



GOING NOWHERE FAST
REFUGEES AND INTERNALLY DISPLACED PERSONS IN
BOSNIA AND HERZEGOVINA

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EXECUTIVE SUMMARY

Apart from stopping the fighting, silencing the guns and separating forces, the single clearest promise of the Dayton Peace Agreement (DPA) was that Bosnian refugees and internally displaced persons would be able to return home. However, the number of returnees has to date fallen far short of expectations. More than sixteen months after the DPA came into force, only about 250,000 refugees and internally displaced persons have actually made it home, almost exclusively to areas in which they form part of the majority group. And even that figure portrays an artificially rosy picture, since a further 80,000 people have been displaced in the same period, largely during the transfer of territory between the two Entities.

About 400,000 out of some 1.2 million Bosnian refugees at the beginning of 1996 have already found durable solutions, whether by repatriating, being granted a more permanent status in host countries, starting the process of acquiring citizenship, or actually obtaining citizenship. That leaves a little over 815,000 still seeking solutions, of whom the greatest number are located in Germany (315,000), the Federal Republic of Yugoslavia (253,000) and Croatia (160,000). In addition, some 750,000 remain displaced within Bosnia and Herzegovina, of whom roughly 450,000 are in the Federation and 300,000 in Republika Srpska (RS Entity). And a further 48,000 Croatian Serbs have settled in the RS Entity.

Displaced persons face a host of obstacles to return. Some conditions—such as the severely depleted housing stock, war-time property laws and a devastated economy—plague all returnees. Others impose a particular burden on people seeking to return to areas where they would be in the minority. These include in particular the security and political situations—exacerbated in most areas by the continuance in power of nationalist authorities and in some areas of indicted or suspected war criminals – as well as discrimination, inadequate and sometimes intentionally distorted information about conditions in the areas to which people hope to return, and inadequate or hostile schooling for their children.

That so few displaced Bosnians have succeeded in returning to their homes is not for want of trying. In the course of 1996 a whole host of schemes, some bold and imaginative, have been tried to get the process under way. These include targeting special areas; repairing housing; selecting pilot projects; organising assessment visits; blacklisting obstructionist municipalities; linking together associations of displaced persons of all ethnic backgrounds in a single country-wide lobby group (the Coalition for Return); running free bus services between key cities across the former front lines; and resettling the Zone of Separation (ZOS), the land along the Inter-Entity Boundary Line between the RS Entity and the Federation.

Of these initiatives, some have achieved notable successes. More than 283,000 passengers have taken advantage of the UN High Commissioner

for Refugees (UNHCR) free bus service to cross former confrontation lines. And members of the Coalition for Return have begun to lobby the authorities where they are currently living on behalf of other displaced persons of different ethnic backgrounds in an effort to change the political climate for return. However, the fact that international agencies have had to focus so much effort on the ZOS, probably the most heavily mined and devastated tract of land least-suited to returns in the entire country, is indicative of the overall lack of progress.

In practice, minority returns have been consistently obstructed by the nationalist political parties in power. After all, the right of all refugees and internally displaced persons to return to areas in which they form a minority conflicts head-on with the explicit war aims of the Bosnian Serb leadership, which were secession and creation of an "ethnically pure" state, as well as with the more covert aims of the Bosnian Croat authorities. In order to prevent minority returns, the media have generated a climate of hostility to returnees, assessment visits have been blocked, and houses systematically destroyed.

Despite political obstructionism within Bosnia and Herzegovina, host countries are determined to repatriate Bosnian refugees. In late 1996, starting with Germany, Western European states began proceedings to deport Bosnian refugees, regardless of their place of origin. As a result, UNHCR expects up to 200,000 refugees to return to Bosnia and Herzegovina, half from Germany, during 1997. Some 160,000 (mostly Bosniacs) are expected to return to the Federation, and another 40,000 to the RS Entity. Repatriating refugees are expected to dislodge at least 50,000 internally displaced persons who are currently occupying the refugees' homes. This is in addition to the 20,000 who are still living in collective centres.

The international community's main source of leverage to accomplish repatriation targets is economic conditionality. Reconstruction funds should therefore be carefully tailored to promote minority returns as well as to enable majority returns on a significant scale. To this end, all housing and infrastructure reconstruction programmes must be linked to minority returns. Moreover, in order to ensure the smooth reintegration of returnees into Bosnian society and minimise resentment, assistance should also be channelled to the receiving communities. The benefits of accepting minority displaced persons back into the community must be tangible and well advertised. But for this to work, all donors must be committed to the policy. It is counter-productive if intransigent local authorities are able to take advantage of "competitive" donors.

Only 40,000 of up to half a million housing units damaged during the war have been repaired during the past year. Accommodating 200,000 returning refugees requires massive expansion of existing shelter projects. Some 50-60,000 additional dwellings must be repaired, whereas, at present, funding is available for only 18,000 units. The funding shortfall in

this area is \$320 million. In addition, without substantial progress in demining, reconstruction of housing will be hampered.

The Commission for Real Property Claims of Displaced Persons and Refugees was established under Annex 7 of the DPA to determine the rights of persons to real property from which they have been displaced and is key to the successful return of minorities and majorities alike. The Steering Board of the Peace Implementation Council, which already funds the Office of the High Representative, should also fund the Commission through regular assessments. Meanwhile, donor governments should immediately commit the \$3.1 million to meet the Commission's minimum needs. Also, both Entities must repeal property laws which discriminate against displaced persons and inhibit their return.

The Brcko Supervisor has announced the plan through which he intends to expedite the voluntary return of non-Serb displaced persons to Brcko, and the voluntary return of Serbs now resident in Brcko to their former homes in the Federation. He has outlined a straightforward and equitable procedure for launching a systematic return process that hastens the return of displaced persons to their homes, both in Brcko and in the Federation. The plan stands a good chance of unravelling one of the most complex issues in Bosnia and Herzegovina and its implementation should be the highest priority for the international community in 1997.

Leaving responsibility for guaranteeing the security of returning minorities to local authorities, many of whom ethnically cleansed them from their respective regions in the first place, severely compromises the return process. If minorities are to return home with a modicum of security, SFOR has to interpret its mandate in a more robust manner. When, for example, minority-owned houses are destroyed, SFOR should remove an equal number of tanks from cantonment sites in the Entity in which the incident occurred and destroy them. A "tank for a house" response would be measured, proportionate, easy to explain and transparently fair. Furthermore, the RS Entity must agree to vet its police force according to the IPTF guidelines.

Even if the above measures are implemented, it is naive to expect a large number of returns unless there is a fundamental shift in the political climate from one of separation to one of reconciliation. Any strategy to help minorities back to their homes must therefore also be one which seeks to break the vice-like grip of the nationalist parties on Bosnian society. To this end, the issue of war crimes must be tackled head-on and those indicted by the International Criminal Tribunal for Former Yugoslavia must be arrested, surrendered to the Tribunal, and prosecuted. In addition, since the nationalist cancer extends beyond those individuals who have already been indicted and there are obstructionist officials at all levels, a DPA Implementation Council must be formed with the power to dismiss such people.

Municipal elections, which are scheduled for 13 and 14 September, can be an effective tool against the nationalist parties, but only if the international community is prepared to insist on minimum conditions to make them free and fair. Critically, the electoral engineering which took place with the registration process in 1996 must not be repeated. Since obstruction of minority returns clearly has an impact on the conditions for free, fair and democratic elections, disqualification of candidates can be a powerful tool with which to stimulate the return process.

Sarajevo, 30 April 1997

MAP
Bosnia and Herzegovina

I. INTRODUCTION

Apart from actually stopping the fighting, silencing guns and separating forces, the single clearest promise of the Dayton Peace Agreement (DPA) was that Bosnian refugees and internally displaced persons would be able to return home.¹

Although the path to some political objectives of the treaty was tortuous and almost abstract, and could only be achieved through intermediate stages, the “right to return” was stated in an unambiguous language:

*All refugees and [internally] displaced persons have the right freely to return to their homes of origin.*²

Sixteen months after the signing of the DPA, most refugees and internally displaced persons have not, in fact, returned. And given the constraints that have become obvious in the meantime, it now appears that many will not do so, at least not soon.

This report is an attempt to take stock, realistically, of the progress that has been made in returning refugees and internally displaced persons to their homes; the efforts that have been made to that end in the past 16 months by citizens of Bosnia and Herzegovina and by the international community; the obstacles that are still hindering return; and the implications of the deeply disappointing result to date.

¹ The General Framework Agreement for Peace in Bosnia and Herzegovina was initialled in Dayton, Ohio, on 21 November 1995, and signed in Paris on 14 December 1995. “Refugees” are displaced persons who have fled to other countries; whereas, internally displaced persons (IDPs) have remained inside the country. “Displaced persons” refers to both categories.

² Article II, Paragraph 5, of Annex 4, which frames the Constitution of Bosnia and Herzegovina, states the promise of displaced persons’ return in that concise, two-line sentence. It is followed by an equally clear statement of the right of refugees and displaced persons to recover “property of which they were deprived in the course of hostilities since 1991, and to be compensated for any such property that cannot be restored to them.”

Annex 7, which is the detailed Agreement on Refugees and [Internally] Displaced Persons, begins by reiterating that basic right in Chapter 1, Article 1, Paragraph 1. It adds: “The early return of refugees and [internally] displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina. The parties confirm that they will accept the return of such persons who have left their territory, including those who have been accorded temporary protection by third countries.”

Finally, Annex 3, Article I, states that the parties “shall ensure freedom of movement”, and Article IV speaks of the right of any citizen of Bosnia and Herzegovina listed in the 1991 census to vote, adding that by Election Day “the return of refugees should already be underway....”

II. DPA PROMISE TO DISPLACED PERSONS: WISHFUL THINKING?

To understand the difficulty of achieving the goals promised in the DPA, it is necessary to keep in mind both the mechanisms established to enforce the agreement and the intentions and motives of all the signatories. They include the parties that fought the war (Parties); and the states that assumed responsibilities for implementing the treaty.

The war that broke out in former Yugoslavia in 1991 was particularly vicious because one of the fundamental war aims was to drive large numbers of civilians from their homes. The goal of nationalist leaders was the creation of homogeneous, ethnically "pure" states in a region where ethnic and religious groups have long been intermingled in every way: as citizens, as neighbours and in millions of cases as family members. As a consequence, this was a war less directed against military targets than against civilians. Under the nationalist strategy of "ethnic cleansing", much of the civilian population of Bosnia and Herzegovina became the target of military operations and terror to drive them from their homes. Because those campaigns were not halted at the outset by other states that could have stopped them, over time they proved grotesquely successful.

The DPA which stopped the fighting in Bosnia and Herzegovina in November 1995 contains certain fundamental weaknesses. Foremost, the enforcement mechanisms for the civilian provisions of the treaty are inadequate. Rather, the treaty relies primarily on the Parties for enforcement, although it was perfectly clear from the start that the will to comply was not present on all sides.

There is an inherent contradiction between the treaty's aim to re-establish Bosnia and Herzegovina as a state within its pre-war internationally recognised borders, and its acceptance of the existence of two sub-state Entities with many of the attributes of a state -- the Federation of Bosnia and Herzegovina (Federation) and the Entity of Republika Srpska (RS Entity). Moreover, the Federation was *de facto* subdivided between two bitterly hostile ethnic groups. During an internecine war in 1993-1994, Bosniacs and Bosnian Croats had used the same tactics of "ethnic cleansing" against each other, generating an additional population of displaced persons. As a result, the unity of both the Federation and of Bosnia and Herzegovina itself remains deeply troubled and endangered.

Most of the Bosnian Serb and Croat leaders, and a small number of extremist Bosniac leaders, are committed to nationalist parties that are still pursuing parallel policies of ethnic exclusivity and dominance. A few of these leaders are indicted war criminals and many others have profited from the war and still benefit from mafia-style relationships with the governments of their areas. They have no

reason to favour the rule of law or the erosion of nationalist fanaticism, or to facilitate the return of “minorities” to the areas they control.

Through control of the media, nationalist politicians have maintained and even extended their hold on power since the war. Bitter, suffering populations on all sides are acutely susceptible to divisive nationalist propaganda, and the signs of readiness for reconciliation, which is a precondition for reintegration, are few and far between. As High Representative Carl Bildt recently noted in his fifth report to the Secretary General of the United Nations, “any attempt at major minority return is meeting fierce resistance ranging from the violent to the bureaucratic.”³

Thus, the repatriation and return of refugees and internally displaced persons has been vexed by the existence of the two formal (plus one *de facto*) Entities whose authorities were left in control of the territory they held at the time of the DPA signing (with some adjustments), and who have pursued diametrically opposed policies. After all, the right of all refugees and internally displaced persons to return and live in a single state of Bosnia and Herzegovina conflicts head-on with the explicit war aims of the RS Entity, which were secession and creation of an “ethnically pure” state, and with the more covert aims of the Bosnian Croat authorities. This important fact-on-the-ground cannot be over-emphasised. It lies just under the surface of the DPA, ready to subvert its intent.

The cease-fire line between the Federation and the RS Entity, which in the DPA was somewhat changed and renamed the Inter-Entity Boundary Line (IEBL), contains its own inherent instability. One of the implications has been that the return of displaced persons to the Zone of Separation (ZOS)⁴ that flanks the IEBL has been loaded with military significance for both sides even while it is a demilitarised zone.

The commitments and objectives of the states that have joined in the creation of the NATO-led multinational military Implementation Force (IFOR) and the subsequent Stabilisation Force (SFOR) in Bosnia and Herzegovina, have been in certain ways contradictory from the start. Almost before arriving, military authorities were stressing their “exit strategies”, which gave the nationalist authorities the signal to “wait it out”. The initial one-year mandate was not extended until late in the fall of 1996, and then only for an additional 18 months.

The multinational forces achieved their military objectives with ease, separating the combatants, establishing control of the ZOS, opening roads, and monitoring the cantonment of heavy weapons. Thereafter,

³ Fifth Report of the High Representative for Implementation of the Bosnian Peace Agreement to the Secretary General of the United Nations, April 1997, paragraph 220; hereinafter referred to as OHR Report.

