has been drawn into an increasingly interventionist role in national politics. It has taken on the responsibility, not merely of supporting the institutions with technical advice and resources, but also convening them, supervising their operation and, in many cases, controlling their output. One of the most difficult strategic dilemmas facing the international community in Bosnia is the extent to which it should seek to supplement and even overrule the national institutions. The current trend towards a more robust role appears to be a response to the pressures of the moment, rather than a long term strategic plan. It carries with it the risk that the

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<sup>10</sup> The Constitution of Bosnia and Herzegovina has never been adopted by any formal process within the country, and no official translation exists in the local languages.

international community may become so deeply embroiled in national politics that it inhibits the development of genuine democratic institutions.

## **2 Establishing the constitutional structures**

The State of Bosnia and Herzegovina is a federation between two Entities: the Republika Srpska and the Federation of Bosnia and Herzegovina, the latter being itself a federation of Bosniac and Croat areas. Under the State Constitution, the institutions of Bosnia and Herzegovina have responsibility for a very limited number of matters (foreign affairs and trade, customs and monetary policy, immigration, inter-Entity criminal law enforcement, communications, transport and air traffic control). There are three political organs of the State – the Presidency, the Parliament and the Council of Ministers. The Presidency is a committee of three members representing each of the constituent peoples, with the Chair rotating periodically. In the Presidency and the Parliament, each ethnic group has power of veto over measures which it considers destructive of its vital interests. Three Ministries have been established – Foreign Affairs; Trade and Economic Affairs; and Civil Affairs and Communications – with ministerial posts shared among the ethnic groups. The High Representative is mandated to oversee the establishment of these institutions.

In the two and a half years since the Dayton Agreement, disputes over venues, agendas and other formalities have frequently prevented the institutions even from meeting, let alone undertaking responsible governance. As the High Representative searches for ways to make them functional, attention often becomes focused on their formal aspects – the appointment of officials, the time and place of meetings, agendas, symbols and so on – as the criteria for assessing the ‘compliance’ of local politicians with their obligations to co-operate. These formalities become an arena for political gamesmanship. When national politicians wish to appear co-operative, they simply feed back to the international community its own rhetoric, without using the institutions to perform any substantive work on behalf of Bosnian society. The nationalist parties have become very sophisticated at playing the international community’s game, through a pattern of general obstruction balanced by occasional concessions. In the process, the international community itself becomes the central pillar of the new institutions, unable to extricate itself from close management of even their most superficial aspects. The process can easily become a charade, neither desirable nor sustainable.

Of the three political institutions at the State level, the Council of Ministers is the principal forum, preparing legislative drafts for presentation to the Parliament. Despite encouragement from the Office of the High Representative (OHR), the Parliament itself has not taken a proactive role in preparing or debating legislative measures, remaining a rubber stamp on the decisions of the Council of Ministers. The Council of Ministers has met irregularly, and often refuses to pass measures essential for the functioning of the State. It required two years for an agreement on the basic legal framework for State institutions, and this is not yet implemented. Other than ambassadors, no civil servants are validly appointed. The legal and institutional framework for the State budget is not yet in place, so no legitimate disbursements of State funds have been made. In the meantime, the three Ministries consist of personnel carried over from the war-time Republic of Bosnia and Herzegovina. The number of people employed and the source of their salaries is not known, but they are

clearly under the control of the main Bosniac party, the SDA. The High Representative and the PIC have condemned the continuation of these 'illegal parallel structures'. Their conversion into legitimate Ministries of the State will be a difficult issue, as many Bosniac officials will have to vacate their positions in favour of Croats and Serbs.

At the Entity level, the fragile nature of the Bosniac-Croat alliance creates similar problems. The Federation was created by the Washington Agreement of March 1994 as an alliance against the Serbs, and was later incorporated into the State of Bosnia and Herzegovina at Dayton. The alliance greatly simplified the appearance of the conflict to the outside world, and was an essential ingredient in the ultimate settlement at Dayton. However the alliance was more formal than real, and did not conclusively end the conflict between Bosniacs and Croats. During the course of the war, Bosniac and Croat regions were governed by two separate administrations: the former calling itself the Republic of Bosnia and Herzegovina, nominally the State government; and the latter the Republic of Herzeg-Bosna, with its capital in Mostar. As the Constitution of the Federation had not been implemented at all by the end of the war, the Bosniac and Croat parties entered into a further agreement at Dayton to dissolve the institutions of Herzeg-Bosna, and to transfer the domestic functions of the Republic to the Federation.

The Federation consists of ten Cantons, with powers allocated across three levels of government: Federation, Cantons and Municipalities. It is an extremely decentralised, complex and cumbersome creation. The Federation level has exclusive responsibility for defence, economic policy, trade, finance, communications and energy, but shares responsibility with the Cantons for health, infrastructure, social welfare, immigration and natural resources. Cantons have exclusive responsibility for police, education, housing, local business and media, as well as any other matter not expressly reserved to the Federation. However, if any Municipality has a majority ethnic population different from that of the Canton as a whole, the Cantonal government is obliged to delegate to that Municipality all functions concerning education, culture, local business and media. Ethnic vetoes apply in the Federation Parliament, and in the Central Bosnia and Herzegovina-Neretva Cantons. Such is the complexity of the Federation Constitution that it can be extremely difficult to determine where functions lie, and all three levels are able to obstruct measures such as minority return. Ironically, it is only the domination of the Federation by the two nationalist parties which enables the system to function at all.

In certain respects, the Federation institutions are more effective than those at State level. Inter-ethnic hostility between Croats and Bosniacs is still present, but does not act as a barrier to co-operation in areas which are genuinely within the common interest, particularly where dealings with the international community are involved. Compromises are successfully negotiated within the Federation Parliament, and the ruling Bosniac and Croat nationalist parties maintain close contacts. However the Federation has not achieved any degree of mixed governance at a lower level. International efforts to establish multi-ethnic administrations at Cantonal and Municipal levels have not been successful, with real power either extremely localised or else held by illegal war-time authorities. Parallel structures operate extensively in breach of the Federation Constitution. The institutions of Herzeg-Bosna administer Croat areas, while the organs of the former Republic of Bosnia and Herzegovina

perform a mixture of State and Federation level functions. Each area has important features of an independent State, maintaining its own currency, taxation, citizenship and armed forces. Croat areas are well integrated into Croatia in respect of telecommunications, transport and trade, and enjoy considerable economic benefits from this relationship. Many Bosnian Croats have Croatian passports, many Croat public officials and military officers are paid from Zagreb, and the Croatian army is still present in Herzegovina. The High Representative has repeatedly condemned these practices as illegal, and recently requested all international agencies not to recognise documents issued under the stamp of illegal authorities.

The core obstacle to the proper functioning of all of these structures is the low level of loyalty to the State of Bosnia and Herzegovina, and the lack of incentive for nationalist politicians to participate in good faith in the Dayton scheme. The ruling powers co-operate only so far as necessary to prevent an extreme reaction by the international community. The main Bosniac party, the SDA, exhibits the greatest loyalty to the common institutions, because Bosniacs have no viable alternative future other than within a multi-ethnic Bosnian State. The Serb and Croat nationalist parties, on the other hand, have strong ties with Serbia and Croatia, and no strategic interest in strengthening the State. Both obstruct the joint institutions regularly and systematically, to prevent limitations of their own autonomy. The September 1998 election results confirm that these basic dynamics remain unchanged since the end of the conflict. Croat and Serb politicians appear to be pursuing a strategy which preserves the option of withdrawal from the State of Bosnia and Herzegovina at some point in the future. Senior politicians, including those in Zagreb and Belgrade, have frequently called for a redrafting of the Dayton Agreement, for the creation of a third Croat Entity, or for closer ties across the borders to Croatia and Serbia. This leads some international observers to believe that the nationalist leaders are 'waiting out' the period of international involvement, after which the Dayton structures may collapse or be altered radically.

### **3 The trend towards international trusteeship**

Frustration with the slow progress of the joint institutions has led to the international community taking an increasingly interventionist role in political life. Whenever a key international policy goal is blocked within one of the institutions, pressure is brought to bear on the offending parties. Interventions usually take the form of letters, visits and public condemnations from high international officials. They may involve economic incentives, or threats of punitive measures in connection with international aid programs. The conduct of elections by the OSCE has offered opportunities for pressure, with nationalist politicians struck from candidates lists for breach of the Dayton Agreement or the electoral rules. The High Representative has been the leading actor in these interventions, bearing the authority of the Peace Implementation Council (PIC). In mid-1997, the OHR prepared a number of essential State laws which became known as 'the Quick Start Package', which were passed following threats of suspension of economic aid by the PIC. The High Representative forced through passport legislation by asking Western States to impose travel restrictions on five Serb politicians, including former Serb member of the Presidency Momcilo Krajisnik. In December 1997, the PIC increased the power of the High Representative by authorising him to take interim decisions which would be binding on the parties until replaced by laws or executive measures consistent with the Dayton



Agreement.<sup>11</sup> He was also authorised to dismiss any public official who obstructs the peace process.

Over the past ten months, the High Representative's interventions have become increasingly robust. He has imposed a number of major, substantive laws, on subjects including citizenship, foreign investment, vehicle licensing, privatisation, media and telecommunications. In most cases, his intervention consisted of imposing a draft law which had already been debated either in the Council of Ministers or the State Parliament, but whose passage had been obstructed by one of the nationalist parties. In some cases, the laws had previously been rejected by the State Parliament. The foreign investment law is the only one of these measures to have been subsequently ratified by the Parliament. He has also imposed measures on important symbolic matters, such as the design of the national flag, the design of the currency, and the selection of the national anthem.