⁴ The ZOS is a strip of land, four km wide, that straddles the IEBL separating the two Entities.

however, they assumed a minimalist stance on some of the vital “additional” tasks in support of the civilian implementation of the treaty.⁵ The near-phobia about “mission creep” and the aversion to risk casualties has prevented the huge international presence from addressing Bosnia and Herzegovina’s transparent need for an extended period of stabilisation, which is all the more pressing given the unresolved tensions in the civilian side of the peace settlement.

A less often confronted element in the displaced persons return conundrum is the evident divergence of interests among the international community which have contributed troops to the multinational force and assumed other responsibilities in Bosnia and Herzegovina. On the one hand, a compelling interest of some European countries is repatriating the hundreds of thousands of refugees who were granted “temporary protection”. On the other hand, the primary interest of the United States, which brokered the peace treaty and has been the crucial backbone of the NATO-led forces, seems to be limiting its long-term involvement.

Finally, the regional issue has been part of the refugee dilemma from the start. Croats, Serbs and Bosnians have been driven across front-lines and borders in criss-cross patterns and are now occupying what remains of the housing in each others’ places of origin. Unless there can be a regional repatriation, which is difficult to visualise given the political stance of the government in Croatia in particular, the return process in Bosnia and Herzegovina is partially blocked.

III. 1996 RETURNS SHORT OF EXPECTATIONS

According to the Humanitarian Issues Working Group of the Peace Implementation Council of the DPA, approximately one-half of Bosnia and Herzegovina’s pre-war population of 4.3 million were displaced during the 43 months of war. Some one million of the displaced remained within the country, and over 1.2 million refugees were dispersed throughout 25 host states. At the start of 1996, out of a remaining population of approximately three million in Bosnia, 80 percent or 2.4 million were affected by the war, including the one million internally displaced, and were dependent on some level of international humanitarian assistance.⁶ Figures for refugees and

⁵ The main ones were the right to “create secure conditions for the conduct of other tasks associated with the peace settlement” such as preventing “interference with the movements of civilian populations, refugees and displaced persons” and responding appropriately “to deliberate violence to life and person”. DPA, Annex 1A, Article VI(2)-(3).

⁶ *Operational Plan for Durable Solutions Within the Framework of Annex 7 of the General Framework Agreement for Peace in Bosnia and Herzegovina and Related Regional Return and Repatriation Movements*, High Level Working Meeting on Implementation of Annex 7 of the General Framework Agreement for Peace in Bosnia and Herzegovina, 8 March 1996, Oslo, p. 7 (HLWM/1996/1); hereinafter referred to as the HLWM 1996 Operational Plan. Following the signing of DPA, the

internally displaced persons provided in this section are approximate and, at times, vary depending on the source. As such, slight discrepancies may be found if these figures are totalled.

By early 1996, Germany was host to the largest number of refugees from Bosnia and Herzegovina (345,000), followed by Croatia (288,000), the Federal Republic of Yugoslavia (253,000), Austria (80,000), Sweden (61,500), Switzerland (26,700), Slovenia (33,400), the Netherlands (23,500), Denmark (23,000), United Kingdom (13,000), and Norway (12,000).⁷ Bosniacs constituted the largest number of the refugees (610,000), followed by Bosnian Croats (307,000), Bosnian Serbs (253,000), and others (23,000). Some 620,000 refugees originated from territories now in the RS Entity, and 598,000 from the Federation.⁸

Contingent on security, funding, reconstruction and de-mining, the Humanitarian Issues Working Group assumed at the beginning of 1996 that up to 500,000 internally displaced persons would return to their homes and 370,000 refugees (170,000 from the immediate region and 200,000 from other countries) would repatriate during the year.

For the internally displaced, the priority was to find durable solutions for those accommodated in collective centres, including the temporary use of rehabilitated vacant housing, accommodation with relatives and friends, and initiatives for their local integration in the Entity within which they were located. For refugees, plans called for their repatriation, first, to home areas where they constituted the majority ethnic group, provided that adequate accommodation was available; and second, to areas of origin where they would be in the minority ethnic group. For both groups, returns and repatriation to areas of origin where they would be in the minority ethnic group were considered to be "complex and daunting tasks".⁹

The actual return and repatriation figures for 1996 fell far short of expectations and an additional 80,000 people were displaced as a result of the transfer of territories, mainly the Sarajevo suburbs, between the two Entities. Only some 250,000 refugees and internally displaced persons returned to their homes or home areas in 1996, and returns occurred almost exclusively to areas where the returnees were part of the majority group. The low number of returns had been "mainly due to failure by the Parties [in Bosnia and Herzegovina] to

mandate of the High Level Working Meeting chaired by UNHCR was assumed by the Humanitarian Issues Working Group. HIWG includes representatives from a broad range of States around the world, including Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia, the Contact Group States, and the principal agencies involved in the implementation of DPA.

⁷ *Bosnia and Herzegovina, Repatriation and Return Operation - 1997*, UNHCR, April 1997, p. 5; Table 1; hereinafter referred to as the UNHCR 1997 Operation.

⁸ UNHCR 1997 Operation, p. 7, Table 3.

⁹ HLWM 1996 Operational Plan, pp. 7-9

implement fully the provisions of Annex 7 and related annexes [of the DPA], particularly those relating to freedom of movement and freedom to return and/or repatriate to areas of origin. Limited housing and damaged essential infrastructure, combined with uncertainties about security and unemployment prospects, were also significant factors which affected return movements overall.”¹⁰ Confidence building measures initiated by the Office of the UN High Commissioner for Refugees (UNHCR) to promote returns and repatriation, including organised assessment visits by the displaced to areas of origin, were “met with unacceptable resistance”.¹¹ And the general climate in the country was characterised as “one of obstruction of minority returns”.¹²

Of the approximately 250,000 displaced persons who returned to their homes during 1996, 88,000 were refugees, the remaining were internally displaced persons. The great majority of the refugees (80,000) returned to the Federation, and 8,000 to the RS Entity. In the Federation, 29,000 refugees repatriated to Sarajevo, 22,900 to Una Sana Canton, and the remaining to the Cantons of Posavina (8,400), Tuzla-Podrinje (5,700), Tomislavgrad (4,900), Zenica-Doboj (2,900), Central Bosnia (2,000), and Gorazde (700). The destination of some 2,800 repatriating refugees to the Federation and to the RS Entity were not known.¹³

Of the 164,000 internally displaced persons who returned home during 1996, some 102,000 (mainly Bosniacs) returned to the Federation, of whom 94,000 returned to areas where they were in the majority group and 8,300 to areas where they were in the minority group. About 62,000 returned to the RS Entity, of whom 60,700 belonged to the majority group and only 1,100 to a minority group.¹⁴

UNHCR estimates that, out of the more than 1.2 million Bosnian refugees at the beginning of 1996, 399,600 have already found a durable solution by repatriating, being granted a more permanent status in the host countries, starting the process of acquiring citizenship there, or actually obtaining citizenship. The remaining 815,700 refugees are still in need of durable solutions at the start of 1997. The greatest number of refugees still in need of permanent solution are located in Germany (315,000), FRY (253,000), Croatia (160,000), Switzerland (19,500), Austria (11,000), United Kingdom (4,600), Italy (8,400), Slovenia (8,400), France (7,400), the Netherlands (6,000), and Belgium (5,700). In addition, some 16,000

¹⁰ *Implementation of Durable Solutions in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia During the Peace Consolidation Period*, Humanitarian Issues Working Group, 16 December 1996, Geneva, p. 2; hereinafter referred to as HIWG Implementation of Durable Solutions.

¹¹ Statement by Mrs. Sadako Ogata, United Nations High Commissioner for Refugees, at the Humanitarian Issues Working Group of the Peace Implementation Council, 16 December 1996, Geneva, p. 2.

¹² HIWG Implementation of Durable Solutions, p. 3.

¹³ UNHCR 1997 Operation, Annex I, p. 36.

¹⁴ UNHCR 1997 Operation, Table 6, p. 11.

refugees in need of a permanent solution are disbursed in other European states.¹⁵

UNHCR expects that up to 200,000 refugees may repatriate during 1997, the greatest number from Germany (100,000). Some 160,000 (the majority of them Bosniacs) are expected to repatriate to the Federation, and 40,000 to the RS Entity.¹⁶ Up to 80 percent of the repatriation is expected to be "spontaneous".¹⁷ These repatriating refugees are expected to dislodge 50,000 internally displaced persons who are currently occupying the refugees' homes and for whom adequate accommodation must be found.

Precise data for the number of internally displaced persons at the end of the war as well as current figures are not available. Nonetheless, UNHCR and Federation authorities agree that there were an estimated 450,000 internally displaced persons in the Federation as of the beginning of 1997. In the RS Entity, officials estimate that the current number of internally displaced persons total 416,000.¹⁸ However the Coalition for Return estimates differ - 605,000 internally displaced persons in the Federation, and 295,000 in the RS Entity.¹⁹ Moreover, some 48,000 Croatian refugees of Serb origin from the Krajina have settled in the RS Entity.²⁰ An increasing number of Croatian Serbs are moving from Eastern Slavonia to the RS Entity.²¹

IV. A YEAR OF OBSTRUCTION TO MINORITY RETURNS

A. Objectives and Benchmarks

At the start of 1996, the international community's primary objective for return and repatriation of displaced persons was to ensure that lasting solutions were found "through a process of early, peaceful, orderly and phased return to a place of their choice in Bosnia and Herzegovina" by promoting "the reintegration of individuals and families into stable communities where their

¹⁵ UNHCR 1997 Operation, Table 1, p. 5.

¹⁶ UNHCR 1997 Operation, pp. 5-6.

¹⁷ UNHCR 1997 Operation, p. 10. "Spontaneous" is a term used by UNHCR to denote returns not under deportation or part of organised efforts of international humanitarian agencies.

¹⁸ UNHCR 1997 Operation, p. 10.

¹⁹ Fact sheet distributed by the Coalition for Return, Jan-Feb 1997. See section IV(B)(3), *infra*, for more on the Coalition for Return.

²⁰ UNHCR 1997 Operation, p. 12.

²¹ Statement of Spasoje Albijanic, Minister for Civil Affairs and Communications of Bosnia and Herzegovina, at the Regional Meeting of Ministers and Commissioners Responsible for Refugees and Displaced Persons from Bosnia and Herzegovina, Croatia and federal Republic of Yugoslavia, 21 March 1997, Geneva.

fundamental human rights [were to] be protected and where their basic needs [were to be] met.”²²

Repatriation of refugees was to take place strictly on a voluntary basis and only after three benchmarks were met:

- (1) implementation of the military provisions of the DPA;
- (2) the adoption of amnesty laws according to the DPA;
- (3) the adoption by the parties of confidence-building measures to prevent activities within their territories which would hinder or impede the safe and voluntary return of refugees and internally displaced persons, including the functioning of human rights mechanisms.²³

The success of the international community's return and repatriation efforts depended on several factors: commitment of the Parties and the international community to the full implementation of the DPA, including provisions relating to freedom of movement; speedy and co-ordinated response by the international community to the needs of returning displaced persons; funding for reconstruction; the provision of timely and detailed information to returning displaced persons on the situation prevailing in their former homes or desired area of return; mine awareness campaign and an expansion of de-mining activities; and a regional approach to the problem of refugees and internally displaced persons throughout former Yugoslavia.²⁴

Taking into consideration the above objectives and benchmarks, the international community initiated a number of measures to promote returns and repatriation and to build confidence among the communities in the country to facilitate returns to minority areas.

B. Measures Initiated

1. Target Areas for Returns

At the Florence Mid-Term Review Conference of the DPA in June 1996, UNHCR initiated a programme to accelerate the return of refugees and internally displaced persons to their homes of origin through the designation of “Target Areas”, where investment in shelter and infrastructure could be concentrated to help create additional absorption capacity. By the end of the year, UNHCR had designated 22 such Target Areas.²⁵

²² HLWM 1996 Operational Plan, p. 2.

²³ HLWM 1996 Operational Plan, pp. 3-4.

²⁴ HLWM 1996 Operational Plan, pp. 6-7.

²⁵ UNHCR 1997 Operation, p. 21.

UNHCR considered the following factors for selecting the 22 Target Areas: communities with widespread damage to dwellings and local infrastructure; areas where investments to address the damage were lacking; areas where the return of former residents was feasible from a political and security standpoint; and the level of co-operation with local authorities to support the project. The objective was to make 37,000 damaged dwellings habitable, and the target number of displaced persons to benefit from the programme was 184,000. The designation of the Target Areas was intended to provide a practical guide to donors in terms of where their investments were likely to have the greatest impact and was not intended to preclude investment in other areas. The International Management Group (IMG) was entrusted the lead role to co-ordinate the programme.²⁶ The majority of the Target Areas selected were in the Federation (19), due to the more extensive damage in the Entity and the lesser degree of co-operation offered by authorities in the RS Entity.²⁷

By the end of 1996, approximately 23,800 housing units had been made habitable within the 22 Target Areas. In addition, 88 schools, 43 clinics/hospitals, 60 water systems, and 47 electrical power systems were rehabilitated. However, despite UNHCR sponsored micro-credit projects with support from the World Bank, lack of employment opportunities in the Target Areas remained a significant factor constraining the return of displaced persons. Also, insufficient de-mining activities in the Target Areas hampered the reconstruction effort as well as farming activities, and will continue to do so during 1997 unless the problem is addressed.²⁸

Nonetheless, during 1996, the Target Areas project made possible the return of more than 100,000 internally displaced persons to their homes, who would have been otherwise living with friends or family, or temporarily occupying someone else's home. The great majority of those who benefited from the programme were members of the majority ethnic group in the areas targeted.²⁹

2. Shelter Programmes

²⁶ *Draft Executive Summary, Report on Target Area Initiative Facilitating the Return and Reintegration of Refugees and Displaced Persons in Bosnia and Herzegovina*, UNHCR, 22 November 1996, pp.1-2; hereinafter referred to as UNHCR 1996 Report on Target Areas.

²⁷ UNHCR 1996 Report on Target Areas, p. 5.

²⁸ HIWG Implementation of Durable Solutions, p. 5.

²⁹ UNHCR 1996 Report on Target Areas, p. 4.

The shortage of housing in Bosnia and Herzegovina was a major obstacle to the return and reintegration of displaced persons during 1996 and threatens to continue as such for 1997. Data published by the World Bank and other economic assistance providers suggest that, during the war, 50 percent of the housing stock was damaged and 6 percent destroyed in the Federation, and 24 percent damaged and 5 percent destroyed in the RS Entity.³⁰ The restoration of these damaged and destroyed housing to the pre-war level was estimated to cost between \$3 and 4 billion.³¹ Donor commitments for reconstruction of housing for the three to four-year period after the DPA was signed amount to \$693 million, including \$230 million for 1996.³²

World Bank estimates indicate that half a million flats and houses were damaged or destroyed during the war, with municipalities along the former confrontation lines sustaining the bulk of the damage.³³ During 1996, only 40,000 housing units were repaired through international assistance programmes. This effort led to the decrease of internally displaced persons housed in collective centres from 50,000 in December 1995 to less than 20,000 in December 1996. In addition, the shelter repair programmes eased the repatriation of 88,000 refugees and one third of internally displaced persons who were accommodated with host families were able to move to private accommodations.³⁴

Immediately after the DPA was signed, UNHCR began to address the shelter problem. It was quickly evident that most international assistance programmes and lending institutions would require a long lead-time to gear up their reconstruction efforts, and that concrete results would be slow to materialise. Since that delayed start would hamper the return process, UNHCR embarked on an unprecedented shelter effort with a self-help approach that was intended to be fast and economical.

UNHCR negotiated sub-agreements with several NGOs (the first of which was UMCOR, the United Methodist Committee on Relief) to purchase large quantities of basic building materials and deliver them through municipal officials to home-owners

³⁰ *Bosnia and Herzegovina, The Priority Reconstruction Program: From Emergency to Sustainability*, Volume 3, Reconstruction Sector Reports, prepared by the European Commission, the European Bank for Reconstruction and Development and the Central Europe Department of the World Bank for the Donor Information Meeting January 9-10, 1997, Brussels, November 1996, p. 33.

³¹ *Ibid*, p. i.

³² *Report of Reconstruction and Return Task Force*, April 1997, Annex 3; hereinafter referred to as RRTF Report.

³³ UNHCR 1997 Operation, p. 21.

³⁴ UNHCR 1997 Operation, p. 22.

who would provide the labour. It was hoped that a relatively small initial investment would have a prompt effect in expanding the housing stock.

On 6 February 1996, UNHCR initiated a "Trust Fund for Shelter Materials in Bosnia and Herzegovina" in order to expand its existing shelter-material support programme to include urgent repair of housing. UNHCR requested \$30 million for the trust fund - \$25 million for the procurement and distribution of basic shelter material to returning internally displaced persons throughout the country, and \$5 million for re-glazing of some 50,000 homes in Sarajevo. As much as possible, the building material were to be produced locally in order to enhance employment opportunities.³⁵ The initial fund was later increased to \$70 million.³⁶

The UNHCR shelter programme was meant to "kick-start" the repair and reconstruction effort, until larger reconstruction projects could be initiated by the World Bank, the European Union, and other development agencies. However, the reconstruction process did not gain the momentum expected during 1996, and by default UNHCR's shelter programme remained one of the largest projects in the housing sector, allowing the repair of some 17,000 units.³⁷ Another major contributor to the reconstruction of housing was US Agency for International Development (USAID) with \$25 million allocated during 1996, of which about \$24 million were spent for the repair of 2,548 houses in 48 villages throughout the Federation, permitting the return of 10,000 displaced persons..³⁸

3. Coalition for Return - A Promising Development

A promising development during 1996 was the formation of the Coalition for Return, a multi-ethnic movement of displaced persons from all parts of Bosnia and Herzegovina. Coalition for Return's aim is to lobby for the creation of an environment conducive to the return of all displaced persons - regardless of their nationality - to their homes of origin. The Coalition was established on the initiative of Deputy High Representative Ambassador Michael Steiner in Sarajevo in October 1996. Representatives of displaced persons were urged by Ambassador Steiner to form a forum to counterbalance the nationalist-separatist political agendas of the ruling political parties. Within five months, the Coalition managed to organise

³⁵ HLWM 1996 Operational Plan, pp. 17-18.

³⁶ HIWG Implementation of Durable Solutions, p. 4.

³⁷ UNHCR 1997 Operation, p. 22.

³⁸ *Emergency Shelter Repair Program, Bosnia-Herzegovina*, USAID/DART, Appendices B and G, April 1997.

a network spanning both Entities, the neighbouring countries, and refugee host-countries in Western Europe, including approximately 70 displaced persons associations representing tens of thousand individuals.

The Coalition for Return has met with local authorities to persuade them to comply with the provisions of Annex 7 of DPA, and to promote the safe and voluntary return of all displaced persons to their homes of origin. A representative of Coalition for Return told ICG: "Until now, the political parties have been pressured only from the 'outside' - by people on whom they did not rely for support. The Coalition for Return can be more effective by pressuring from the 'inside.' If the displaced persons of various communities take up the return issue themselves, local authorities will have to respond because their political support depends on the local community, including the displaced."

The Coalition for Return has also focused on bringing displaced persons in contact with other displaced persons currently residing in their homes. The Coalition for Return has organised fact-finding visits to identify areas of the country where return is most feasible.

The Coalition for Return is in the process of consolidating relevant information which will serve to bridge the gaps on questions and issues relevant to displaced persons. Such research could be valuable sources of objective and unbiased information for displaced persons, thus enabling them to make informed choices about returning to their homes or remaining in their temporary areas of residence.

The Coalition for Return has organised three major conferences in Banja Luka, Mostar and Tuzla, focusing on strategies for return and repatriation during 1997. The following projects have either been initiated or will be in 1997: (1) the opening of four regional offices in Sarajevo, Banja Luka, Mostar and Tuzla; (2) identification of viable areas for returns; (3) provision of information to internally displaced persons and refugees, especially in Croatia and the Federal Republic of Yugoslavia, through a monthly bulletin; (4) establishment of a strategy planning group to provide information to international organisations and relevant authorities; (5) initiation of a self-help home repair programme; (6) expansion of a weekly television programme dedicated to issues relevant to displaced persons; (7) appointment of three journalists - one from each ethnic group - to act as the Coalition's spokespersons; (8) appointment of a team to disseminate information to displaced persons in the country as well as abroad; (9) establishment of links with organisations providing legal aid and information to

internally displaced persons and refugees; (10) initiation of a lobbying effort to pressure Entity authorities to repeal discriminatory legislation; and (11) promotion of the return of displaced persons as a major issue during the September 1997 municipal elections.

4. ZOS Return Procedures

One of the clearest prisms through which to understand the dangerous deadlock over so-called “minority returns” is the “ZOS returns” programme. This has been a high-profile 10-month effort by the international community to support Bosniac attempts to return to pre-war properties on the RS Entity side of the IEBL, inside the ZOS. Because the organised return by Bosniacs to homes deeper inside the RS Entity has been totally blocked, the emphasis on return to the ZOS has been all the more intense.³⁹ The ZOS return project has been deeply troubled.

ZOS returns began in February 1996, when a handful of displaced persons ventured back to their houses in the suburbs of Omerbegovaca and Dizdarsa, on the southern outskirts of Brcko. They had been emboldened by the recent arrival of US troops who had just established a commanding presence in the Brcko area. With the Americans present, the returnees perceived an implicit zone of safety where the RS Entity police were under close observation and presumably would not dare harass the returnees.

Indeed, although the atmosphere was tense, the first returnees encountered no major security problems. On 11 April, however, a new dynamic became evident. Federation authorities began to try to expand and accelerate the fledgling Brcko-area ZOS return by delivering basic building materials to Omerbegovaca. The materials were not given to the pioneer families, who were getting by on their own at the survival level, but rather were used by Bosniac construction crews to begin roofing other houses in the area. The roofing crews were deployed only on the RS Entity side of the IEBL. Accordingly, the Bosnian Serbs perceived the assistance not as a humanitarian effort but as an attempt to establish “facts on the ground”.

³⁹ This discussion concerns attempts by Bosniacs, in the main, to return to the RS Entity territory. The one important Bosnian Serb return to the Federation side of the ZOS is the exceptional case of Krtova, near Lukavac, where UNHCR quietly and successfully brokered the return of about 600 Bosnian Serbs to an abandoned village in a strategically insignificant corner of the ZOS in the spring of 1996.

The RS Entity authorities quickly responded by dispatching building crews and materials to start roofing shattered houses on the Bosnian Serb side of the IEBL to make them inhabitable for Bosnian Serbs who had been displaced to Brcko. Thus began a close-quarters Bosniac-Serb "housing race".

Fearing conflict between the Bosniacs and Bosnian Serbs, IFOR commanders in Brcko imposed a two-week moratorium on construction in mid-June. Meanwhile, UNHCR had been implementing a "self-help" assistance programme, giving basic building materials to returnees, outside the ZOS, and was trying to frame a programme that would be workable in the ZOS as well. Because of the obvious potential for renewed conflict, IFOR and UNHCR asked the Office of the High Representative (OHR) to take the lead in establishing ground-rules for managing what was clearly becoming an explosive situation. On 3 July 1996 OHR, UNHCR, IFOR, and IPTF representatives met in Bijeljina and drafted the first of several sets of guidelines for "phased" and "orderly" returns to the RS Entity side of the ZOS. The aim was to minimise the possibilities for conflict by establishing a screening process under which an International Housing Commission (IHC) comprised of representatives from UNHCR, OHR, IFOR, and IPTF, would verify the pre-war link between each prospective returnee and the property in question.⁴⁰

The initial purpose was to defuse the situation near Brcko by verifying that ZOS returns reflected a genuine displaced persons return movement and not a covert strategic move by the Federation to encroach on RS Entity territory at what was clearly a militarily sensitive location. The guidelines were simple. Only pre-war owners were to be cleared to return to the RS Entity side of the ZOS, and as an initial pacing measure, an arbitrary limit of 20 approvals for cross-IEBL returns per week was set as the target for the commission. Later some additional ground-rules evolved. For example, no applications from active military or police were to be approved. The returnees were also explicitly barred from bringing any weapons into the ZOS.

It was envisioned at the Bijeljina meeting that the Brcko model might be applied elsewhere in the ZOS, and that began to happen in July, first at Mahala and then at other villages in the ZOS in north-east Bosnia and Herzegovina such as Jusici and

⁴⁰ These are the so-called Bijeljina procedures issued by OHR and IFOR after the July 3 meeting of the Northeast Region Joint Civilian Commission. The IHC is comprised of eight locally-based commissions, nearly all in the north-east. Each local commission is made up of field officers of the four international organisations and is chaired by a UNHCR representative.

Gajevi. Although the procedures were updated and streamlined at least three times, most recently by the OHR in February 1997, the concept has not changed substantially, except to clarify that pre-war residence, not ownership, was the criteria for approval of an application.⁴¹

Several aspects of the IHC process troubled those who devised it: avoiding any implication of a promise by the international community to assure the safety of the returnees; avoiding any implied promise that their needs for financial assistance would be automatically met as a result of the approval; and ensuring that returnees understood that once on RS Entity territory, they would be subject to RS Entity law.

IFOR insisted all along that although it would provide "area security" -- that is prevent the outbreak of hostilities -- it would not be responsible for guaranteeing the security of individuals. Hence the application forms filled out by prospective ZOS returnees have contained an explicit waiver acknowledging that there is no such guarantee. Similarly the applicants have had to acknowledge that being cleared to return to the ZOS does not carry any expectation of financial assistance.

Encouraged in some instances by Federation authorities, groups of prospective returnees began a series of organised moves into the Bosnian Serb side of the ZOS at points near Tuzla. In some cases Federation officials consulted international authorities before organised returns and the IHC procedures were followed, while in other cases the returns were launched overnight and were termed "spontaneous".

Villages such as Mahala, Jusici, Gajevi, and Stanic Rijeka became widely known during the summer and autumn of 1996 as Federation authorities tried to accelerate the returns, RS Entity authorities tried to stop them, and the international community tried to manage a "phased" and "orderly" process. There were a number of serious confrontations between Bosniac returnees and Bosnian Serb police and civilians, and

⁴¹ An important revision of the IHC procedures issued in mid-October, and signed for the first time by a representative of the Office of the European Commission (EC), contained a hint of optimism, stating that the ZOS "shall become an area of priority for international attention and support and thus hopefully develop into a zone of safety and stability", *Procedure for Return and Reconstruction in the Zone of Separation*, Sarajevo, 15 October 1996. But the international community later distanced itself from this language and from any implied promise. The most recent version states: "The applicant should not expect, and no expressed commitments should be made by the IHC or its members, that the return will be accompanied by financial or other assistance -- unless such assistance is assured", *Revised Guidelines for International Housing Commissions for Returns to the ZOS*, Sarajevo, 28 February 1997. In October, the EC pledged \$2.2 million for reconstruction in the ZOS during 1996 and \$3.3 million for 1997. However, none of the pledged amounts has been dispersed, except for the building of a TV antenna near Gorazde.

an extended series of night-time dynamiting of Bosniac houses that were under repair.

The most dangerous of the clashes were the initial “spontaneous” move into Mahala in July and the armed confrontations at Gajevi in early November in which one Bosniac died and several were wounded. The most destructive of property were the dynamiting of nine houses under repair in Brod and Omerbegovaca on 11 November and the torching and dynamiting of 11 new prefab houses in Gajevi between 28 February and 11 March 1997.

One particularly convoluted incident occurred in October at Jusici, where the villagers moved “spontaneously,” pre-empting the IHC process. Russian IFOR troops searched the houses and reported that someone had brought a dozen-odd hand grenades and a few rifles. This was a clear violation of the ZOS procedures and to make the point that security breaches of this nature would not be tolerated, US IFOR demanded that all the Jusici returnees leave the ZOS while the IHC screening procedure was implemented. At a high level meeting in Sarajevo, the other international members of the IHC policy group, including UNHCR, acceded to IFOR’s demand.