The measures taken by the High Representative have all been in key areas, removing obstacles to the peace process and the successful functioning of the State. For example, the creation of a uniform vehicle licensing regime has greatly facilitated freedom of movement across the Inter-Entity Boundary Line, the telecommunications law will for the first time integrate the three telephone networks, and the media law creates the first institutional framework capable of promoting independent media. Although the trend towards interventions seems to be gathering pace, he is using his powers sparingly, hoping that the threat of intervention will spur the national institutions into action. However, there are growing signs that nationalist parties on all sides have begun to welcome these interventions. By arbitrating on ethnic conflicts, the High Representative allows national politicians to avoid compromise and political risk. They are able to present a hard-line stance to their own people, while at the same time enjoying the benefits brought by reasonable laws. In short, the elected leaders and delegates are being relieved of the responsibilities of governance by the High Representative's actions. If this is the case, then a more aggressive international role in national politics may in fact inhibit the development of the proper institutions.

This poses a difficult dilemma for the High Representative. Without a method of clearing deadlocks, the reconstruction and development of Bosnia can be held hostage by a small number of extremist politicians. Most of the important progress in the peace process to date can be attributed to the High Representative's interventions. As a result, each time an important issue is blocked by one of the parties, there is considerable pressure on him to take decisive action to remove the obstruction. The more resistance there is to international policy goals, the more he is drawn into this trusteeship role. It is not clear if there is any strategy as to how long he should continue to act in this way, or how he will ultimately withdraw from close management of the common institutions. He also risks becoming involved beyond his current institutional capacity. The High Representative may be able to intervene effectively to resolve disputes that are purely formal in nature, or where one party is

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<sup>11</sup> Conclusions of the Peace Implementation Conference, Bonn, 8 December 1997, Art. XI-2, II-1A and XI. The legal basis of these additional powers is unclear, perhaps resting on an extremely broad interpretation of the High Representative's authority under Annex 10 of the Dayton Agreement to issue binding interpretations of the Dayton Agreement.

clearly withholding consent to a reasonable measure for unacceptable motives. However many inter-ethnic disputes are genuine, substantive disagreements on complex matters concerning the development of post-war and post-communist society, beyond the expertise or resources of the OHR. There is also real concern as to the legitimacy of an international official overruling the constitutional organs. No matter how poorly the elected parliaments are functioning, disregarding their decisions seems unlikely to strengthen the democratic process.

#### **4 Controlling local politics**

Throughout the country, the political and social environment is highly localised. Conditions vary significantly from one village to the next, influenced by ethnic profile, war history, the number of displaced persons and so on. Many of the most significant obstructions to the peace process occur at a local level: human rights abuses by police forces, evictions from property, discrimination in public services, obstruction of minority return. The great majority of local leaders are still in place from the end of the war, many of them military leaders, and some effectively warlords ruling in a lawless environment. One of the essential goals of the international community in Bosnia is to break down the climate of impunity in which local leaders operate, making them accountable for their actions. The experience of the past two years shows how difficult it is for the international community to control local politics. This section outlines some strategies which have been tried over the past two year.

##### *4.1 Economic conditionality*

Economic conditionality is often cited as the main source of international influence over domestic politics, but has proved to be an unwieldy tool. Threats of suspension of aid, and conditions attached to particular aid projects, are used to send messages to local leaders as to what conduct is acceptable to the international community, and to create a pattern of incentives for compliance with the peace process. In practice, local politicians in Bosnia are very experienced at avoiding the effects of conditionality, playing donors off against each other to gain the maximum aid for the minimum concessions. Because the High Representative has no direct control over other international organisations, and limited influence on bilateral donors, he is unable to co-ordinate the application of the aid budget according to a consistent set of policy goals. As a result, there is a market place in international aid, where local leaders facing the suspension of a project are often able to find another donor to replace the lost funds. The process through which international aid commitments are made is not conducive to sensitive political judgements about the behaviour of local authorities. Most donors are not sufficiently attuned to the political process to distinguish among regions or political factions in a meaningful way. Those aid administrators who are close enough to the field to make political assessments are usually preoccupied with securing funds for their area of responsibility, and are reluctant to suspend or cancel projects for fear of losing their budgetary allocation. Funds are often pledged a year or more in advance of the commencement of a project, and cannot easily be altered in response to changes in local conditions. Suspension of projects involves major bureaucratic and financial waste. When formal sanctions are imposed against a particular municipality, donors often insist on granting exemptions

to ongoing or supporting projects, and projects denoted as humanitarian, with the result that the municipality may not notice any real reduction in support.

Various classification schemes have been developed over the past two years to assist donors with distinguishing among municipalities or regions. These include UNHCR black-listing of municipalities, UNHCR target areas, RRTF priority areas and the UNHCR Open Cities scheme. Each of these involved some form of assessment of the behaviour of local officials, although in some cases they also incorporated investment criteria and absorption capacity for return. In June 1998, the PIC requested the High Representative to establish a more formal municipal evaluation scheme to determine compliance and co-operation in the fields of refugee return, implementation of election results, police integration and prosecution of war criminals. Donors are called upon to take these evaluations into account when allocating funding. In none of these schemes has it proved possible to apply the assessment criteria in a meaningful way. Municipal authorities have obstructed the Dayton Agreement so consistently that no behaviour has stood out as particularly worthy of reward. Because of the poor record on compliance, the international community often falls into the trap of recognising 'good behaviour' which is purely formal in nature. In respect of minority return, for example, municipalities may be given a favourable status in reward for public declarations of willingness to accept minority return, the preparation of regional return plans, or the creation of municipal return offices which employ members of the returning minority. It has been easy for those municipalities which seek international support to meet these secondary criteria without performing any actual implementation of the Dayton Agreement.

Perhaps most fundamentally, economic conditionality can send the wrong message to ordinary people. The poverty of the local population, particularly displaced persons living in vulnerable circumstances, is one of the factors which promotes ethnic extremism. When the international community suspends aid to these people, it increases their insecurity, making them more dependent on local leaders and more easily radicalised. If, as many observers have commented, ethnic separatism is best addressed through employment creation and economic development over an extended period of time, then punitive action may be counterproductive.

#### *4.2 Dismissing local officials*

During 1998, a new strategy for controlling local politics has been developed, where responsibility is attributed to specific officials. In December 1997, the PIC gave the High Representative authority to dismiss any official, elected or otherwise, who obstructs the peace process. The High Representative has since dismissed a number of municipal and local police officials, most notably in Stolac and Drvar following violence against minority returnees. Dismissing individual officials seems to be more a gesture of frustration with the slow progress of the peace process, than a coherent strategy. There is no sign that dismissing a single official changes the political environment in strategic locations. Nationalist parties retain the power to appoint replacements or select new candidates for election. Where political conditions are conducive to extremism, there will be no shortage of extremists to take the place of individuals dismissed by the High Representative. The dismissed official may continue to be powerful, as his or her party position may be more influential than the municipal post. There is also the problem of filling the vacated position. In Drvar,

following the dismissal of the Deputy Mayor, the HDZ-controlled Municipal Assembly refused to approve a successor. At a special session of the Assembly convened by the OHR, the HDZ ensured that enough deputies stayed away from the meeting that a quorum could not be formed. In order not to be seen to capitulate to such blatant manipulation, the OHR took the matter to the OSCE's Provisional Electoral Commission (see section 5.1 below), and secured a one-day suspension of the quorum requirements to allow the Assembly session to go ahead. Such manoeuvres are highly artificial, and have no positive effect on local conditions.

One exception to this pattern may be international operations to arrest war criminals. Despite prohibitions on indicted war criminals holding public office, they continue to be influential in many locations, where war-time military or criminal power structures remain intact. The few SFOR operations to arrest war criminals had a marked, though temporary, effect on repressing these illegal networks, and each resulted in a period of quiet from local nationalist leaders. The arrests obviously help to reduce the climate of impunity in which local leaders operate, and more operations would be a very positive contribution.

#### *4.3 Governance by international officials*

The most recent strategy to counter local obstruction is the appointment of Special Envoys to specific localities, sometimes with power to overrule local authorities. Local trusteeships have been tried on a substantial scale with the European Union Administrator in Mostar and the International Supervisor under the Brcko Arbitration Award. Each of these officials had power to issue orders or decisions with the status of binding local laws. The EU Administration operated in a divided city in extremely difficult circumstances, and was unsuccessful in establishing a joint city administration or a return mechanism. Although the Bosniac and Croat parties formally agreed to its powers, it exercised little or no influence over local politics. The International Supervisor in Brcko has had more success, conducting a minority return program to empty villages around Brcko and greatly improving freedom of movement across the Inter-Entity Boundary Line. However there have been no lasting changes to the political environment in Brcko, and the June 1998 PIC Declaration described the new multi-ethnic administration as "shallowly-rooted".

Despite the poor record to date, the June 1998 PIC Declaration foreshadows the appointment of Special Envoys of the High Representative to specific trouble-spots. The High Representative recently appointed a Special Envoy to Drvar, and the OSCE and the High Representative appointed an international chair of an Interim Executive Board in the Municipality of Srebrenica, following failure to implement the local election results. The exact function of the Special Envoys is not clear. It is easy to confer special powers over the local administration on paper, but much harder to achieve any real influence. The international community is unlikely to provide the Envoy with the resources – police, security guarantees, funding – to carry out his will in the face of opposition from local leaders. A Special Envoy will certainly bring the international community closer to the local level, improving monitoring and knowledge of local personalities. He may have unlimited access to local officials, providing opportunities for advocacy. However at the end of the day the local leaders know that they will still be in power long after the Special Envoy is withdrawn. They can simply maintain an appearance of co-operation, and wait for him to leave.