That led to an incongruous test of will between the villagers and IFOR. IFOR imposed an embargo on Jusici, preventing the delivery of further supplies to the village during an especially cold and rainy week. The situation was frozen for several days while IFOR threatened officials in the Tuzla area with a complete cut-off of assistance. Finally the returnees moved out.

This crisis generated bitter commentary in the Bosnian media and a certain degree of tension within the international community over the hardball tactics used to discipline the villagers -- who after all had every right to return to Jusici. Some questioned whether it was necessary to have gone to such lengths to evict the villagers for 48 hours, only to screen them through the IHC and then allow them to move back.⁴²

The ZOS has been a priority and an unending irritation for all involved, but for different reasons. To the villagers ZOS return simply means going home, albeit often to piles of rubble and fields strewn with land-mines. Since the DPA already promised them the right to return, the IHC process seemed an unnecessary, painfully slow and deeply frustrating impediment.

⁴² Russian IFOR, which is in charge of troubled eastern parts of the ZOS such as Gajevi and Jusici, has tended to be supportive of the RS Entity interests and does far less than US IFOR to assure area security.

To Federation officials the ZOS is a target because it represents a two-kilometre strip of adjacent and hence easily accessible territory which is all the more important because minority returns have been impossible elsewhere in the RS Entity. But the fact that the areas chosen for return around Brcko, Dobo, Koraj and the Sapna Thumb are all militarily significant suggests Federation authorities also had a strategic motive.

RS Entity officials have been acutely sensitive to these moves because the ZOS would be their outer defence perimeter in case of renewed fighting. Moreover, freedom of movement across the IEBL would negate the fundamental point they have been trying to establish, that Bosnia and Herzegovina has been partitioned already, and that the IEBL is actually a formal boundary.

And finally, international organisations such as UNHCR have regarded the ZOS as a priority reluctantly, and by default. It is clearly a poor place to encourage safe and orderly returns. On the other hand, it is the only place where organised minority return has been conceivable up to this point. So they have been determined not to quit.

The international community has tried repeatedly to streamline and rationalise the IHC screening mechanism, but the process has remained extremely time-consuming and the actual returns have been minimal. In the past year some 4,500 applications have been approved under the IHC procedure, covering about 10,000 people, but according to UNHCR, only 811 Bosniacs have returned to the RS Entity side of the ZOS as of March 1997, and only 211 using the IHC procedures.⁴³ The initial aim of the ZOS procedures was to demonstrate phased, orderly small-scale returns as a step toward broader minority returns, but the objective still appears remote. As the backlog grows, the pressure and the sense of absurdity mounts, leading many internationals who are involved in the ZOS return process to question its point.

In the absence of a more determined SFOR effort to ensure security, the ZOS return programme is in deep trouble. The lengthening list of IHC approvals is quantifiable, but it is far from being a sign of progress in implementing the DPA provisions for return. Nearly all those who have returned to the RS Entity ZOS are living in grim conditions, generally without electricity or running water, and subject to various forms of harassment. The fact remains that the ZOS is a former front-line area, laced with minefields and wrecked houses, which could easily become a battlefield again. It is a focus for return

⁴³ UNHCR 1997 Operation, p. 18.

because it is accessible, not because it is at this time a healthy place to live, plough fields or invest.

5. Pilot Projects Within the Federation

On 2 November 1995 at Dayton, President Alija Izetbegovic and then-Federation President Kresimir Zubak signed an agreement for the voluntary return of 600 families to "Pilot Project" towns in the Federation - 100 Bosnian Croat families to Bosniac-controlled Travnik, 200 Bosniac families to Bosnian Croat-controlled Jajce, 100 Bosniac families to Bosnian Croat-controlled Stolac, and 200 Bosnian Croat families to Bosniac-controlled Bugojno.⁴⁴ Other similar projects were to be initiated during the year.⁴⁵ These returns within the first four Pilot Project areas were deemed to have been a confidence-building measure, and were to be completed by 8 December 1995.⁴⁶ However, the Pilot Projects proved to be highly labour intensive and highlighted the complexity of return movements to minority areas.

By March 1996, the Travnik project had almost been completed, and substantial progress was made in Jajce with half the projected number of families having returned. However, after six weeks of intensive negotiations facilitated by UNHCR, OHR, representatives of the US, and the Federation Mediator, not one family had been able to return to Stolac. The Bugojno project was equally unsuccessful.⁴⁷

A year later, the Pilot Projects were completed only in Travnik and Jajce. But even in those towns, "persistent difficulties ... suggest that the safety of returning refugees has yet to be satisfactorily guaranteed."⁴⁸ The projects were stalled in Stolac and Bugojno. In Stolac, even though 110 families were permitted to work on the repair of their homes in September,⁴⁹ the project has been confronted by numerous obstacles principally owing to opposition by the mayor, and has been suspended on numerous occasions. In Bugojno, as of the end of March 1997, only 128 out of the projected 200 families had been able to return,⁵⁰ and a number of the returning Bosnian Croats were forced to leave due to serious harassment.⁵¹ The Bugojno project was finally completed in late April.

⁴⁴ HLWM 1996 Operational Plan, pp. 8-9.

⁴⁵ HLWM 1996 Operational Plan, p. 20.

⁴⁶ Humanitarian Issues working Group, HIWG/96/4, p. 6.

⁴⁷ HLWM 1996 Operational Plan, p. 9.

⁴⁸ OSCE Democratisation and Human Rights Report, 26 September - 7 October 1996, p. 3.

⁴⁹ UNHCR 1996 Compliance Report, p.2.

⁵⁰ HIWG Implementation of Durable Solutions, p. 4.

⁵¹ UNHCR 1996 Compliance Report, p. 2.

Owing to the insignificant results produced by the Pilot Projects even 17 months past their one month completion deadline, and the inordinate amount of time, effort and resources required, the projects were not expanded.

6. Organised Assessment Visits

In the spring of 1996, pressures built in places like Celic and Rahic where there were large numbers of displaced persons wanting to return to their nearby homes in towns such Brcko and Koraj. UNHCR tried to break the ice for such returns by organising "assessment" visits in which busloads of Bosniacs would return for a brief visit to see what had become of their former properties. But although UNHCR persuaded the parties to sign a joint agreement authorising such visits, very few of the visits were successful. The effort to arrange them proved extremely time-consuming for UNHCR protection officers as local officials refused to co-operate. Several visits were blocked by hostile crowds throwing stones and screaming obscenities. Sometimes the damaged homes of displaced persons on a list for an assessment visit were further demolished.

In July 1996, UNHCR presented to the Parties a list of eight municipalities⁵² whose authorities had been particularly obstinate and obstructive of organised assessment visits by displaced persons. On 21 August, UNHCR was informed by these authorities that the lack of co-operation was due to a "misunderstanding" and that they were now instructed to co-operate.⁵³

Nonetheless, the expected co-operation did not materialise and in general obstructionism continued. These organised assessment visits were often counter-productive in terms of "confidence-building" since local authorities on both side attempted to turn them into political demonstrations. Most importantly, a negligible number of displaced persons were able to return to their homes as a result of such visits.

7. Bus Services

⁵² Doboje, Lopare, Prijedor, Teslic and Zvornik in the RS Entity; Capljina and Drvar in Bosnian Croat-controlled areas of the Federation; and Sanski Most in Bosniac-controlled areas of the Federation.

⁵³ *Analysis of Compliance/Non-Compliance with Chapter 1 of Annex 7*, UNHCR, October 1996, p. 3; hereinafter referred to as UNHCR 1996 Compliance Report.

By late spring of 1996, it was obvious to UNHCR that the assessment visit strategy was not working and that the dividing lines between the entities were hardening into *de facto* borders. It was equally clear that tens of thousands of “minority” Bosnians desperately wanted to cross the lines to visit their former towns, get in contact with family members and friends, find out whether their former houses were still standing and, if so, who was occupying them.

In perhaps its boldest experiment, UNHCR decided to open a free bus service on routes to the Sarajevo Serb suburbs and between cities such as Banja Luka and Drvar, Tuzla and Bijeljina, and Sarajevo and Gorazde. UNHCR began this program with considerable trepidation because it was clear there might be harassment and attacks on the buses. There were indeed some problems on a number of routes initially, but overall the bussing program was a success. The buses were often filled to capacity and the frequently emotional response of the riders made clear that beneath the surface of the inter-community cold wars, there remains a pool of “normal people” who resist the nationalists’ program of ethnic segregation.

The safety of the bussing experiment was of high concern at the start, and this was an area where IFOR took special measures to assure security. The initial runs on some routes were escorted by IFOR and IPTF, and were monitored from the air. Bosnian Serb authorities in some areas such as Banja Luka initially resisted the buses on the grounds that the service had not received prior authorisation, that the drivers were not licensed in the RS Entity, and the buses were uninsured. At one point, a British IFOR commander in Banja Luka dispatched armoured vehicles to an especially troublesome Bosnian Serb checkpoint with orders to attach hooks to the police cars and drag them away. This put a definitive end to the resistance at that location. Over time the harassment subsided.

The service was sub-contracted to the Danish Refugee Council. By the end of the year, 11 such bus lines were in operation, providing transportation to up to 1,000 passengers per day wishing to visit their places of origin. UNHCR intended to transfer this service to a commercial operation, but security concerns have so far prevented the implementation of this intention.⁵⁴

Despite the efforts of local authorities, in particular Bosnian Serbs and Croats, to obstruct the bus service, some 283,000 passengers have used the buses as of April 1997.⁵⁵ The annual cost of this service has been approximately \$1.3 million.

⁵⁴ HIWG Implementation of Durable Solutions, p. 3.

⁵⁵ UNHCR 1997 Operation, p. 17.

While the impact of the bus service on actual numbers of minority returns is impossible to determine, there is no doubt that it was an important confidence-building effort and promoted freedom of movement across the former confrontation lines.

8. Municipalities Blacklisted by OHR

On 18 April 1996 Principal Deputy High Representative Ambassador Michael Steiner informed the authorities of the Federation and the state of Bosnia and Herzegovina that four municipalities -- Bosnian Croat-controlled Stolac and Capljina, and Bosniac-controlled Bugojno and Vares -- were only entitled to humanitarian support and would no longer receive any "financial resources from shared taxes and transfers", including reconstruction aid.⁵⁶ These four municipalities were singled out because they had failed to convene interim municipal assemblies (IMAs) by a specified date as required and agreed in the Sarajevo Agreement on the Federation of Bosnia and Herzegovina of 30 March 1996.⁵⁷ This blacklist was not directly related to the return of displaced persons since the municipalities only needed to convene an IMA for the sanctions to be withdrawn. Nevertheless, the matter was linked since the refusal of the parties in power to co-operate with minority party representatives was a powerful deterrent to minority returns.

No formal study of the effectiveness of the above sanctions policy has been carried out. However, international officials monitoring events in the four municipalities report that the blacklist has had minimal impact and, critically, IMAs are yet to be convened. Depriving Capljina of reconstruction aid appears to have had no effect whatsoever, since the economy is already performing comparatively well and, in any case, finance comes from Croatia. Stolac too benefits from close economic links with Croatia, though the economic outlook there is somewhat less healthy. Bugojno and Vares are in obvious need of economic assistance, but even in these municipalities, attitudes remain generally hard-line. In Vares, for example, Bosnian Croats who had repaired their homes and intended to return there permanently found that the authorities were allocating their property to Bosniac families. Only in Bugojno has there

⁵⁶ Letter from Ambassador Steiner to then President Kresimir Zubak, Vice President Ejup Ganic, Prime Minister Kapetanovic and Prime Minister Hasan Muratovic, 18 April 1996.

⁵⁷ UN Security Council Document S/1996/224.

been any kind of return of Bosnian Croats in a belated effort to fulfil pilot project targets.

An oft-cited criticism of the sanctions policy against the four municipalities is that other municipalities behave equally badly, and possibly worse, yet are not penalised in the same manner: in Mostar for example, there is considerably less compliance with the DPA. Moreover, other municipalities formally convened IMAs to fulfil the minimum requirements of the Sarajevo Agreement, but the IMAs never met again. In essence, there is a perceived lack of consistency in the policy.

9. Repatriation Information Reports

In January 1996, the international community recognised that an important factor for promoting returns, repatriation, and other durable solutions for internally displaced persons and refugees was access to accurate and up-to-date information on conditions in the intended areas of return and relocation. In early 1996, UNHCR set up a repatriation information unit in Sarajevo, supported by the regional offices, and initiated the publication of "Repatriation Information Reports" (RIR) on individual municipalities covering the following topics: political and security conditions, housing, registration procedures, routes and means of transportation, documentary requirements, pertinent legal developments, infrastructure, public utilities, public/social services, economic activities, and available assistance programmes.⁵⁸

By October 1996, UNHCR had issued Repatriation Information Reports on 72 municipalities in both Entities, and translated them into the local languages. The reports were made available in all refugee host-countries and were posted on the Internet.⁵⁹ However, due to rapid developments on the ground, the RIRs were often outdated shortly after publication. In addition, the reports were not distributed as widely as intended. Ultimately, the programme proved to be too costly, and the reports were of little use to displaced persons. UNHCR discontinued the programme in December.

In December 1996, UNHCR gave \$600,000 to a new initiative - the Repatriation Information Centre (RIC) - run primarily by SFOR. The RIC was intended to "serve as a clearing house for the sharing of information between governments and organisations concerned, to ensure that repatriation is planned taking due account of shelter absorption capacity, ongoing reconstruction efforts, the availability of basic social

⁵⁸ HLWM 1996 Operational Plan, pp. 10-11.

⁵⁹ HIWG Implementation of Durable Solutions, p. 3.

infrastructure, as well as security and human rights factors affecting repatriation.”⁶⁰ However, the first draft reports available in April (not officially published) contained some misleading information; clearly, accuracy will continue to be a problem. Moreover, there are no plans to translate the reports into the local languages.

C. Regional Perspective

Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia are hosts to more than three million refugees, internally displaced persons, and other war affected populations. In addition to 160,000 Bosnian refugees in Croatia, the country has between 100,000 and 140,000 internally displaced persons, mainly from Eastern Slavonia. And the Federal Republic of Yugoslavia is host to 566,000 Serb refugees, including 253,000 from Bosnia and Herzegovina.⁶¹ Some 48,000 ethnic Serb refugees from Krajina and western Slavonia are currently in the RS Entity, and many more from Eastern Slavonia may move to the RS Entity.⁶²

It has been evident since the beginning of the wars in the former Yugoslavia that the criss-cross pattern of refugee exodus cannot be reversed without an extraordinary effort on a regional scale. Due to the massive destruction of housing, the displaced people of the region are trapped in a virtual gridlock of forced population movements. The defenders of ethnic homogeneity will find it easy to continue to block minority returns by pointing to the need of their displaced majority populations for shelter.

The country, key to any regional strategy, in which it may be possible to break the logjam and kick-start the return process is Croatia. Great swathes of territory in Krajina which were formerly inhabited by Serbs are now largely depopulated. Though much of the housing stock was systematically torched after Croatia's 1995 offensives and some displaced Croats have moved in, there, nevertheless, remains more available accommodation there than anywhere else in the former Yugoslavia. Moreover, any initiative which concentrates on the plight of Serb refugees should boost the Serb community's confidence in the international community and generate momentum for returns within Bosnia and Herzegovina.

Critically, of all the former belligerents Croatia is generally the most susceptible to international pressure. It is the newest member of the Council of Europe and aspires eventually to join NATO. It is also seeking a \$500-million loan to reconstruct its

⁶⁰ UNHCR 1997 Operation, p. 32.

⁶¹ IFRC Position Paper, p. 10.

⁶² See section III(A) *supra*.

economy from the International Monetary Fund and is already a recipient of US development aid.⁶³ Moreover, international pressure has already yielded some results. Earlier this month, for example, Croatia adopted as policy recommendations developed by UNHCR and the UN Transitional Administration for Eastern Slavonia (UNTAES) for equal treatment and equal access to Croatian government programmes.⁶⁴ As a result, displaced Croats and displaced Croatian citizens of other ethnic groups who wish to return home are now declared to have equal legal status as “returnees” in Eastern Slavonia, though not in other parts of Croatia.

Nevertheless, Croatia frequently falls short of its commitments. In order to be admitted to the Council of Europe, Croatia had to honour a list of fourteen conditions drawn up by the Council of Europe’s Parliamentary Assembly and Committee of Ministers. These included the protection of the rights of Serbs in Croatia and facilitating the return of Serb refugees to the Krajina - conditions which to date Croatia has failed to honour. The international community must insist that Croatia lives up to its obligations as a member of the Council of Europe and further pressure all governments in the region to respect the rights of minorities to return home and live in security.

V. OBSTACLES TO RETURN

To follow the intricacies of returning displaced persons to their homes in Bosnia and Herzegovina, one has to keep in mind constantly the distinction between “minority” and “majority” returns. Majority and minority returns are short-hand terms indicating whether the homes of origin of prospective returnees lie in the entity where their particular ethnic group is in the majority, or whether they would be returning to a territory controlled by one of the other ethnic groups. Given the nationalist virus that still infects political thought in post-war Bosnia and Herzegovina, a great deal rides on this distinction.

Majority returnees face only the normal run of problems in a post-war situation: damage to housing and infrastructure, scarcity of jobs, war-related psychological trauma, and so on. Added to those difficulties, minority returnees generally have to contend with hostility, harassment and all the diverse forms of discrimination that go along with being seen as the “other” in a political environment still driven by virulent nationalism.

⁶³ New York Times, 29 April 1997.

⁶⁴ *Operational Agreement of the Working Group on Returns*, Joint Working Group on Returns, signed by the Government of Croatia, UNTAES, and UNHCR, 23 April 1997.

A. Conditions that Affect All Returnees

1. Abandoned Property Laws

During the war, all three sides passed legislation to regulate the use of “abandoned” property, allowing displaced persons to move into vacant houses and flats for periods of up to one year, subsequently renewable. In 1995 and 1996, new laws and amendments imposed substantial, in many cases insurmountable, barriers to the right of refugees and internally displaced persons to return to their pre-war homes, one of the central guarantees of the DPA. The scope of the problem is enormous. Potentially all returnees whose houses have been occupied during the war years face these difficulties. In practice, the greatest obstacles are faced by displaced persons attempting to return to areas where they now find themselves in the minority

The Federation law distinguishes between people who own a private home (usually a free-standing house) and those who hold an occupancy right to a “socially-owned” housing unit (in most cases a flat). It is estimated that, before the war, there were 60,000-100,000 socially-owned flats. Individuals gained an occupancy right to a flat through various means, often as a benefit of long-term employment. The occupancy right could be inherited although it could not be sold.

Article 10 of the Federation Law on Abandoned Apartments and a decree declaring that the war ended on 22 December 1995 permanently revoked occupancy rights to “socially-owned” flats, unless the occupant began using the flat by 29 December 1995 if he or she had been internally displaced, and by 6 January 1996 if he or she had sought refuge outside the country. The High Representative, who has ultimate authority to determine interpretations of the DPA, concluded that “Article 10 ... infringes upon the right of return ... by imposing an arbitrary and discriminatory time period in which refugees and [internally] displaced persons are required to return and reoccupy their apartments.”⁶⁵

Under Federation law, people who have an ownership right to a home are entitled to reclaim their property; they can initiate a legal process to establish the right and, if necessary, evict the current temporary occupant. However, owners have been faced with extensive delays. In particular, local authorities have been slow to find adequate alternative accommodation for

⁶⁵ *Opinion of the Legal Adviser to the High Representative on the Law on Abandoned Apartments, January 1997.*

temporary occupants, primarily owing to the lack of such accommodation (and the cost of reconstruction) and also because they tend to be more sympathetic to their current constituents, the “temporary” occupants of previously “abandoned” flats. Their unresponsiveness is all the greater when pre-war owners are of a minority ethnic group. Under the Constitution of Bosnia and Herzegovina (but not under Federation law), local authorities may be obliged to find adequate alternative housing for temporary occupants before they can force them to move.⁶⁶ Even when all lawful conditions for an eviction have been satisfied, the local police often refuse to carry it out. The situation is further complicated when police of both Entities carry out unlawful evictions, sometimes on the pretext that homes are needed for returnees. Lawful occupants have been evicted because they belong to an ethnic minority or opposition political party or simply because someone else had bribed an official.

Moreover, a Federation draft Privatisation Law would grant the right to purchase a socially-owned flat to the current “temporary” occupant. Pre-war holders of occupancy rights would thus entirely lose their right to return. The High Representative has called on the Federation government to amend the draft Law to grant a right to purchase only to people who occupied socially owned flats on or before 6 April 1992.

The RS Entity Law on the Use of Deserted Property allows for the speedy return of vacant property, but neither an owner nor a holder of an occupancy right can reclaim an occupied home unless the current occupant is willing and able to return to his or her home in the Federation or receives fair compensation. The High Representative has declared this law to be a violation of the DPA since the right to return cannot be predicated on reciprocity. Moreover, given that few Bosnian Serbs express a desire to return to the Federation, often owing to pressure and propaganda from RS Entity authorities, in practical terms the reciprocity requirement has blocked all returns of non-Serbs to occupied homes.

2. Depressed Economy and High Unemployment

⁶⁶ The Constitution incorporates the European Convention on Human Rights (Annex 4, Art. II(6)). While the European Convention recognises a right to property, it also recognises a right to respect for one’s home.

Lack of employment opportunities may prove an even greater deterrent to repatriation and returns than lack of housing. Many people may be able to find accommodation if they have a source of income, but they cannot envision a long-term future in an area if they are unlikely to find a job, owing either to a severely depressed economy or to discrimination.

Donors committed \$1.5 billion for reconstruction efforts in 1996, of which \$1 billion was expended, principally in Bosniac-controlled areas of the Federation.⁶⁷ About five percent went to Bosnian Croat-controlled areas, which also received considerable assistance from Croatia. Only two percent went to the RS Entity, primarily owing to the authorities' refusal to accept funding via the central government. As a result, the Federation's economy grew by about 50 percent, and the RS Entity's is believed to have remained stagnant or even declined.

Nevertheless, up to one million out of an estimated three million of the current population of Bosnia and Herzegovina remain dependent on international humanitarian aid (down from 80 percent at the end of the war).⁶⁸ Unemployment in the Federation is 52-54 percent, and almost 60 percent in the RS Entity.⁶⁹ The monthly average wage in the Federation is 280-290 DM, and in Bosniac Cantons is only 225 DM. In the RS Entity, that rate is 64-67 DM.⁷⁰

3. Mines and Unexploded Ordnance

The poor housing and employment situations are exacerbated by the presence of mines. The UN has estimated that anywhere from 375,000 to three million landmines and unexploded ordnance are strewn around the country, mostly along former confrontation lines and retreat routes.⁷¹ Bosnia and Herzegovina is possibly one of the five most heavily mined countries in the world. In 1996, there were 312 reported civilian casualties, mainly farmers and children, 77 NATO casualties and 37 casualties of Bosnian soldiers.⁷² Currently, 50 mine incidents occur per month, of which 30 are fatal.⁷³ As of February 1997, more than 17,000 minefields had been

⁶⁷ RRTF Report, p. 9.

⁶⁸ See section III of this report.

⁶⁹ RRTF Report, p. 9.

⁷⁰ *Ibid.* While the economic situation is indeed bleak, it is not quite so bleak as the wage figures may indicate, given the existence of a parallel economy that is "off the books" and the fact that many families in rural areas subsist in part on their farm and agricultural products.

⁷¹ *Summary of Mine Statistics*, UN Mine Action Centre, 6 February 1997.

⁷² *Ibid.*, and *Mine Awareness Programme*, International Committee of the Red Cross, February 1997.

⁷³ RRTF Report, p. 8.

identified, but this probably represents no more than 60 percent of the total.⁷⁴ In any event, most civilian mine injuries were sustained in marked fields, indicating the farmers' perception of the need to enter these fields, and the difficulty of keeping children out of them. In some areas, mines have been placed since the "end" of hostilities in and around homes owned by minorities. By any account, a substantial amount of land and houses have been rendered unusable by the possible presence of mines and unexploded ordnance.

In 1996, only a small percentage of minefields was cleared for a variety of reasons including disagreements among Entity authorities, inadequate co-ordination among the UN, western governments, and others working on de-mining, and an inadequate funding commitment to enable long-term planning for a sustained de-mining programme.⁷⁵ The UN Mine-Action Centre (MAC) reports improved co-operation in April 1997. Clearly, without substantial progress in this area, reconstruction and the return of displaced persons will be further delayed.

B. Conditions of Particular Concern to Minorities

Under the DPA, the Parties agreed to "take all necessary steps to prevent activities within their territories which would hinder or impede the safe and voluntary return of refugees and displaced persons" and to "take immediately" several "confidence-building measures" aimed at protecting the equal rights of minorities to return to their homes in safety and to have access to jobs and social services.⁷⁶ In particular, the Parties agreed to take prompt measures to stop actions aimed at obstructing minority returns and to discipline, and where warranted prosecute, members of the military, paramilitary and police forces and other public servants responsible for "serious violations of the basic rights of persons belonging to ethnic or minority groups."⁷⁷

⁷⁴ *Summary of Mine Statistics*, UN Mine Action Centre, 6 February 1997.

⁷⁵ ICG will issue shortly a report on de-mining efforts in Bosnia and Herzegovina which will document these and other conclusions and will offer recommendations for the 1997 de-mining season.

⁷⁶ DPA, Annex 7, Art. I, par. 3. These measures include: "(c) ... the prompt suppression of acts of retribution by military, paramilitary, and police services, and by other public officials or private individuals; (d) the protection of ethnic and/or minority populations wherever they are found ...; (e) the prosecution, dismissal or transfer, as appropriate, of persons in military, paramilitary, and police forces, and other public servants, responsible for serious violations of the basic rights of persons belonging to ethnic or minority groups." In addition, under Article II, par. 1, the parties undertake "to create in their territories the political, economic and social conditions conducive to the voluntary return and harmonious reintegration of refugees and displaced persons, without preference for any particular group."

⁷⁷ *Ibid.*, Art. I, par. 3.

However, throughout 1996, the Parties did little to create such conditions. Many of the political leaders who pursued the war remain in power and the elections in September merely cemented their positions of influence. Both SDS (Serb Democratic Party - *Srpska demokratska stranka*) and HDZ (Croat Democratic Party - *Hrvatska demokratska zajednica*) leaders and, to a lesser extent, extremists in the SDA (Party of Democratic Action - *Stranka demokratska akcije*), continued to pursue their war-time aims.

The policy to obstruct and discourage minority returns is most overtly directed from the highest levels of authority in the RS Entity. As stated by RS Entity President Biljana Plavsic in September 1996:

We have to solve the problem of space of our own Serb displaced persons first. They have been forced to abandon their own property in the Federation.... This means that, in the near future, I cannot see any chance for the return of minorities to the Republika Srpska. In this sense, Dayton is more theory than anything else.⁷⁸

In Bosnian Croat-controlled areas, the policy is instigated by top HDZ officials in Mostar with support from the government of Croatia, and implemented by officials at the cantonal and municipal levels.⁷⁹

In many cases, acts targeted at minorities -- aimed at forcing them to leave or preventing their return -- have continued since the signing of the DPA. These acts increased in the run-up to the September 1996 elections. Violence and intimidation are again likely to increase in advance of the municipal elections set for this September, and as displaced persons try to return to their homes during the good weather months of 1997.

1. Forcible Expulsions, Obstruction of Returns, and Violence Against Minorities

Local authorities failed to stop, condoned and even took part in violence aimed at driving minorities from their homes.

Minorities have continued to suffer arbitrary arrests and detention, physical mistreatment, harassment and murder. As stated by High Representative Carl Bildt in a recent report:

⁷⁸ Statement at meeting with senior UNHCR officials, quoted in report by Amnesty International, *Bosnia-Herzegovina: Who's Living in my House? Obstacles to the Safe Return of Refugees and Displaced Persons*, April 1997, at fn. 15; hereinafter referred to as AI Displaced Persons Report. An 8-page pamphlet issued by the RS Entity Ministry for Refugees and Displaced Persons, *Theoretical Contribution to the Repatriation and Relocation 1996*, makes very clear that the Ministry is committed to the position expressed by Pres. Plavsic and is firmly set against any minority returns.