This has been a sceptical account of the international community's capacity to control local politics. Uncritical confidence in the power of the international community leads to poor strategic thinking. There is no value in the international community purporting to manage or take control of a situation when it has no real capacity to do so. Gestures such as sacking officials or appointing Special Envoys are essentially bluffs which will diminish in effectiveness the more they are used. Local leaders are skilled at reading the degree of commitment of the international community, and impossible to control. The lessons of the last two years teach that the international community should resist pressure to enter too deeply into local politics. It should make clear demands of local leaders, and support them vigorously whenever they show genuine good will. However where local leaders become dug in over issues they perceive as affecting their vital strategic interests, pushing too hard at best produces temporary results, and at worst increases inter-ethnic fear and suspicion. At such times, the only option available to the international community is to withdraw temporarily and concentrate its resources into more promising areas.

## **5 Elections, democracy and democratisation**

The first priority of the intervention in Bosnia was the conduct of elections, which were pushed through in the shortest possible time. Enormous resources were invested in the design of the electoral system and the conduct and monitoring of the elections. The goal was to create a stable and legitimate government, giving the international community elected officials with whom it could deal in implementing the peace process. There was clearly a hope that elections would secure changes in the regimes around the country, giving the citizens of Bosnia and Herzegovina the opportunity to 'vote for peace' by supporting non-nationalist candidates. In successive rounds of elections, this has not occurred. War-time leaders have been returned to power across the country. The new electoral system has not produced responsible or accountable government, but merely provided an extra source of support to the monolithic nationalist parties. The Bosnian experience shows that internationally sponsored elections do not of themselves create a genuine democratic system, and that the path to democratisation in a severely divided society is extremely difficult.

The four rounds of elections conducted in the two and a half years since the Dayton Agreement have returned nationalist leaders to power in all three ethnic groups, legitimated and strengthened by their new constitutional mandate. In the 1996 elections, conducted under controversial circumstances, the nationalist parties won strong majorities in each round of the election, including the State Presidency and Parliament, the Parliaments of both Entities, and the Cantonal Parliaments in the Federation. The strongest performance of non-nationalist parties was in Sarajevo Canton, with 35% of the vote. In 1997, elections were held for 4,789 council seats in 135 municipalities. The three ruling nationalist parties took 80% of seats in the Federation and 57% in Republika Srpska. Parties running on multi-ethnic platforms took just 6% of the council seats, winning power only in Tuzla. Independent candidates performed very poorly, winning only 13 seats throughout the country. Candidates representing displaced persons performed better than expected, with absolute majorities in five municipalities, and more than 20% of the vote in a further 42 municipalities. The September 1998 State and Entity election results, just released at the time of writing, show a resurgence of extreme nationalist leaders in the

Republika Srpska, and despite some gains by moderate parties, the nationalist parties have retained their commanding position across the board.

Although the elections themselves have been conducted in a largely free and fair manner, the results continue to reflect the strong ethnic divisions across the country. With the population dividing overwhelmingly into ethnic voting blocks, the elections function more as a census of ethnic groups than a forum for selecting among alternative governments or policies. Most individuals are aware that the greatest threat to their security and livelihood is the risk of living under local authorities of a different ethnic group. As a result, very few people vote for representatives of another ethnicity, and multi-ethnic coalitions perform very poorly. Ethnic voting robs the democratic process of its content. Nationalist politicians know they have no prospect of winning votes from other ethnic groups, and therefore have no incentive to serve the interests of other groups while in power. The most important control mechanism in a democratic system – the fear of losing subsequent elections – is therefore absent from Bosnian politics.

Attempts by the international community to influence voting patterns away from support for nationalist parties have had little or no effect. The most substantial attempt took place in the Republika Srpska over the past year. In November 1997, a contest for power within Republika Srpska led to the creation of a new regime under the control of President Biljana Plavsic and Prime Minister Milorad Dodik. Plavsic appears to have sensed a political opportunity in the extremely low standards of living in Republika Srpska, and launched an attack on the Pale regime for its manifest corruption and its association with war criminals. A constitutional crisis between the President and the Parliament ensued, each purporting to dismiss the other, until new Parliamentary elections were organised by OSCE in November 1997. Dodik, whose party won only two seats in that election, was appointed Prime Minister by a majority of one with the support of Bosniac and Croat members. His appointment took place during a boycott of the Parliament by the main Serb parties, and was heavily engineered by the international community. During 1998, leading up to the September elections, the international community extended prominent support to Plavsic and Dodik, lifting the aid embargo on Republika Srpska and effectively informing Serb voters that continued international aid was conditional upon them supporting the two moderates. In the September 1998 elections, Plavsic lost the Presidency to an extremist opponent, Nikola Poplasen, who has pledged to prevent the return of minorities to the Republika Srpska, and to pursue the goal of a Greater Serbia through political and democratic means. It is not known at the time of writing whether Dodik will be able to form a majority in the Parliament and retain the Prime Ministership. These results have sent a clear message that international support does not dictate voting patterns.

### *5.1 International control over the electoral process*

The Dayton Agreement gives the Organization for Security and Cooperation in Europe (OSCE) enormous powers over the design, planning and conduct of the elections. In advance of the 1996 election, it was responsible for certifying that the conditions existed for free and fair elections, a highly controversial decision when freedom of movement was limited, voter intimidation and fraud was widespread, and the dominant political parties were exercising tight control over the media. Although

aware of these shortcomings, OSCE pushed ahead with the election, apparently taking the view that an elected government of some form would be an advance over the unconstitutional regimes in power at the time. The Head of the OSCE Mission controls the Provisional Electoral Commission (PEC), a mixed international and local body created to regulate the conduct of elections. The PEC established rules for the registration of political parties, eligibility of candidates and voters, the conduct of the campaign, and the determination, publication and certification of election results. These rules were by no means merely technical in nature, but involved numerous highly significant political choices as to the shape and direction of the political process. The OSCE also established an Election Appeals Sub-Commission (EASC) to adjudicate complaints about the electoral process. It has the power to impose penalties for violations of the electoral rules, including disqualification of candidates and de-certification of parties. The power to exclude nationalist leaders from the electoral process has been one of the more important forms of influence held by the international community. In 1996, OSCE negotiated the resignation of indicted war-criminal Radovan Karadzic from the chairmanship of the principal Serb party, the SDS.<sup>12</sup>

Annex 3 of the Dayton Agreement, which governs elections, provides that citizens of Bosnia and Herzegovina should in general vote in the municipality in which they lived before the war, but may also apply to cast their vote elsewhere. This has allowed displaced persons to be represented on municipal councils in their pre-war place of origin, even if they are now unable to live in or even to visit that municipality. It is hoped that multi-ethnic administrations will gain enough control over local police and administrative bodies to force them to allow returns to take place. However there have been enormous difficulties in implementing the local election results, producing some anomalous situations. In the five municipalities where displaced minorities won control of the council,<sup>13</sup> and others where they achieved substantial representation, heavy international involvement has been required even to get the elected delegates to meet together. OSCE has the responsibility to certify that the new council has been properly installed, and may decertify any municipality for breach of the rules up to six months after certification. Under the PEC rules, the obligations of the council are to convene its first session with all sides participating, to elect or appoint officers and committees with a fair representation of minority parties, and to adopt rules of procedure. Certification may be rejected by OSCE if councillors are denied access to the municipality or the council itself, if there is harassment of officials, if councillors are prevented from living in the municipality, or if council proceedings are not secular.

Implementation of the new municipal councils has been declared a success, with all except Srebrenica now certified. However the certification process has inevitably been highly superficial, with many councils not meeting again after their first session. Illegal parallel administrations are still widespread. The OSCE and UNHCR are planning a priority return program for elected officials, but it is clear that many of the

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<sup>12</sup> However when the EASC tried to decertify the SDS in the 1997 elections for displaying election posters with pictures of Radovan Karadzic in open defiance of election rules and undertakings given, the OSCE Chief of Mission overruled it, prompting widespread criticism.

<sup>13</sup> Muslims took Srebrenica from the Serbs and Zepce from the Croats, while Serbs took Bosanski Petrovac from the Bosniacs and Bosanski Grahovo and Drvar from the Croats.

officials, particularly Bosniacs from Republika Srpska, do not in fact want to live in the municipality which they represent. In Srebrenica, which the original Bosniac residents cannot yet visit, failure of the new council to meet the certification requirements led to the OSCE Head of Mission and the High Representative arbitrating on the distribution of council posts among the ethnic groups. When the arbitration award itself was not implemented, they created an Interim Executive Board with power to decide on 'disputed issues', with an international official appointed as Acting Chair. Not surprisingly, the Interim Executive Board itself is unable to function, and the High Representative is now considering sending a Special Envoy with power to govern by fiat. Although Srebrenica is the most extreme example, the future of multi-ethnic councils in most parts of the country is not promising. This poses a dilemma for OSCE, which cannot force the multi-ethnic councils to become effective, but also cannot afford to let the issue drop. The temptation is therefore for OSCE to declare the process to be a success, irrespective of real conditions in the field.