⁷⁹ Reuter, 11 February 1997.

The authorities responsible for protecting human rights, in particular the police, continue to account for a substantial portion of the reported abuses. Political leaders and police in both the Federation and Republika Srpska have often implicitly condoned abuses by failing to respond appropriately.⁸⁰

The most severe abuses are occurring in the RS Entity and the Bosnian Croat-controlled areas in the Federation.⁸¹

In Teslic (RS Entity), hundreds of Bosniacs fled a wave of violence in May 1996 triggered by the efforts of a few Bosniac displaced persons to visit their homes; incidents of arson, grenade attacks, physical assaults and verbal threats against non-Serbs continued throughout 1996. Non-Serbs were also forced out of their homes in Bosanska Gradiska, Kotor Vares, Prijedor and the Banja Luka area, including some 30 Bosniac families forced from their homes in the Vrbanja suburb of Banja Luka in June. RS Entity police failed to conduct proper investigations into four separate cases in which Bosniacs were murdered in Teslic, Doboj, Dubrave and Zvornik. Arrests have still not been made in the case of a Bosniac man who was beaten to death in August while in police custody in Banja Luka.⁸²

Owing to the increasingly serious level of harassment, UNHCR suspended the repatriation of minorities to the RS Entity on 31 July 1996.⁸³ By September, harassment in Banja Luka was so severe that UNHCR organised the evacuation of all Bosniacs who wanted to leave. In the first months of 1997, non-Serbs began to trickle back to Banja Luka, but are again facing resistance. For instance, during the first two weeks of April, the Chief of Police in Banja Luka refused to enforce five court orders to evict Serb displaced persons who had forcibly expelled non-Serbs from dwellings they had lawfully occupied.

In Bosnian Croat-controlled areas, minorities were frequently the victims of beatings, evictions and other forms of intimidation. Between January 1996 and March 1997, some 80 Bosniac families were forced from their homes in west Mostar, many by former or still serving Bosnian Croat (HVO) soldiers, who then took possession of the homes. The west Mostar police did nothing to stop the evictions, even when they came upon the assailants. Violence against Bosniacs peaked on 10 February 1997, when uniformed and plain-clothes Bosnian

⁸⁰ OHR Report, p.17, par. 99.

⁸¹ *Ibid.*, at par. 102.

⁸² *Ibid.*, at par. 99 and 100.

⁸³ UNHCR 1996 Compliance Report, p.1.

Croat police fired into a crowd of unarmed Bosniacs, killing one pensioner and wounding 20 other people. Under strong international pressure, the west Mostar authorities prosecuted some of the attackers, who had been photographed with guns drawn, but in the end they all received suspended sentences, and international organisations cannot confirm whether the convicted police have in fact been suspended from the force.⁸⁴

While the level of violence against minorities in most Bosniac-controlled areas has not been so high as to drive out substantial numbers of minorities, Bosniac authorities have done nothing to protect Bosnian Croats from violence, intimidation and discrimination in Bugojno. A number of Bosnian Croats who remained in Bugojno throughout the war were evicted in 1996, and others have been unable to regain possession of their pre-war homes.⁸⁵ Bosniac authorities have failed to protect Bosnian Serbs in Sanski Most, and Bosniac police have tolerated and encouraged violence against Bosnian Serbs in some of the Sarajevo suburbs. Bosnian Croats returning to their homes in the Sarajevo suburbs in the last few months have also been encountering increasing intimidation. While up to 20,000 Bosnian Serbs and slightly more Bosnian Croats remain in Sarajevo and its suburbs (out of a total population broadly estimated at 400,000), their numbers overall continue to decline.

2. "Ethnic Engineering"

Local authorities have continued to carry out politically-motivated resettlement which might be called "ethnic engineering" in order to affect the ethnic composition of the resettled areas and to prevent the return of displaced persons. Intimidation, violence, and burning of homes by Bosnian Serbs directed by Pale, combined with propaganda broadcast on Pale radio and TV aimed at fomenting fear, caused the flight of an estimated 80,000 Bosnian Serbs from their homes in the Sarajevo suburbs immediately preceding the transfer from Bosnian Serb to Bosniac control in February and March 1996. Several thousand of those who fled have now returned. The RS Entity continues to resettle Bosnian Serbs from the Sarajevo area and Eastern Slavonia in Brcko and elsewhere. Bosnian Croat authorities continue resettling Bosnian Croats, particularly from Central Bosnia, in Drvar, and Glamoc. Bosniac authorities are successfully campaigning to fill up the

⁸⁴ *Report in Pursuance of the Decisions on Mostar of 12 February 1997*, Special Investigation Group Mission Headquarters, UN IPTF, 24 February 1997.

⁸⁵ *Situation of human rights in the territory of the former Yugoslavia: periodic report*, Elizabeth Rehn, Special Rapporteur of the Commission on Human Rights, UN Doc. E/CN.4/1997/56 of 29 January 1997, at par. 29; hereinafter referred to as Rehn Report.

Sarajevo area with Bosniacs displaced from eastern Bosnia and Herzegovina, especially Srebrenica.

Local officials have frequently discouraged efforts by their “own” displaced persons to return to areas controlled by “other” ethnic parties. RS Entity authorities intimidated and harassed displaced Bosnian Serbs from registering to vote outside the RS Entity and effectively blocked the efforts of Bosnian Serbs who wished to return to their homes in Drvar and Glamoc in the Federation. RS Entity authorities have recently begun intimidating Bosnian Serbs now living in the RS Entity from visiting their homes in Sarajevo by telling them that they could lose their registration, and therefore their eligibility to receive humanitarian assistance, if they visit the Federation even for a day. Bosnian Croat leaders have refused to press their Bosniac counterparts to allow displaced Bosnian Croats to return to Bosniac-controlled areas in Central Bosnia and Bosnian Serb-controlled Posavina; and Bosniac leaders have taken minimal steps to help Bosniac displaced persons to return to their pre-war homes in Bosnian Croat-controlled Stolac, Capljina and Pocitelj.

Houses owned by minorities continue to be destroyed or damaged, often after their owners have commenced repairs. In October and November alone, 346 houses were destroyed, and several hundred were destroyed before or since. In the RS Entity, at least 96 homes belonging to non-Serbs were destroyed in a matter of days after the UNHCR gave the local authorities in Prijedor the names of people who had expressed a desire to return to those homes in October 1996. Bosniac-owned homes have been systematically destroyed in several Bosnian Croat-controlled areas including Capljina and Stolac.

3. Obstruction of Freedom of Movement

According to OHR, police practices pose “the single greatest obstacle” to freedom of movement in both Entities.⁸⁶ Since each of the three ethnic governments issue their own vehicle licence plates, vehicles from other areas can be readily identified. Police continue to set up illegal checkpoints, routinely confiscate documents and impose arbitrary fines. Draft age men (18-45 years) are at particular risk of being detained on generally bogus suspicions of war crimes.⁸⁷ Their

⁸⁶ OHR Report, par. 85.

⁸⁷ For instance, Federation authorities arrested a Bosnian Serb on suspicion of war crimes near Sanski Most in November 1996 after he had travelled there on a UNHCR bus to visit his home; he was detained for several months. Rehn Report, par. 35.

insecurity is aggravated by the Entities' refusal to share lists of suspected war criminals with some agency, such as the UNHCR, so that men wishing to travel could check whether they were wanted by the authorities of another region. Men (including Bosnian Serbs) are discouraged from travelling to the RS Entity because of its failure to amend its amnesty law to extend coverage to persons who deserted or avoided military conscription.

Authorities have allowed or encouraged current residents to block people trying to return, visit or rebuild their homes, including those acting with the assistance of UNHCR. Bosniacs had to be escorted by IFOR and IPTF to visit graveyards and homes in Bosnian Croat-controlled areas as the police and civilians obstructed their passage, after stone-throwing and other incidents. The RS Entity authorities vigorously blocked the return of non-Serbs to Doboj, Teslic, Prijedor and Brcko, among other places. In late April 1996, some 1,500 local Serbs rioted to block the intended visit by approximately 800 Bosniacs to their homes in the Doboj area. On the same day Bosnian Serb mobs smashed the windows of buses taking Bosniacs to visit graves near their former homes in Trnovo. In Prijedor, the police chief handed out guns and incited the local population to prevent Bosniacs from visiting their homes. IFOR and SFOR, which provided escorts to UNHCR-organised return efforts, regularly turned back buses in the face of hostile crowds.

4. Media Propaganda Against Reintegration

Widespread opposition to returns is to a large extent created in the media. This is especially the case in the RS Entity where Momcilo Krajisnik, Serb member of the Bosnian Presidency and close colleague of indicted war criminal Radovan Karadzic, chairs the management board of RTV Srpska and carefully controls the content of state radio and television. Indeed, the output of these media is frequently so offensive that High Representative Carl Bildt accused them of putting out propaganda that "even Stalin would be ashamed of".⁸⁸

According to the Institute for War and Peace Reporting (IWPR), the key news broadcast "fully upholds the policies, ideology and national euphoria propagated by the ruling SDS. Its relentlessly negative stance towards the Federation -- and especially towards Bosniacs -- aims to rule out any possibility of coexistence and reintegration."⁸⁹ Though the evening news has in the last 16 months refined its language somewhat and dropped much derogatory terminology, many documentaries

⁸⁸ Reuter, 12 July 1996.

⁸⁹ IWPR Monitoring Report, 10 July 1996.

and audience-participation programmes continue to use abusive and insulting language to describe Bosniacs. News reports from the Federation tend to be placed in the section *Iz sveta* (From Abroad), thereby suggesting that the RS Entity is not part of Bosnia and Herzegovina.

Attempts by Bosniacs to visit their homes in the RS Entity are treated in the Bosnian Serb media as aggression against the RS Entity and a violation of its sovereignty. They are also an opportunity to revert to use of derogatory terminology. When on 5 July 1996, for example, Bosniacs living in Tesanj in the Federation attempted to cross the Usora bridge to visit the RS Entity and clashed with Bosnian Serbs, TV Srpska described the Bosniacs as "Muslim hordes" and "a mob of extremists from Balija land".⁹⁰ Meanwhile Bosnian Serb Radio Doboj reported that "Using freedom of movement as a mask, the Tesanj Muslims - helped by IFOR - used force to enter the territory of Republika Srpska."⁹¹

In the run-up to last year's national elections, the Bosnian Serb media were not above fabricating stories of an imminent Bosniac invasion. For example, SRNA, the state news agency, reported on 7 September that Muslim military units would launch attacks on the day before or after the elections in order to seize strategic points in the RS Entity, particularly Prijedor. The report further claimed the attacks would be supported by IFOR and the foreign media.⁹² And post-election attempts by Bosniacs to return to their homes in the village of Jusici on 9 October were described by Radio Srpska as "an unlawful settlement of Muslims on the territory of Republika Srpska" and "an occupation of Republika Srpska".⁹³

The presence of Bosniac members of parliament in the RS Entity Assembly is generally considered in the Bosnian Serb media to be threatening and unjustified even though they won seats in last year's elections. Bosniac Members of Parliament were heavily criticised for walking out of the religious part of the inaugural ceremony of the RS Entity Assembly but never given any opportunity to respond. Instead, viewers of the programme *Sto vi kazete?* (What Do You Have to Say?) were able to ask what Muslims were doing in the RS Entity at all.⁹⁴ *Sto vi kazete?* remains the most virulent anti-Bosniac programme on TV Srpska.

⁹⁰ IWPR Monitoring Report, 10 July 1996.

⁹¹ *Bosnia-Herzegovina: The Continuing Influence of Bosnia's Warlords*, Human Rights Watch/Helsinki, December 1996, p 42.

⁹² IWPR, Monitoring Report, 12 September 1996.

⁹³ IWPR, Monitoring Report, 24 October 1996.

⁹⁴ IWPR, Monitoring Report, 6 November 1996.

Anti-Bosniac invective and consequently anti-return sentiment is often as malicious and excessive in the Croat media in Bosnian Croat-controlled Federation territory as in the RS Entity. Croatian Radio Herceg-Bosna, whose broadcasts can be heard in almost all of the Federation, is usually the worst offender. Tense relations between Bosniacs and Bosnian Croats in Travnik, for example, led the station on 4 February to accuse the Bosniac authorities of behaving like a Bosnian Tehran and working to establish a Muslim state. And after the clashes in Mostar of 10 February in which a Bosniac was killed, another commentary claimed that: "The Muslim political leadership decided to use the tried and tested terrorists methods of its spiritual brothers Hamas, Hezbollah, the Taliban and fundamentalists in Algeria."⁹⁵

VI. REPATRIATION OF REFUGEES FROM WESTERN EUROPE

In order to address the massive crisis of displaced persons after war broke out in Bosnia and Herzegovina in 1992, a number of European states provided "temporary protection" to the refugees on humanitarian grounds. It was a practical response to a large-scale influx. Temporary protection was to include, at a minimum, admission to the country of refuge, respect for the principle of *non-refoulement*, basic human rights and internationally recognised humanitarian standards, and repatriation when conditions in the country of origin allowed. Some European and non-European States granted refugees a more permanent status.⁹⁶

Following the signing of the DPA, it was agreed that temporary protection was to be lifted once the following benchmarks were met:

- (1) the implementation of the military provisions of the DPA;
- (2) the proclamation of amnesty as foreseen in annex 7;
- (3) the establishment and functioning of mechanisms for the protection of human rights as foreseen in the DPA - Commission for Displaced Persons and Refugees, the Commission on Human Rights, international human rights monitoring missions and the IPTF.

The end of temporary protection would imply a presumption that refugees could safely return to their place of choice in Bosnia and Herzegovina. However, it was also recognised that, following the lifting of temporary protection, there might still be refugees with a continuing need for international protection, including those with a well founded fear of persecution under the new situation prevailing in Bosnia and Herzegovina, those with "compelling reasons arising out of previous persecution", and those who were stateless.⁹⁷

⁹⁵ IWPR, Monitoring Report 20 February 1997.

⁹⁶ HIWG 1996 Post-Conflict Solutions, Annex II, p. 15.