The September 1998 elections may be the last round controlled by the international community, beyond a continuing monitoring role. A joint international and local body is now preparing a permanent electoral law, bringing the authority of the PEC to an end. This exercise may be the last opportunity for the international community to effect changes to the basic design of the system. Various observers have suggested that a different electoral system might produce radically different results. One proposal calls for the division of the country into three separate ethnic voting rolls, and a system where candidates would be elected by all three ethnic groups.<sup>14</sup> This would forcibly eliminate ethnic block-voting, and would create an incentive for the nationalist parties to field moderate candidates who could appeal to other ethnic groups. This strategy would cause the gradual evolution of the nationalist parties into more moderate institutions. To date, radical solutions such as this have not been accepted, both because of the difficulty of rewriting the Constitution at this time, and because of the risk that such an election would be boycotted or would produce election results that are impossible to implement. Ultimately, substantial electoral reform will be necessary if the current ethnic divisions are not to be solidified and endlessly repeated in the electoral process. However it is doubtful that the international community will ever be in a position to impose such a solution against the will of the nationalist parties. The ethnic elites must themselves come to accept the benefit of an improved democratic system.

## 5.2 *Democratisation, civil society and ethnic reconciliation*

The development of political alternatives to the nationalist parties has been slow. While the international community regards as 'moderate' any party offering lip service to the Dayton Agreement and a friendly rhetorical stance towards the international community, there are in fact very few real differences among the parties. Of the 80 or so parties participating in the recent elections, most are small-scale, single-issue parties offering no policy alternatives to the nationalist parties. Many are formed by displaced persons wishing to return to a specific area, representing only a single ethnic group and by no means necessarily committed to multi-ethnic policies.

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<sup>14</sup> International Crisis Group, "Changing the logic of Bosnian politics: discussion paper on electoral reform" (March 1998).



There are a handful of multi-ethnic parties or coalitions, but these are poorly organised and tend to have no political platform or ideational base beyond opposition to the nationalist parties. The PEC rules required all candidates in the September elections to express their views on return, minority rights, economic reform, reconstruction and social services, to try to broaden political debate. OSCE has a program to support those opposition parties it sees as most promising. For the September elections, it established 15 public resource centres where approved parties were able to use printing and other facilities to assist with campaigning. While recognising that these parties have limited prospects in the short term, OSCE's strategy is to identify potential transitional parties which could contribute to creating enough of an opening in the political environment for more grass-roots alternatives to emerge.

Explanations for the slow emergence of moderate leaders are not difficult to find. The political dynamics of ethnic conflict count against moderate political forces. Politics are conditioned by collective fears of the future and memories of wrongs committed by other ethnic groups. Structural problems such as security dilemmas (whereby each group takes defensive measures which threaten the security of other groups), problems of commitment (the difficulty of the ethnic groups offering each other credible undertakings) and information failures (a tendency to assume the worst as to other groups' capacities and motivations) increase mutual fear among the ethnic groups. This creates the conditions for nationalist politics to flourish. Extremists are always able to outbid any moderate opposition by feeding the fears of ordinary people.<sup>15</sup> Individuals who oppose the leaders of their own ethnic group on substantive issues, or try to form networks with other ethnic groups, are easily branded as traitors and isolated from the centre of power.

Because of the difficulty of establishing formal political opposition, civil society movements may be the first step on the path to democratisation. Civil society is the sphere of association of individuals and private organisations independent of the formal state, including local NGOs, trade unions, religious groups, academic institutions and cultural organisations. According to liberal political theory, civil society is the site for the formation of the values which make democracy possible. A healthy civil society will help to promote a plural democracy based on popular participation and genuine policy platforms.<sup>16</sup> Although there is no shortage of theory about civil society, it does not easily translate into strategy for the international community in Bosnia. Bosnia does not have a strong network of civil society organisations, even compared to those found in Croatia and the Federal Republic of Yugoslavia. This is partly a result of the social disruption of the war, with many communities dispersed and much of the educated middle class abroad as refugees. International efforts to promote the growth of local NGOs can easily distort their development. According to one report, many international agencies used or created local organisations to continue their humanitarian and psycho-social programs at the

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<sup>15</sup> "Ethnic extremists...are nearly always present, and they can be expected to become prominent whenever at least one of the strategic dilemmas above is initiated. Analytically, ethnic activists and political entrepreneurs are as much a product as a producer of ethnic fears and are dependent for their 'success' upon the underlying strategic dilemmas": Lake & Rothchild, "Containing fear: the origins and management of ethnic conflict" (1996), 55.

<sup>16</sup> Cohen & Arato, *Civil Society and Political Theory* (1992); Hadenius & Uggla, "Making civil society work" (1996).

end of the war.<sup>17</sup> The aim was to secure cheap service delivery, rather than strengthen civil society. Local NGOs were given funding for large projects way beyond their organisational capacity, and expanded in an unsustainable manner. Training and capacity building often consist of teaching staff of local NGOs how to write project proposals and reports for international donors, creating a market where organisations spend most of their energies competing for international funds. As a result, the NGO sector in Bosnia is effective in certain areas of service delivery, but weaker at advocacy and community development, and makes little contribution to democratisation.

Some effective local organisations have formed spontaneously in response to specific social issues. The most organised tend to be involved in human rights and women's issues. The international community has given considerable support to a network of displaced persons' organisations called the Coalition for Return, which lobbies on behalf of the rights of the displaced, particularly in the field of property rights. The Coalition contains members with radically different goals, and its activities are mainly limited to formal debate. Nonetheless the extent of public interest in property rights and refugee issues is such that it functions well as a forum for dissemination of opinions and information, and it now has a strong enough public profile to engage the Federation authorities in public discussion. Contacts among the religious institutions are also developing, and constitute a potential force for peace. However attempts by international agencies to pressure other local organisations into becoming multi-ethnic have been criticised. Forcing inter-ethnic dialogue tends to be rather patronising, and can provoke anger and suspicion.

Although there is clear value in a strong civil society network, it is less clear what should be the involvement of the international community. There is no consensus as to how to promote authentic, grass-roots social and political movements without distorting their development. In an environment of ethnic conflict, overt international advocacy on behalf of local organisations may politicise their role, attracting hostility from local authorities and limiting their impact. There may be little that the international community can do beyond contributing resources, and resource constraints are not the main limiting factor. Spontaneous movements arising out of genuine sectional interests are far more effective than institutions created by the international community. Over time, these sectional interests may come to cut across ethnic lines, creating genuine democracy by diversifying the interests involved in public life.

## 6 Conclusion

This review shows that the international community was quite unprepared for the enormity and complexity of the task of building the Bosnian State. Ethnic divisions dominate all aspects of political life, causing the constitutional structures to function very poorly. The Dayton Agreement and the State Constitution continue to be creatures of the international community, and without a genuine commitment on the part of the ethnic elites, they will not function independently. Elections have failed to change the basic dynamics of ethnic conflict, if anything causing ethnic divisions to become institutionalised. The three ethnic regimes continue to operate through extra-

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<sup>17</sup> Smillie "Service delivery or civil society? Non-governmental organizations in Bosnia & Herzegovina" (1996).

constitutional, war-time structures in their respective territory, and the formal institutions are in many cases entirely illusory. As a result, the entire Dayton structure is only maintained with the constant support of the international community. The results of international withdrawal from Bosnia for the time being would be impossible to predict.

Frustration with the slow progress of the institutional structures has led to the international community taking a more aggressive role, searching for ways to 'enforce' the constitutional structures. These include not only the traditional tools of international military presence and conditional economic aid, but also experiments with forms of international trusteeship. This analysis suggests that those experiments do not offer any real prospect of creating a self-sustaining Bosnian State. The powers at the disposal of the international community are far less substantial than is often assumed. The political dynamic is far too fluid and complex to be controlled by external actors. Ethnic elites respond to international actions, manipulating institutions for their own benefit, and diluting or nullifying international policy goals. Attempts to control the political process at a micro-level produce artificial and transient results. The more that international actors try to manipulate the course of events, the more the international community becomes the central player in the political dynamic. Once the High Representative and other international institutions begin to control and overrule domestic institutions, they come under enormous pressure from within and without the country to continue to play this role. It is this pressure, rather than any strategic vision, which lies behind the current trend towards trusteeship.

The implication is that the international community must begin to set strict limits to the nature and extent of its involvement in the political process, and discipline itself not to step beyond those limits in order to fix short-term political problems. It is clear that at this stage, international involvement is essential to preventing the collapse of the State. But it is also clear that national institutions which refuse to act without the prompting of the international community are not on the path to becoming sustainable. If international interventions have the effect of increasing the dependence of the constitutional structures on outside actors, then the strategy is misdirected. The international community must accept the reality that the nationalist parties will retain control over the joint institutions for the foreseeable future. Rather than trying to overrule them, it must require national politicians to take responsibility for their own actions. International actors may attach economic or political consequences to specific actions of the institutions, but the actions, for better or worse, must be taken by the institutions themselves.

### **PART 3      Return, reintegration and reconciliation**

#### **1      The return dilemma**

Ethnic cleansing in the wars which accompanied the dissolution of Yugoslavia was one of the most disturbing phenomena of the post-Cold War era. The greater part of the violence in Bosnia was directed at driving civilians from their homes for the express purpose of creating ethnically pure areas. Four years of systematic atrocities against civilians were ruthlessly effective in separating the ethnic groups. For reasons

which are well documented elsewhere, the international community failed to respond effectively to ethnic cleansing during the course of the war. Its humanitarian assistance efforts tended if anything to facilitate the movement of population.<sup>18</sup> The complex and unstable pattern of ethnic enclaves which resulted from the war, and the sheer pace and volume of population displacement, defeated successive international peace plans. The Dayton peace formula became feasible only once the process of ethnic separation was close to completion, with the Muslim-Croat alliance providing a system for dealing with the remaining mixed areas in Central Bosnia. Nonetheless, the Dayton map (49% of territory to the Republika Srpska, 51% to the Federation) required further substantial movements of population in order to match the situation on the ground, and the process of ethnic separation was completed in the months following the cease-fire.