⁹⁷ HIWG 1996 Post-Conflict Solutions, Annex II, pp. 16-18.

In October 1996, starting with Germany, Western European states began legislative, judicial and administrative proceedings to lift temporary protection and deport Bosnian refugees regardless of their place of origin. Germany alone announced its intention to deport between 70,000 and 90,000 refugees by 30 June 1997, and began revoking temporary protection without regard to international standards for the protection of refugees. An Austrian law has extended temporary protection through 31 August 1997 only for certain categories of refugees. And Switzerland revoked temporary protection as of 31 August 1996, but then extended it to 30 April 1997 for single people and childless couples and 31 August 1997 for families with children. Other European states have extended temporary protection. Danish and Norwegian authorities have stated that they have no intention of lifting the protection. While Sweden has decided not to deport Bosnian refugees, it has decided that Bosnian refugees with dual Croatian nationality could be deported there.⁹⁸

Following these developments, at the Humanitarian Issues Working Group meeting in December 1996, the High Commissioner for Refugees acknowledged that certain categories of refugees benefiting from temporary protection in Western Europe could be encouraged to return to Bosnia.⁹⁹ However, UNHCR urged that such repatriation must be on a voluntary basis. Also, UNHCR stated, it would not object to such repatriation so long as refugees are returned to their "habitual place of residence when such a location is within an area where their own group currently represents the majority and administers the area..., subject to verification by the host State of individual circumstances which may impede safe repatriation.... [Nonetheless], there may be individuals who may have a well founded fear of persecution in the situation prevailing today in Bosnia and Herzegovina within the terms of the 1951 Geneva Convention Relating to the Status of Refugees or have acute humanitarian needs."¹⁰⁰ In addition, UNHCR encourages the consideration of other durable solutions such as local integration and resettlement for refugees from Bosnia and Herzegovina.¹⁰¹

Refugee host-countries, in particular in Western Europe, have not always complied with the above listed UNHCR recommendations when considering the non-voluntary repatriation of Bosnian refugees.

During 1997, UNHCR expects some 200,000 refugees to repatriate, 25 percent of whom will be Bosnian Serbs from the RS Entity who will repatriate to that Entity, and 75 percent who will be Bosnian Croats and Bosniacs, in many cases from areas now included in the RS Entity, but who will have to return to the Federation, thus becoming

⁹⁸ AI Displaced Persons Report.

⁹⁹ UNHCR 1997 Operation, p. 1.

¹⁰⁰ UNHCR 1997 Operation, p. 4.

¹⁰¹ UNHCR 1997 Operation, p. 2.

internally displaced persons. Some 43,000 are expected to repatriate to Sarajevo, 27,000 to the Una Sana Canton, 23,000 to Tuzla-Podrinje, and 17,000 to Banja Luka. Four-fifths of the repatriation movement is expected to take place from May through September. It is estimated that 160,000 are expected to repatriate "spontaneously".¹⁰² But that number may be misleading as refugees in Europe are "voluntarily" repatriating to Bosnia and Herzegovina under pressure: for example, after their temporary protection status is revoked, after permission to earn a living is denied or revoked, and after public assistance subsidies are cut.

UNHCR and the Federation Ministry for Refugees have jointly established five transit centres for repatriating refugees. In addition, one transit centre in the RS Entity and five more centres in the Federation will be established by the second half of 1997. The centres will offer accommodation for returnees for a maximum of 48 hours and provide food and other services. The current capacity of the centres is 600, which will be expanded to 3,000 by the second half of the year.¹⁰³

Since three quarters of the repatriating refugees will not be able to return to their own former homes upon arrival because of war damage or occupation by others, they will have to rely temporarily on rental property or shared-space with host families. While some of the repatriating refugees will arrive with resources for their survival thanks in part to incentive packages offered by refugee host-countries, many may require additional cash to be able to meet the cost of temporary shelter.¹⁰⁴

VII. LOOKING FORWARD - MEASURES TO INCREASE RETURNS IN 1997

1996 turned out to be a year of entrenchment rather than return. With an inordinate amount of attention devoted to the September elections, the three main nationalist parties focused their energies on consolidating their power bases and showed little enthusiasm for the DPA's agenda for re-unifying the country and re-creating a multi-ethnic society. Unrealistic timetables for returns, set under pressure of a December 1996 pull-out date for the NATO-led forces (extended in December for 18 months), required the UNHCR and partner organisations to press for returns without the necessary prerequisites in place.

If the situation is to change substantially in 1997, there will have to be an intensified effort to create the necessary preconditions

¹⁰² UNHCR 1997 Operation, pp. 5-6.

¹⁰³ UNHCR 1997 Operation, p. 22.

¹⁰⁴ UNHCR 1997 Operation, p. 19. Details of incentive packages offered to repatriating refugees are described in UNHCR 1997 Operation, p. 37, Annex II.

for return: progress in arresting the indicted war criminals, breaking the grip of the nationalist parties, strengthening the moderate opposition, improving communication and travel across the ethnic divides, rebuilding homes, creating jobs, repealing discriminatory property laws, providing security for minorities and, in general, building confidence through a variety of measures.

The international community's main source of leverage to accomplish these goals remains economic conditionality. Reconstruction funds should be carefully tailored to promote minority returns as well as to enable majority returns on a significant scale.

In an effort to assist the reader, conclusions and recommendations in this section have been highlighted in bold-italics.

A. Support for Returns: Housing, Property Rights, Jobs

1. Urgent Need for Funding for Housing Reconstruction

To accommodate the 200,000 refugees who are expected to return in 1997, the 50,000 internally displaced persons whom they will dislodge, and the 20,000 people still living in collective centres, it is estimated that some 50-60,000 dwellings must be repaired. The majority of those units to be rehabilitated are in the Federation (23,300 in Sarajevo and its suburbs, 15,700 in the Tuzla area, 6,800 in Una Sana Canton, 3,000 in Mostar, and 2,400 in Zenica/Doboj Canton), and 7,900 in the "Anvil" area of the RS Entity.¹⁰⁵ Existing shelter projects will repair a maximum of 18,000.¹⁰⁶ This leaves a major funding gap of \$320-340 million for 1997. As of mid-April, reconstruction co-ordinating agencies did not have accurate and up to date information on how many construction projects had started or were set to start, let alone a list of housing units that should be repaired as a matter of high priority (based on such considerations as the degree of damage, employment prospects in the area, and verification of the owner or other lawful occupant as well as their desire to return).

¹⁰⁵ UNHCR 1996 Report on Target Areas, p. 3.

¹⁰⁶ RRTF Report, p. 10. Funds identified so far are as follows: UNHCR, \$50 million; European Commission, \$33 million; other bilateral donors, \$30 million; and estimated carryover from 1996 (funds not disbursed), \$50 million.

This is a crisis of immense proportions and urgency. Most repairs can only be undertaken during the good weather months (between May and November at best). Planning regarding which housing units should be repaired this year should be much further along than it is. The process cannot seriously get underway until sufficient funds are pledged.

Donors, especially the EU, should commit funds for housing reconstruction. They have made promises and pledges; they have planned and “identified” programmes; they have formed task forces and working groups; they have studied various ways to spend money (direct incentives to refugees, blocks of money to target areas, loan schemes). But four months into 1997, they are short well over \$300 million needed for what they themselves consider necessary to support the refugee repatriation.

Without these funds, UNHCR and reconstruction agencies cannot seriously plan. For instance, the \$50 million that the EU had “identified” for the UNHCR shelter programme as late as in March, has now been cut to \$40 million, and even that is still not secure. The US Congress voted that USAID was not to spend any money on reconstruction in Bosnia and Herzegovina for 1997.

Funding should also be allocated to the de-mining effort, without which reconstruction activities will grind to a halt in many parts of the country.

2. Code of Practice for Reconstruction Programmes

Because of problems encountered by reconstruction agencies in reaching agreement with municipal authorities concerning reconstruction and allocation of housing units, the Reconstruction and Return Task Force recently proposed that a Code of Practice should be developed to govern housing reconstruction.¹⁰⁷ The Code would form a package of conditions to be adopted by all organisations and donors involved in funding or implementing reconstruction programmes, as well as by Bosnian authorities as formal conditions for reconstruction aid.

The proposed Code is based on the following principles:

- (1) so far as possible, selected housing units for reconstruction should not be occupied currently;

¹⁰⁷ The RRTF is chaired by the OHR and comprised of the UNHCR, the European Commission, the World, the International Management Group and the Annex 7 Property Commission.

- (2) the ownership status of the unit targeted for reconstruction should be investigated, independently of the municipal authorities (the Property Commission will be available to perform this service for a fee);
- (3) where the owner of the reconstructed house is able and willing to do so, that person should be returned to the house;
- (4) in other cases where an owner is not returning, another returnee may be given a limited temporary occupancy right to the house, with the approval of the Municipal Authority;
- (5) the terms governing temporary occupancy rights will be imposed by the Property Commission consistent with the draft laws on abandoned property and flats prepared by the OHR;
- (6) the Municipal Authority will issue a Certificate of Temporary Occupancy to the returnee for a specific but renewable period;
- (7) the original owner of the property retains full legal rights over the entire property, irrespective of any reconstruction works performed on the property, or the length of occupation by temporary occupant.

These principles provide a solid starting point for a Code of Practice. However, they do not adequately take into account the need to repair homes of people who have remained in their homes during the war. The experience of the last year has shown that repairing only the homes of displaced persons, and especially of refugees who spent the war under what “remainees” consider relatively comfortable conditions in Europe, has created a certain understandable resentment, however unjustified, towards the returnees. Where the returnees have been minorities,¹⁰⁸ the resentment has often been expressed as open hostility¹⁰⁸

The European Union has directed that 50 percent of its housing assistance is to be spent on houses of refugees in European Union (EU) countries and the remainder on refugees in non-EU countries and internally displaced persons. ***The EU should consider revising this policy, and non-EU donors should consider how their funds might best support reconstruction programmes that also address the needs of people who remained in their homes.***

The Code should also incorporate the principle that when people return to an area where they are now in the minority and find that their pre-war residences are occupied, it is important to find alternative accommodations for the temporary occupants. Home owners who agree to accept

¹⁰⁸ See Section IV(B)(5), *supra*, for a discussion of the Pilot Projects.

displaced persons should receive some form of compensation, such as vouchers for free utilities or for interest in companies that will eventually be privatised.

3. War-Time Property Laws

The High Representative has declared that war-time property laws violate the right of refugees and internally displaced persons freely to return to their pre-war homes, and accordingly has pressed the authorities of both Entities to amend them in line with guidelines drafted by his staff.¹⁰⁹ In addition, the Federation draft Privatisation Law would allow the current “temporary” occupant of a socially-owned flat the option to purchase the flat, which would thus permanently extinguish any rights of the pre-war occupant or owner. The RS Entity government recently proposed amendments to its law which would remove the main obstacle to repossession by the lawful pre-war occupant or owner, namely, the “reciprocity clause”, providing that a pre-war occupant may reclaim his or her home only if the current occupant is willing and able to reclaim his home in the Federation. The Federation government has not yet accepted amendments to entitle pre-war holders of occupancy rights to reclaim their socially-owned flats, and to specify that only people who held occupancy rights before 6 April 1992 are entitled to purchase their socially-owned flats. This matter requires continuing attention.

4. Support for the Property Commission

The Commission for Real Property Claims of Displaced Persons and Refugees was established under Annex 7 of the DPA to determine the rights of persons to real property from which they have been displaced, as a crucial step in being able to exercise their right to return. It is expected that at least 600,000 claims will be filed with the Commission in the next several years.

The Commission was slow to establish offices, hire staff, develop rules of procedures, agree on the format of the database and questionnaires, and begin operations. However since August, it has been functioning at a steadily accelerating pace. It has now registered approximately 20,000 property claims, and verified close to 2,000. The Commission is key to the successful return of minorities and majorities alike, and warrants support at an increased funding level.

¹⁰⁹ See section V(A)(1), *supra*, for fuller discussion of the property laws.

In 1996, the Commission received approximately \$1 million to establish its operations. The Commission has drafted a budget of \$6.3 million for 1997 which would enable it to open 16 regional offices, place staff in refugee host countries, and establish mobile claim verification teams to collect cadastral and other property records from municipal authorities around the country for entry in a central data base. The Commission has also requested additional funds to be able to undertake special projects. For instance, it has now opened three offices in the Brcko area to enable it to give priority consideration to claims from that area, as an essential part of the work of the Return Commission for Brcko.¹¹⁰

To date, only \$3.6 million has been pledged by donors (including \$1.2 million from the US), and \$1.5 million has been received, sufficient to continue operations at the current level only until June 1997. The Commission has asked to be funded through regular assessments by the Steering Board responsible for funding the Office of the High Representative, so that it would know its annual budget in advance and be able to plan and develop its programmes on a sound economic basis.

The Steering Board of the Peace Implementation Council should vote at its next meeting to fund the Commission through regular assessments. The donor governments, led by the European Union, and the country whose national chairs the Commission (currently Switzerland), should commit the remaining \$3.1 million to meet the budget. Moreover, they should provide additional funds to enable the Commission, in the coming year, to establish the property rights of as many people as possible who want to return to homes in areas where they are now in the minority. This additional funding is necessary if the international community is to be able to take advantage of the narrowing window of opportunity for facilitating minority returns during the remaining 14 months of SFOR's mission.

Whether or not it receives funding beyond the requested \$6.3 million, ***the Commission should place a priority on establishing the property rights of minorities who want to return to their homes; and, in particular, to deciding claims from displaced persons trying to return to Brcko and the Sarajevo suburbs.***

¹¹⁰ This Commission, established in late April 1997, is comprised of the OHR, UNHCR, the European Commission, IPTF and SFOR, the same organisations that comprise the International Housing Commission which "facilitates" returns to the ZOS. See Section VII(B)3, *infra*, on recommendations regarding the ZOS return programme.