Strong opposition to the ideology, methods and results of ethnic cleansing has given the international intervention in Bosnia and Herzegovina a prominent moral dimension. The international community has made its principal goal the reversal of ethnic cleansing through the return of refugees and displaced persons to their homes of origin. All attempts by the national authorities to cement the results of ethnic cleansing, by erecting legal and institutional barriers to return, or by facilitating the relocation of population into property abandoned by minorities, have been strongly opposed. However, to date the international community has not been successful in beginning a movement towards ethnic reintegration. Despite the application of sustained international pressure and enormous resources, minority return programs have achieved only marginal results. It is becoming increasingly apparent that the Dayton peace formula itself poses an obstacle to ethnic reintegration, by allowing each ethnic regime virtual autonomy within its own territory. As a result, the strategic interests of all parties lead them to be implacably opposed to ethnic reintegration.

The poor progress of return is well documented,<sup>19</sup> and need only be summarised here. Of more than 1.2 million refugees, only 250,000 have returned to Bosnia since Dayton, and over 500,000 have resettled permanently abroad. Of just over a million internally displaced persons, more than 800,000 remain displaced, most occupying the houses of other people. More than 40% of the population is therefore still displaced. Most of the returns so far have been cases of majority return, occurring early in the peace process. The outstanding caseload is the difficult component: return of individuals whose homes are in areas now controlled by another ethnic group. Despite enormous international efforts, only 50,000 minority returns have been achieved,<sup>20</sup> concentrated in a small number of locations. Because of the barriers to

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<sup>18</sup> One UNHCR publication in 1995 noted: "As the parties to the conflict quickly realized, if UNHCR could be induced to organize the evacuation of threatened populations, the process of ethnic cleansing could be completed under humanitarian auspices. Despite UNHCR's unwillingness to be exploited in this manner, the organization was ultimately obliged to concede that evacuation was in some cases the lesser of two evils. As UNHCR's senior official in the region observed, 'we chose to have more displaced persons and refugees, rather than more dead bodies'". UNHCR, *The State of the World's Refugees 1995*.

<sup>19</sup> OHR, "Report on the Implementation of the Peace Agreement for Bosnia and Herzegovina" (September 1998); UNHCR, "Repatriation Operation 1998" (1997); CRPC & UNHCR, "Return, Relocation & Property Rights" (1997); International Crisis Group, "Minority Return or Mass Relocation?" (1998).

<sup>20</sup> Only some 2,000 of these minority returns have been to the Republika Srpska. Of the 220,000 refugees still in Germany, almost all are Bosniacs from Republika Srpska.

minority return, only 42,700 refugees returned to Bosnia and Herzegovina in the first half of 1998, and almost all of these were obliged to relocate among their own ethnic group. Given the scale of displacement, the ongoing rate of minority return is almost insignificant. No promising strategy for addressing the problem has been developed, and each year the international community finds itself in the position of repeating resource-intensive strategies which have proved a consistent failure.

The major reason for the failure of minority return is opposition from nationalist leaders. Authorities at all levels and in all parts of the country have consistently obstructed international return programs. The previous section describes why it is impossible to force local leaders to co-operate against their own perceived interests.<sup>21</sup> At the same time, it is also clear that there are complex psychological and social barriers to return among the general population. International actors in Bosnia often assume that obstruction to minority return comes from a relatively small number of nationalist leaders with a personal interest in maintaining ethnic separatism. If that obstruction could be removed, by overruling local leaders or offering them incentives to moderate their opposition, then ordinary people would welcome a return to pre-war levels of ethnic integration. That assumption may be misleading. In focus groups and surveys carried out among Bosnian citizens, most do state that they wish to return to their homes of origin, and would be happy to live with their pre-war neighbours, whatever their ethnicity.<sup>22</sup> However they also see the prospect of living under the control of authorities of another ethnic group as the greatest threat to their security and livelihood. In post-war Bosnia, after years of territorial exchanges and the manipulation of election results through the movement of people, ethnic distribution has become inextricably linked with territorial control. Large-scale minority return is opposed on all sides because it raises the possibility of losing control of territory gained or successfully defended during the war. It particularly threatens displaced persons of the majority ethnic group in the return area, who fear being displaced again by the return of others. Minority return may be tolerated to empty villages without economic or strategic significance, or in small numbers into large urban centres, but outside those marginal situations it is consistently opposed. By the same token, the determination of displaced persons to return to their homes often represents a desire to take back control of their home town from another ethnic group. Experience shows that people are far less interested in returning into a minority living situation, with all the insecurity which that entails. So long as these strategic and psychological factors are widespread among the population, there will be no shortage of local leaders, elected or otherwise, to obstruct minority return.

The Dayton Agreement itself is somewhat ambiguous on the point, and does not dictate a definite policy to the international community. It does make the right of refugees and displaced persons to return to their homes of origin an essential principle of the peace process, written into the Constitution and Annex 7 and binding upon authorities at all levels. The right is reinforced by an array of legal and human rights principles, and protected by various international and local institutional mechanisms.

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<sup>21</sup> The most recent UNHCR strategy paper reveals an awareness of the problem, ascribing the deadlock in the return process to a whole series of factors beyond the control of UNHCR, particularly the ongoing influence of war-time leaders: "A regional strategy for sustainable return of those displaced by conflict in the former Yugoslavia" (June 1998).

<sup>22</sup> CRPC & UNHCR, "Return, Relocation & Property Rights" (1997).

However, the right to return in Annex 7 is weakened by being coupled with the possibility of compensation for lost property, as though the authorities might legitimately choose between allowing return or providing money in lieu of return. The right to compensation, and to choose a return destination or place of residence, is frequently cited by Serb leaders as equal in status to the right to return. As discussed in the previous section, the structure of the constitutional system, dividing the country into largely autonomous regions with a weak central government and providing an ethnic formula for Parliamentary representation, is not consistent with widespread minority return. The Dayton Agreement, and the Constitutions of the State and both Entities, are clearly premised on continuing separation of the ethnic groups.

This presents the international community with an acute ethical and strategic dilemma. Weakening the strong political pressure for ethnic reintegration might be interpreted by nationalist politicians as *carte blanche* to consolidate the results of ethnic cleansing, through establishing impassable legal barriers to return. This would result in extreme discrimination against ethnic minorities in each of the territories, making the return provisions of the Dayton Agreement a dead letter, and betraying the interests of the victims of ethnic cleansing who are still determined to return. Displaced persons and returning refugees would be permanently relocated into housing abandoned by the displacement of others, eliminating the possibility for the original inhabitants to return to those homes. Any international involvement in this process, through reconstruction aid or other forms of assistance, might implicate international agencies and their donors in the process of ethnic cleansing.

However, the consistent failure of minority return programs throughout the country suggests that a fundamental change of strategy must take place before too long. The reality of Bosnia and Herzegovina for the foreseeable future is a high degree of ethnic separation. A large proportion of the internally displaced are living in dire humanitarian circumstances. Their physical and economic insecurity is an important contributing factor to political extremism, making them easily radicalised in support of nationalist causes. If no solution can be found for them, they will remain a destabilising factor indefinitely. Clearly return to home of origin is the ideal solution to the displacement problem. However for many people, returning to their homes would involve living in a situation of physical insecurity and constant discrimination, with limited access to employment or basic social services such as education or health. To date, international policy has focused on removing these obstacles to return, but with limited success. Where return proves impossible, or where the displaced persons themselves choose not to return, should the international community be involved in the search for alternative solutions? UNHCR now considers that population relocation will be an essential component of the search for durable solutions for refugees and displaced persons, and that it may be supported so long as it is voluntary and does not diminish the prospects for return.<sup>23</sup> From an operational perspective, it is clear that minority return programs of such intensity cannot be sustained indefinitely in the face of minimal success rates. However for the time being, political considerations are dissuading any international agencies from undertaking programs to assist displaced persons and returning refugees to integrate successfully among their own ethnic group.

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<sup>23</sup> UNHCR, "A regional strategy for sustainable return of those displaced by conflict in the former Yugoslavia" (June 1998).

This paper argues that the only way to resolve the return dilemma is to make a realistic assessment of the international community's capacity to influence post-war demographic patterns in Bosnia and Herzegovina. The experience of return programs over the last two years makes it clear that the international community is not in control of the movement of population. Although the moral and legal arguments in favour of minority return are indisputable, an exclusive focus on that solution has not proved an effective strategy. One of the lessons of Bosnia is that following such a bitter conflict, physical reintegration of the population may not be the first step on the path to ethnic reconciliation. On the contrary, using international influence to 'enforce' minority return tends to harden the strategic positions of the ethnic groups, strengthening the hand of nationalist forces and making it more difficult to achieve grassroots reconciliation. This paper therefore argues that the focus of international strategy should shift to promoting reconciliation in the political, social and economic fields.

## **2 A review of strategies used to date**

There has been no shortage of innovative return programs attempted over the past two and a half years. Although most agencies are working in an environment of funding shortfalls, the failure of the programs cannot be attributed primarily to resource shortages. Rather, the problem lies in generating a self-sustaining return process, which mobilises local resources and good will behind the goal of improving the return environment. So long as this is absent, direct international pressure results in very limited numbers of returns. This section provides a brief overview of the main strategies used to date.

### *2.1 Reconstruction-driven return*

Reconstruction-driven return is the typical case of a current minority return project. There is no effective legal framework for removing displaced persons from houses which they are occupying illegally. Nor is it generally desirable to achieve return at the expense of further displacement of others. International agencies have therefore focused on homes which are empty because of war-damage, making housing reconstruction the key element of most minority return programs. Considerable care is needed to identify appropriate areas, houses and beneficiaries for participation in a program. To minimise political opposition and avoid threatening the majority population, the return area is usually an empty, isolated village of no economic or strategic significance. Local authorities are persuaded to accept a specified number of returns through political pressure or economic inducements. Equivalent sums are spent on the majority population in the surrounding areas to avoid popular resentment against returnees. Houses which are appropriate for reconstruction are identified, and must be clustered together for the security and well-being of returnees, and to minimise the cost of reconnecting the infrastructure. Beneficiaries must be identified who are genuinely committed to returning, rather than merely accepting the benefit of the reconstruction work and then selling their properties. To make the return sustainable, some form of community development must be undertaken, so that the returnees have access to health care, education and other basic services. Some programs also include temporary employment creation programs, to provide the returnees with some income during the settlement phase.

The complexity of programs of this type makes them extremely resource intensive. The number of factors which must be co-ordinated in a successful program means that this modality of return has a very limited sphere of operation. It does not offer any means of returning people to occupied housing. It is dependent on the supply of damaged housing suitable for reconstruction, which will diminish over time. Experience shows that it is very difficult to recreate a viable rural community in this way, or to offer returnees any economic security. Overall, the occupancy rate of property which has been reconstructed has been around 60%. Many of those who have returned in this way are elderly people in rural areas, who exhibit the greatest emotional attachment to their land. Returnees usually remain dependent on family elsewhere to support them, and return to the nearest population centre of their own ethnic group to shop and obtain necessary services. If there is no economic activity in the immediate area, young people and families do not remain for long in their properties, relocating as soon as possible in search of employment.

Perhaps the most frustrating aspect of these programs is that the entire return process must be managed and funded by an international agency. The resources of the local community are not mobilised at all. In fact, the majority population of the return area also absorbs international resources through economic conditionality and other demands. Investments of this type are only appropriate if they generate a sustained cycle of return, giving other pre-war residents from the area the confidence to return and rebuild their own properties. There is little sign that this is occurring. As a result, it is unlikely that reconstruction-driven return programs will continue on any scale beyond the summer of 1999.

## 2.2 *Incentive-driven return*

A second strategy has been to create incentives for local authorities by linking willingness to accept minority returns with reconstruction and development projects. Various general problems with using economic conditionality in Bosnia were outlined in the previous Part. Of several different schemes which have been attempted, the best articulated and publicised has been the UNHCR Open Cities initiative. Under this scheme, local authorities are given the opportunity to declare themselves publicly to be open to minority return, and therefore become candidates for increased levels of reconstruction aid. Although this concept was initially greeted enthusiastically by the international community, its results have been disappointing. One recent study found no general linkage between Open City status and either levels of donor funding or levels of return.<sup>24</sup> Several Open Cities have seen declining rates of minority return, or international funding, or both, since the confirmation of their status. Declarations of openness do not necessarily translate into positive actions, and displaced persons and refugees are extremely sceptical of promises from local authorities.

Perhaps the most fundamental problem is that economic conditionality does not give rise to any general, lasting pattern of incentives which could lead to self-sustaining returns. On the contrary, the danger is that local authorities come to expect a *quid pro quo* from the international community for all returns. Five of the earlier Open Cities - Gorazde, Konjic, Vogosca, Bihac and Busovaca - received altogether in excess of US\$50 million in aid in 1996 and 1997, while their total minority returns for the same

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<sup>24</sup> ICG, "Minority return or mass relocation?" (May 1998).



period were approximately 1,600. The danger is clear: the international community may establish a 'going rate' for returns on a case by case basis which is far in excess of what it can or should pay.

### 2.3 *Managed return*

Managed return initiatives are those where the international community identifies certain specific individuals who have been attempting to return to their homes, and puts pressure on local authorities to allow those returns. In the first months after Dayton, UNHCR commenced a number of pilot projects for minority return in strategic areas, working closely with local authorities and monitoring success on an individual basis. In many cases the returns were met with obstruction and violence. Some observers have been concerned that individuals were encouraged to return into dangerous situations, believing that their security would be guaranteed by the international community.<sup>25</sup> In the Stolac project, UNHCR remained for many months just a handful of returns short of its target number. Although UNHCR was determined to complete the last few returns in order to declare the pilot project a success, a more objective appraisal would be that the test had produced an unambiguously negative result.

The International Supervisor appointed under the Brcko Arbitration Award has also undertaken a managed return project. Using his powers under the Award, the Supervisor created a Return Commission to approve return cases, and successfully returned several hundred displaced persons from the Federation to empty properties on the Republika Srpska side of the Zone of Separation, but has not achieved any returns into Brcko town itself, or returned any Serbs from Brcko to their homes in the Federation. Perhaps the most ambitious managed return program has been undertaken in Sarajevo, following an international conference in February 1998 at which senior international politicians demanded 20,000 minority returns in 1998, the removal of legal and administrative obstacles to return, and an improvement in living conditions for minorities.<sup>26</sup> The conference identified the misallocation of housing stocks as the most substantial obstacle to minority returns. In Sarajevo and all other major cities, many thousands of the original inhabitants took possession of more than one vacant apartment during the war, and now refuse to give up their extra housing to those who fled the conflict.<sup>27</sup> A Sarajevo Housing Committee, under an international chair but with the involvement of local authorities, was created to oversee the management of housing. The Committee finds itself increasingly called upon to manage a situation over which it has absolutely no control. It demanded that the city authorities produce a list of 2,000 apartments which were held by double occupants, which would be targeted for evictions. To date, only 23 evictions have resulted from this initiative. The authorities have repeatedly obstructed the Committee's initiatives, including by providing false information. In total, only 1,200 minorities have returned to Sarajevo

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<sup>25</sup> All international agencies are extremely careful not to offer security guarantees to returnees. However where returnees meet in advance with committees comprised of OHR, UNHCR, IPTF and SFOR representatives, it is inevitable that they will be given the impression that they will be supported by these agencies after they return.

<sup>26</sup> The Sarajevo Declaration, 3 February 1998.

<sup>27</sup> One report calculates that at least 13,000 former residents of Sarajevo have illegal possession of more than one home, and the true figure could be much higher. International Crisis Group, "Too little too late: implementation of the Sarajevo Declaration" (September 1998).

since the international conference. The main donors participating in the return conference have recently announced that US\$20 million will be withheld from the Sarajevo aid budget, because of the failure to make satisfactory progress on minority return.

The process of managed return encounters all the problems of managing the local political process outlined in the previous Part. The experience of the Sarajevo Housing Committee shows that even maintaining an effective monitoring system over the local authorities is extremely difficult, and that when they have no interest in compliance, there is little that can be done to force them to do so. When their motivation comes purely from international pressure, the best that can be hoped for is that local authorities will offer the minimum possible compliance. When a specific number of return cases are demanded of them, they will perceive that as the limit of their obligation. Overall, there is a real trap in the international community purporting to take over the management of an issue when it has no capacity to do so. Its limitations will quickly become apparent to local leaders, and its credibility will suffer.

#### *2.4 Return through administrative process*

Another approach has been to focus on the procedural side of return, creating institutional mechanisms that process return claims on an individual basis and make rulings on the right to return. The strategy is to confront local authorities with evidence of the property rights of individual families. One mechanism was created in the Dayton Agreement – the Annex 7 Property Commission – which has final judicial authority to rule on property rights, and the power to disregard laws which are obstructive of return. In 1997, special International Housing Commissions were created to process applications to return to the Zone of Separation. In 1998, following pressure from the Peace Implementation Council, the Federation Refugee Ministry issued an instruction to all municipalities to establish Municipal Return Offices to receive applications for return, and establish a database of properties. In April 1998, after heavy international pressure, the Federation Parliament adopted new laws on abandoned property which provide for another administrative mechanism at municipal level to process return claims. These laws oblige municipal authorities to evict temporary occupants and allow original inhabitants to return within specified time limits.

Until the adoption of the Federation property laws, these administrative mechanisms had made no contribution at all to the return process. Where the international community has control over decision making, as in the case of the Property Commission, the problem becomes one of enforcement of the decision. Because the obstacle to return is not, at heart, a dispute over property title, a binding judicial decision on property rights is of little immediate help. The local authorities responsible for enforcement are frequently the same individuals responsible for ethnic cleansing in the first place, and have a strong interest in preventing return. A Property Commission decision is more likely to be useful for proving title for the purpose of disposing of property, particularly where property records have been destroyed or tampered with. Where the decision-making process is left to local authorities, as with the Municipal Return Offices or the new property law procedures, there is unlimited scope for the process to be obstructed. The claims process under the Federation law

on abandoned apartments has been consistently obstructed by local authorities. The High Representative recently imposed an extension to the time period for claiming apartments, because fewer than half of the potential claimants had been able to register their claims. Forms of obstruction included harassment and intimidation, illegal charging of prohibitive filing fees, refusal to accept claims lodged through personal representatives, and requiring claimants to submit documentation that was not accessible to them.<sup>28</sup> Among the 14,000 individuals who have been able to register their claims, only 2,000 decisions have been rendered, and only in 365 cases have they been able to regain possession of their apartment.<sup>29</sup> Because of the intense political pressures on local authorities not to allow returns, both from their own constituencies and from the nationalist parties, it is difficult to imagine enforcement of return decisions taking place in significant numbers. There is a danger that these administrative mechanisms can become a smoke-screen, focusing international attention on bureaucratic mechanisms rather than substantive progress.

### 3 The relationship between reintegration and reconciliation

This overview of return strategies shows that there have been substantial and sustained attempts by the international community to achieve ethnic reintegration. The political consensus behind the need for minority return has been firm. Some US\$5 billion has been pledged for housing and infrastructure reconstruction, currently representing the biggest development program per head of population in any country of the world. Many innovative programs have been tried, both to achieve return directly and to create procedural mechanisms to facilitate return. It is of course always possible to point to missed opportunities. More arrests of war criminals, better coordination of economic conditionality, a slower rate of refugee return from Western Europe or more focused political pressure may all have helped the return process. However the missed opportunities are not the key to the problem. International efforts have been strong, consistent and even innovative, but have not succeeded in creating a sustained movement towards minority return. The lessons of the last two years of efforts are that the international community is not in control of the post-war demographics of Bosnia and Herzegovina, and cannot enforce ethnic reintegration. Ethnic separatism is not simply a matter of the misbehaviour of local nationalist leaders. There are deep-rooted social and political forces which resist integrated governance and living conditions. No matter what resources the international community channels into the intervention, it cannot replace the local political system with direct governance, nor achieve enough control over local elites to make them act contrary to the way in which they perceive their strategic interests.

All the evidence suggests that *ethnic reintegration* through the return of minorities may not be an effective strategy of achieving *ethnic reconciliation*. To resolve the current impasse, what is needed is a vision of ethnic reconciliation which is broader than reversing the immediate effects of ethnic cleansing. International tactics should shift away from demanding the implementation of international policies by nationalist leaders, towards developing the conditions that would give ethnic elites a genuine

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<sup>28</sup> Ironically, the Municipal Return Offices have now become a form of obstruction to the claims process under the abandoned property legislation, with many claimants improperly directed away from the correct institution to the Municipal Return Office.

<sup>29</sup> Report of the Federation Ombudsmen, 18 September 1998.

interest in governing on behalf of all the ethnic groups. The Dayton agreement provides a model in which ethnic elites can undertake joint governance despite their strategic differences. However the immediate post-war environment is characterised by tight control over political expression, inflexible assertion of group interests, and general intransigence towards inter-group dialogue. For the constitutional model to become operative in these conditions, the elites must have incentives to co-operate constructively with each other. Annexing a written constitution to a peace treaty establishes the legal basis for the system, but does not set it in motion. Nor can the international community intervene directly to supply the incentives for co-operation. The social forces which make the system operative must emerge autonomously and from the ground up, perhaps over a considerable period of time.

The path to genuine reconciliation must begin with the normalisation of living conditions, easing the insecurity of ordinary people. Alleviating the fear of persecution, loss of housing and economic hardship among the population would have an immediate effect in weakening the platform of political extremists. As more people return to a stable living environment and ordinary life expectations, there will be an easing of pressure in the political and social environment, allowing it to become more diverse. Interests which are not articulated purely in terms of ethnicity will begin to find expression. There will be a development of social strata and divisions which are not solely ethnic in nature, based on class, regional, educational or other differences. Over time, this will result in a gradual moderation and broadening of the political sphere. People will look to their leaders to provide prosperity, not merely immediate protection. The dominant nationalist parties will respond to this change in environment, becoming more conciliatory towards other ethnic groups and developing genuine policy platforms.

Economic forces will play an extremely important part in this process. The first step on the path to reconciliation is an increase in economic contacts across ethnic lines, which can be driven by individual financial interest without the need for much institutional support. Economic contacts among the ethnic groups occurred to a remarkable degree even during the war, and trade has no necessary connection with peace building. However increased commercial activity has already restored freedom of movement in almost all parts of the Federation, and is gradually making the Inter-Entity Boundary Line more permeable. Trade increases the volume of personal contacts between the ethnic groups, building relationships of trust and the possibilities for joint activity. This gradually decreases the security dilemmas between the groups, in turn making the political rhetoric of extremists less convincing. It is probably inevitable that nationalist parties will continue to dominate politics for a long period of time. Throughout the new democracies of Eastern Europe, the institutionalised role of the Communist Party has been replaced by the effective domination of a successor party, often with the same individuals holding power. Where nationalism is a powerful political force, breaking down the power of this bloc is extremely difficult. The path to democratisation is long and slow, and it will be a long time before non-nationalist parties are in a position to offer a credible alternative government. However in the meantime, economic development will give rise to common interests among the elites in the existing nationalist parties. The more the ethnic groups become economically interdependent, the greater the personal cost to nationalist leaders of reverting to open conflict.

The physical reintegration of the population into ethnically mixed living areas may be the last step along this path, some years into the future. The psychological effects of civil war and genocide are not easily overcome. For the time being, it is very difficult to convince the victims of atrocities that their security is not threatened by the return of members of the responsible ethnic group. Similarly, returnees may fear retribution from other ethnic groups for crimes committed during the war which are attributed to their ethnic group as a whole. Of course this pattern varies in different locations. In some areas, war fatigue and the desire to resume ordinary lives are stronger than ethnic tensions, and a degree of ethnic reintegration is feasible immediately. However in general, the psychological obstacles to reintegration are enduring. It is much easier to promote contacts among the groups in public spaces and neutral zones than close to home. International reconciliation initiatives that develop neutral places such as markets have been quite successful. Mixed residential areas have not yet been successful.

One important contribution which the international community can make to the reconciliation process is the arrest and prosecution of war criminals. War crimes trials also have an important symbolic function. The sense of injustice which follows unpunished atrocities reinforces and exaggerates group divisions, because victims blame their suffering not only on the specific perpetrators of the crimes, but the other ethnic group as a whole. War crimes trials direct blame and resentment back to the responsible individuals, provide an outlet for resentment, and give public recognition of suffering, all of which are essential for a process of healing to begin. The process is equally important for the ethnic group to which the war criminals belong. It acts as a symbolic rejection of the crimes, opening up the possibility for reconciliation.

#### **4 Demographics and development patterns**

Bosnia and Herzegovina is in a period of major demographic upheaval. With more than 40% of the population displaced, the nature and composition of many communities have been altered irrevocably. New centres of development are emerging, changing the geographical distribution of employment opportunities. Differences in development levels in different regions are likely to increase in the years to come. The social and economic structures which sustained many rural communities under the socialist system have disappeared. Industries which once supported entire cities are now defunct. A portion of the destroyed housing and infrastructure, particularly in remote areas, will never be repaired. Urbanisation is occurring at a considerable pace, and many refugees return from abroad with very different life expectations to when they departed. Some of these trends are common to all Eastern European transition economies, but have been accelerated in Bosnia by the war and are now taking place in a completely uncontrolled manner. When combined with the overwhelming factor of ethnic separatism, predicting the outcome of these demographic trends over a period of years is completely impossible.

A number of recent studies have shown that housing reconstruction programs do not generate population movements, and that they can represent a poor investment if incorrectly targeted.<sup>30</sup> Many villages reconstructed by the international community

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<sup>30</sup> RRTF, "An action plan in support of refugees and displaced persons in Bosnia and Herzegovina" (April 1998); CRPC & UNHCR, "Return, Relocation & Property Rights" (1997).

have remained empty, because of the difficulty of replacing the social infrastructure which existed before the war. Because of this, international donors have become conscious of the need to direct investments into areas which have already proved to be a magnet for population movements, in order to target their beneficiaries effectively. For the time being, these population movements are the only guide to future development patterns. Because of the degree of war damage, there is a need for international development assistance to improve the housing and infrastructure of the major urban areas, and the absorption capacity of smaller population centres. As a result, international aid will come to reinforce the patterns of population movement which are already occurring.

This has major implications for international strategy. When the perspective shifts from the political to the economic, it becomes apparent that the mass return of the population to its place of origin is not necessarily the most effective development strategy. Current population movements are not individuals returning to their homes of origin, but rather people relocating in search of employment opportunities or a secure living environment. For the time being, international agencies are careful to reconstruct properties only for the benefit of the original inhabitant, to avoid assisting with population relocation. However, a long-term development strategy may need to accept the inevitability that internal migration to development centres will be the principal solution to the displacement problem. A degree of international acceptance of ethnic separation for the time being may be the price of initiating the economic forces which will contribute to ethnic reconciliation.

The same economic pressures should contribute to ethnic reintegration in the longer term. At the moment, widespread ethnic discrimination in employment prevents the mobility of labour beyond the ethnic enclaves. Each ethnic region operates as a discrete economic space, with separate enterprises, financial institutions, taxation systems and customs areas. For a country as small as Bosnia and Herzegovina, this is highly inefficient, and economic pressures should lead to the economic integration of the three areas. To be effective, this will need to be accompanied by increased mobility of labour. Ultimately, the major development centres should become a magnet drawing in an increasingly multi-ethnic population.

## **5 The problem of property rights**

The movement of population, whether through war-time displacement or in response to economic forces in the future, is greatly complicated by the current breakdown in the rule of law concerning property. Property is of enormous cultural and economic significance, and the loss of property is the most lasting humanitarian consequence of the war and the most widespread source of human rights abuses. Displaced persons throughout the country are living in abandoned properties, either illegally or with temporary occupancy rights allocated by local authorities, and their lack of permanent accommodation makes them extremely vulnerable to manipulation by nationalist extremists. The scale of the displacement means that there are very few properties anywhere in the country that are both habitable and vacant. During and since the war, all three ethnic groups used property rights to cement the results of ethnic cleansing, erecting legal and administrative barriers in the way of return. The result is a highly complex and unsatisfactory property legal system, with elements of the old laws, war-

time regulations and the Dayton Agreement all vying for precedence, the property record system substantially broken down, and the courts functioning poorly if at all.

With so much of the population now illegally occupying property, re-establishing the rule of law will be one of the most difficult challenges of the coming years. As the prospects of large-scale minority return fade, the need to address illegal occupancy and the denial of property rights becomes more apparent. One solution favoured by the Serb authorities and many local people is compensation for lost property. Annex 7 of the Dayton Agreement contains a mechanism for compensation to be determined and awarded by the Property Commission, which becomes the successor in title to any individual who is compensated. It may take the form of a monetary award or bond, drawn against a Refugees and Displaced Persons Property Fund, and may be funded through grants or by the activities of the Property Commission trading with the properties it receives pursuant to compensation awards. The system has never become operative, because no funds are available for compensation, and the Property Commission has no means of gaining possession of abandoned properties. While there is unlikely ever to be cash compensation funded from international sources, the Property Fund mechanism may nonetheless have a role. If compensation took the form of the right to purchase other properties from the Property Fund, then the system would become a form of clearing house for property exchanges.

A simpler solution may be to improve the property market to the point where ordinary transactions accomplish the recognition or redistribution of property title. Although sales and exchanges are taking place, the legal system is not currently providing sufficient protection for a property market to operate fairly or efficiently. Improving the regulatory framework is one contribution the international community might be able to make, as well as initiatives such as public education to protect individuals from fraud or exploitation. Transactions are presently inhibited by the difficulty of proving title, because of numerous political and practical problems with the property registration system. A mechanism such as the Property Commission claims process may be useful here, providing individuals with universally acceptable proof of their rights. A definitive certificate of property rights would also give individuals the security to delay any decision on their property until the political situation and the property market have stabilised further, rather than selling cheaply through fear of losing everything. It might also be used to promote lease agreements, which allow for recognition of property rights without accomplishing a permanent redistribution. An essential element of property reform, although too complex a topic to consider here, is the process of privatising socially owned housing. Close international involvement will be needed to prevent corrupt distribution of housing.

For the time being, proposals such as these are politically unacceptable because of a widespread fear that allowing population relocation to take place on a permanent basis would eliminate further prospects of minority return. There is certainly a real risk that any such mechanism would be exploited by nationalist authorities, who would make sure that minorities had no real alternative but to dispose of their properties cheaply. However in practice there is no clear 'either-or' relationship between minority return and reallocation of property rights. Assisting displaced persons to acquire permanent housing among their own ethnic group may have the effect of making the property they currently inhabit illegally available for minority return. For most displaced persons, their original home represents their entire wealth.

If they were able to receive either alternative permanent housing or a sale price for their pre-war property, they would be given the means to solve their own displacement. As they return into acceptable living conditions with ordinary life expectations, their opposition to the return of minorities will decrease. Returning displaced persons into normal living conditions is an essential first step in the political evolution of all three ethnic areas.

## **PART 4      The path ahead**

The final part of this paper draws together the conclusions made so far as to the obstacles encountered in the intervention to date, and tries to define a constructive role for the international community in Bosnia and Herzegovina in the future. It offers policy directions in the two main areas considered in the paper: first the appropriate level of involvement for the international community in the formal institutions and the national political sphere, and second the role of the international community in ethnic reconciliation.

### **1      The international community and Bosnian political life**

In the first area, it is clear that the international community has become too deeply engaged in the national political dynamic. Its efforts have been well intentioned, directed at putting in place the Dayton constitutional model with its various techniques for containing ethnic conflict. The model has proved difficult to implement, due to the low level of loyalty to the State of Bosnia and Herzegovina on the part of ethnic elites. Lacking any real incentive to co-operate, the nationalist parties have participated only because of constant international pressure. This has forced the international community to become the central pillar of the Dayton structure, unable to withdraw without risking State collapse. Frustration with the slow progress has led the international community to take an increasingly interventionist role, using the powers of the High Representative to remove obstructions to the peace process. As a result, the international community finds itself undertaking the responsibilities of governance on behalf of the institutions, with little or no prospect of making them independent.

**To develop an effective strategy for creating a self-sustaining State, the international community must take a longer-term perspective.** Planning has for too long been dominated by the imminent withdrawal of international military forces. Once it becomes clear that the international military and civilian presence will remain for a sustained period, more effective strategic planning becomes possible. There is a need for a public commitment to maintain some form of military and civilian presence over a ten-year period.

**Current experiments with trusteeship should be abandoned in favour of smaller numbers of higher quality interventions.** An example of an appropriate measure might be the High Representative's decision to create a uniform license plate system, which had an immediate effect on improving freedom of movement throughout the country. In that case, the decision offered long-term benefits for ethnic reconciliation which warranted the irregular procedure for its adoption. By contrast, the High Representative should avoid taking decisions on complex regulatory fields, where



responsibility for implementing the legislation will be thrust back upon the international community. In such cases, the international role should be limited to facilitating agreement among the ethnic groups, and providing technical support and advice wherever it is needed. In all cases, the international community should avoid being drawn into local politics. It has no capacity to control local events, and should not attempt to do so whatever the provocation. Areas such as Drvar, Capljina or Srebrenica are not for the time being productive locations for international programs. It is essential that the international community define a more limited role for itself in the national institutions, and then discipline itself to keep to that role, whatever the provocations of the day.

**The international military and civilian presence should gradually decrease in intensity over a ten year period.** During this period, the military presence can evolve considerably, becoming more focused on crowd control and security functions, along the lines of the Multi-National Specialised Units deployed since August 1998. Heavy combat capacity can be moved elsewhere, on the understanding that it will return to Bosnia rapidly if the need arises. Throughout this period, the international community must remain ready to act decisively to remove major threats to the peace process. Secession attempts within Bosnia and Herzegovina could rapidly reverse the gains of the peace process. Interference in Bosnian internal affairs from the Federal Republic of Yugoslavia and Croatia could potentially destroy the State. High-level political, economic and military pressure should be reserved for responding to major threats of this nature. In general, however, international civilian involvement in the functioning of the State should become less intrusive in form, concentrating on technical assistance and institutional support. Assistance should be oriented towards development, in common with the support offered to other transition economies. Direct links with other governments of the region can offer a stabilising force, as well as building the capacity of government institutions. As the work of the special institutions created for the Bosnian intervention comes to a close, European institutions should take over their remaining functions, ensuring that the international commitment to Bosnia does not come to a complete halt. Membership of institutions such as the Council of Europe, and perhaps ultimately the European Union itself, can be used not only as an incentive for moderate politics, but as a tool for improving the quality of governance. Lasting European engagement with the development of Bosnia and the region is essential for progress on issues such as minority rights, judicial and policing institutions, social policy, and the development of a modern economic regulatory framework

## **2 The international community and ethnic reconciliation**

The second area in which conclusions are offered is the international role in promoting ethnic reconciliation, and the search for permanent solutions for refugees and displaced persons. The two years of efforts devoted to minority return were a necessary moral response to ethnic cleansing. However despite consuming enormous resources, minority return programs have not been successful in generating any sustained movement towards ethnic reintegration. There are deep-rooted strategic and psychological obstacles to widespread return, which are beyond the capacity of the international community to control. When the international community tries to force reintegration, it increases fear and tension among the ethnic groups, hardening the resistance to international goals. The impasse between the moral necessity of

opposing ethnic cleansing on one hand, and the practical impossibility of achieving ethnic reintegration on the other, has left the international community in a period of strategic limbo, repeating resource-intensive programs that have proved a consistent failure.

**The international community should focus on the longer-term goal of ethnic reconciliation, rather than the immediate goal of ethnic reintegration.** Reconciliation is a process that occurs from the ground up, in response to social and economic development. A reconciliation strategy involves a shift of emphasis away from controlling the conduct of national politics, towards developing the post-war social environment. International involvement in ethnic reconciliation can only be indirect in nature and gradual in effect. Continuing military presence is important, to provide a secure environment for social and economic activity. Restoring the rule of law and repairing judicial and police institutions is an essential step. Independent media is crucial, and the prosecution of war criminals would have a positive effect. The development of a healthy network of civil society institutions helps to promote alternatives to ethnic extremism. Economic forces play a key role in reconciliation, providing incentives for increased interaction among the ethnic groups. All forms of economic development assistance are therefore important, including reconstruction of housing and infrastructure. A comprehensive list of these areas is neither possible nor necessary, as all forms of social and economic development assistance make an indirect contribution over time to ethnic reconciliation.

**Strategy on refugees and displaced persons should focus on normalising living conditions for the greatest number of people as soon as possible.** Large numbers of displaced persons living in poverty and insecurity are a major destabilising factor, contributing to the power of extremist politicians and retarding the process of ethnic reintegration. It is essential to find permanent solutions for their displacement. Return to home of origin should remain the preferred solution, but is not likely to solve the bulk of the displacement problem. The international community should support return wherever it is occurring, but be wary of trying to force return in the face of local opposition. Direct confrontation with extreme nationalist leaders should be avoided, because of the risk of contributing to the environment of fear and insecurity which is essential for maintaining their power base. The international community should recognise that in many instances, reintegration of the population will be the last step along the path to reconciliation. Much of the displacement problem will have to be solved by resettlement, principally to majority areas offering employment opportunities. The international community should become involved in facilitating this process, minimising humanitarian and human rights problems along the way. New housing will be needed to house refugees in Western Europe who cannot return to Eastern Republika Srpska. As far as possible, local resources should be mobilised to assist with the resettlement process. The most effective way of doing this is to assist displaced persons to recover the value of their lost property through sale or exchange. This is essential to restoring the rule of law in property, and in most cases represents the only possible remedy for the most enduring human rights and humanitarian consequence of displacement.

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