The Commission has declared its intention to be guided, in determining property rights, by the DPA and international law; and to disregard inconsistent Entity laws. **Accordingly, the negative effect of Entity property and citizenship laws, discussed above, could be substantially minimised if:**

- (1) the Entities were to pass laws saying that the decisions of the Property Commission have the force of law and are to be directly implemented by the municipal authorities;**
- (2) the international community were to ensure that the Property Commission had adequate financing to be able to decide a much greater quantity of claims than it is able to do currently.**

These two measures would effectively pre-empt the Entity courts from deciding property claims, and would make the Property Commission a genuine alternative that could reasonably be expected to make a dent in settling the huge number of disputed property claims.

The Office of the High Representative currently is working to persuade the Entities to adopt such implementing laws. **Donors should withhold committing money for housing reconstruction to particular municipalities until either their Entity government adopts a law stating that the decisions of the Property Commission are to be directly implemented by the municipal authorities, or the municipal authorities agree to be bound by the decisions of the Property Commission.**

5. RS Entity Law on Citizenship and Policy Against Minority Returns

In April 1997, the Entity National Assembly amended the RS Entity Law on Citizenship to grant RS Entity citizenship to all citizens of the former Yugoslavia who take up residence in the RS Entity by the end of 1997.¹¹¹ This law will apply to the 48,000 or more Croatian Serbs from the Krajina, and the

¹¹¹ A plausible argument could be made that this law is consistent with the letter of the DPA. Annex 4, the Constitution of Bosnia and Herzegovina, Article I(5) states that "citizenship of each Entity [shall] ... be regulated by each Entity", subject to five enumerated conditions. One of these is that "All citizens of either Entity are thereby citizens of Bosnia and Herzegovina." Control of citizenship is one of the cardinal aspects of sovereignty. It is hard to imagine that the drafters of the DPA intended to give the Entities the power to confer Bosnian citizenship. That, however, is the result of the DPA's failure to prohibit the Entities from conferring Entity citizenship on non-citizens of Bosnia and Herzegovina. Clumsy drafting should not be allowed to legitimise a clear challenge to the sovereignty of the country, which is affirmed by several provisions of the DPA. If there is any doubt on this point, the OHR should issue a legal opinion.

thousands from Slavonia, currently residing in the RS Entity, and might serve as an additional incentive to remaining Serbs in Eastern Slavonia to move to the RS Entity.

Although the law is not discriminatory in theory, it becomes discriminatory in practice in light of the stated opposition of the RS Entity authorities to the return of non-Serbs:¹¹² only people who reside in the RS Entity will be able to claim citizenship, and the RS Entity authorities make sure that only ethnic Serbs are able to reside there. The RS Entity authorities will continue to give priority to finding accommodation for these ethnic Serbs, using up what little remaining housing is available and in effect sealing off any possibility for non-Serbs to return to their pre-war homes.

It will be important for the OHR to press the RS Entity authorities to either repeal the amendment to the citizenship law, or to repudiate the current policy of preventing minority returns.

6. Access to Housing and Basic Services

Current procedures are inadequate for enabling refugees to establish, while they are still abroad, the status of their own homes or other acceptable accommodation in their home areas. Procedures are necessary so that refugees do not return only to have to stay in temporary shelters, and so that temporary occupants who will be displaced by their return can begin, at the earliest possible date, to look for other accommodation, if necessary, with assistance from the municipal authorities.

The plight of returnees without housing is exacerbated by restrictions on access to social services. In the Federation, returnees are not allowed to register for even basic food or medical assistance unless they can show proof of a place to stay. In the RS Entity, authorities often claim that, owing to limited resources, they cannot assure that non-Serbs will benefit from available social services.¹¹³ Moreover, in both Entities, authorities in various municipalities impose “war taxes” on returnees, especially minorities and refugees, thus limiting the amount of money they have for housing and other essential costs. ***Both Entities must prevent municipalities from imposing these added burdens on returnees.***

¹¹² See Section V(B), *supra*, for a discussion of the RS Entity policy regarding minority returns.

¹¹³ UNHCR 1997 Operation, p. 14.

B. Support for the Reintegration of Minorities

A principal aim of the Bosnian Serb and Croat nationalist leaders was to create “ethnically pure” territories as a precursor to secession. If one of the central goals of the DPA is to maintain Bosnia and Herzegovina as a single state, then the return of displaced persons to their homes is the only way the DPA promise can be kept. Otherwise, the centrifugal dynamics of three “ethnically cleansed” territories, already endowed with many of the attributes of a state, will prove impossible to resist and eventually three separate statelets will be created, each with territorial claims on the others. If Bosnia and Herzegovina is partitioned, enduring peace and stability will be an unlikely outcome.

The Contact Group recognised this imperative in drafting the DPA. Under their pressure, the Parties undertook to fulfil the promise to reintegrate the country by ensuring that refugees and internally displaced persons could exercise their right to return freely to their places of origin without delay, in safety, and with equal rights. However, during 16 months of peace, as it became clear that the Parties were failing to fulfil these as well as other commitments, the Contact Group and the inter-governmental organisations co-ordinating and assisting the implementation of the DPA resorted to stopgap measures rather than addressing the fundamental problem of non-compliance.

Frustrated with “unacceptable resistance” to minority returns at the end of 1996, UNHCR, the lead humanitarian agency charged with assisting and co-ordinating the return and reintegration of displaced persons, may have sent the wrong signal of resignation when setting priorities for 1997. The High Commissioner stated, “the priority [for 1997] will have to be on returns to majority areas. This is what is most do-able and safest given the conditions on the ground. But let me be very clear: we should continue to insist on the right of everyone to return to their homes wherever these may be - including minority areas.”¹¹⁴

Obviously, the reintegration of displaced persons into areas where they will be part of a minority population requires time and patience. However, the opportunity provided by SFOR’s presence will be squandered if the fundamental problem of non-compliance is not addressed. The remaining part of this section examines lessons learned from some of the confidence-building measures tried during 1996 to promote reintegration, explores other options, and offer some recommendations.

¹¹⁴ Statement of Mrs. Sadako Ogata, United Nations High Commissioner for Refugees at the Humanitarian Issues Working Group of the Peace Implementation Council, Geneva, 16 December 1996.

1. Condition Economic Assistance on Compliance with the DPA

The London Implementation Council recognised the concept of economic conditionality by concluding that the “willingness to devote human and financial resources is dependent upon a strengthened commitment from the authorities in Bosnia and Herzegovina to implementation of the Peace Agreement.”¹¹⁵ More particularly, the Council urged the Bosnian authorities to create and maintain “conditions to encourage the return of refugees and [internally] displaced persons to places of their choice in either of the two Entities.”¹¹⁶ UNHCR has urged that “conditionality should not be used only to sanction non-compliance but could be used positively to demonstrate the rapid and palpable benefits of full compliance.”¹¹⁷ Similarly, in a report published in November and submitted to the DPA Implementation Council meeting in London, ICG suggested that municipalities which encourage the return of displaced minorities must be rewarded with economic assistance.

Assistance must not only be provided to accommodate the returnees but also to develop the local economic and social infrastructure, thus also assisting those who remained during the war. If a municipality prevents such returns, it should receive no funding from the international community. The more receptive to minority returns a municipality proves to be, the more funding it should receive. The policy should be explained in the local media so that the link is made clear, which may in time change the public image of returnees from that of an unwelcome threat to an economic asset.¹¹⁸

All housing and infrastructure reconstruction programmes in Bosnia and Herzegovina should be linked to minority returns if the community in question included minorities before the war, but for this to work, all donors must be committed to the policy. The policy will collapse if intransigent local authorities are allowed to take advantage of “competitive” donors.¹¹⁹

¹¹⁵ *Bosnia and Herzegovina 1997: Making Peace Work*, London Peace Implementation Conference, Summary of Conclusion, 5 December 1996, London, p. 2; hereinafter referred to as London Conclusions.

¹¹⁶ *Ibid*, p. 4.

¹¹⁷ UNHCR 1997 Operation, p. 20.

¹¹⁸ *Aid and Accountability: Dayton Implementation*, ICG Report, 24 November 1996, Sarajevo.

¹¹⁹ ICG will publish shortly a separate report with recommendations on how to apply economic conditionality on Entity, municipal and individual levels to promote compliance with DPA, including the reintegration of minority displaced persons.

2. Reinforce Grass-Roots Level Displaced Persons Organisations

The Coalition for Return made a promising debut in late 1996. In his report to the Security Council, the High Representatives stated, "By jointly expressing their interests, those most affected by the war and manipulated by the authorities are becoming a significant political force at the grass-roots level."¹²⁰ The Coalition for Return and similar organisations of displaced persons throughout the country have initiated negotiations with some local authorities to allow the reintegration of their communities by facilitating the return of minority displaced persons.

The Office of the High Representative was instrumental in initiating the Coalition and supports their efforts. That support should be sustained and other international institutions should join in the effort.

3. Confidence-Building Measures

Confidence-building measures initiated during the past 16 months were meant to promote freedom of movement and return of displaced persons to minority areas. While, some of the measures were successful in promoting freedom of movement by allowing displaced persons to visit their homes, other measures failed all together and proved counter-productive.¹²¹

The **Pilot Projects**, which were agreed upon at Dayton and which UNHCR inherited, were disappointingly slow as noted above. UNHCR's plans for 1997 instead propose a new concept of "Open Cities" which sounds similar, but contain certain differences in emphasis. Following encouraging developments in central Bosnia and Herzegovina (Federation) where grass-roots displaced persons' organisations and local authorities have began low-key initiatives to accelerate returns of minorities to their places of origin, UNHCR and its partners recently announced that they will offer support and material assistance to villages and municipalities which volunteer to declare themselves "Open Cities", allowing and welcoming previous residents from all national communities.¹²²

The difference between the Pilot Projects and the Open City initiative is important. While the former was agreed at the

¹²⁰ OHR Report, p. 14.

¹²¹ See section IV(B), *supra*.

¹²² UNHCR 1997 Operation, p. 19.

national level, the latter relies exclusively on the initiative of displaced persons themselves and local authorities. If the international community fulfils its promise of support and material assistance, and if the Entity authorities demonstrate clearly their support for the initiative or at least do not obstruct it, the Open Cities initiative could lead to larger-scale returns of minorities across former confrontation lines. ***However, in order not to generate the resentment created by the Pilot Projects where assistance was provided only to the returnees, assistance should be channelled also to the receiving communities.***

As related above, the **ZOS Procedures** resulted in only a handful of returns. Of roughly 4,500 families who have been cleared for return to the ZOS under the International Housing Commission Procedures, only a little more than 200 have actually done so. The reason is obvious: even though displaced persons may want to return to homes in the ZOS, they are extremely reluctant to do so under existing conditions.

The ZOS procedures became increasingly efficient during 1996 in processing applications, and if the pattern continues, the backlog of approved applications will continue to grow to no useful purpose. Field officers involved in the IHC process have concluded that the procedure is at best a waste of time, and at worst a deception, since IHC approvals carry no assurance of security or of financial assistance. If peace breaks down, the ZOS returnees will almost certainly be among the first victims since they live in militarily sensitive front-line areas where fighting is likely to break out.

There is no point in continuing the ZOS procedures exercise if the international community does not offer a security guarantee for the ZOS returnees and provide adequate financial assistance. As matters stand at present, the current process is a time-consuming failure and should be scrapped.

Assessment visits have proven useful only when they are negotiated between local authorities and representatives of displaced persons, and only if they can be kept low profile. The co-operation of local, Entity, or territorial authorities with such visits must be an important factor in determining whether the authorities should benefit from international economic assistance.

UNHCR is seeking to disengage from the management of inter-Entity **bus services**, which are not a traditional UNHCR activity. In contrast to assessment visits and ZOS returns, the UNHCR bussing programme has been an overwhelming success,

indeed virtually the only success to date in reintegrating the country. ***It is vital that this bussing programme -- which is a unique success story – be maintained and expanded by some international agency if not UNHCR until a commercial alternative can be found.***

The draft reports produced by the **Repatriation Information Centre** (RIC) have failed to live up to expectations. ***Unless the RIC can improve the accuracy and timeliness of the information contained in these reports and translate them into local languages, their usefulness will be limited.***

4. Promote Substantial Minority Returns to Key Areas

During 1997, attention should be focused on assisting substantial minority returns to a few key communities where their reintegration is most likely to be successful. Such an effort will require a co-ordinated effort to rehabilitate housing and infrastructure, and create employment opportunities for the returnees as well as the receiving community. ***Security for the returnees must also be on the forefront of these efforts by increasing IPTF and SFOR presence in those communities, vetting the local police as well as adding minority members to the force, and using whatever political and economic leverages are available.***

The current one-year period during which part of the Brcko municipality on the RS Entity side of the IEBL (Brcko RS) is under international supervision offers the best window of opportunity for breaking the logjam through large-scale minority returns. ***Thus, it is particularly important that steps be initiated as soon as possible to promote the return of displaced persons now living in Brcko RS to their homes in the Sarajevo suburbs and elsewhere, so that non-Serb displaced persons from Brcko RS can return to their homes.*** Responding to the Brcko arbitration decision, the High Representative declared his intention to initiate “procedures broadly similar to those currently used to facilitate the return of refugees and [internally] displaced persons to the Zone of Separation”.¹²³ UNHCR plans to focus on Brcko through its shelter rehabilitation programme (600 houses), Priority Target Areas programme, information activities, and legal aid project.¹²⁴

The Brcko Arbitral Tribunal may order that the Town of Brcko be made a special district of Bosnia and Herzegovina if there is

¹²³ Statement of the Office of the High Representative, 14 February 1997.

¹²⁴ UNHCR 1997 Operation, p. 20.

not “satisfactory compliance with the DPA and the development of representative democratic local government”.¹²⁵ The possibility that the administration of Brcko Town could be removed from the RS Entity is a major source of leverage to encourage compliance with the terms of the Award and the DPA generally. ***“Satisfactory compliance” means most importantly the return of a substantial number of displaced non-Serbs to Brcko RS and measures to promote such returns, including restructuring and re-training of the Brcko police; freedom of movement; a fair and comprehensive voter registration process for the forthcoming municipal elections; conditions for free and fair elections; non-discrimination in employment, education and social services; and protection of security and other human rights of minorities.***

A key step in promoting returns of pre-war residents to Brcko RS will be finding adequate accommodation for Bosnian Serbs displaced from elsewhere and currently residing in Brcko. The most durable and cost-effective solution is to make it possible for those displaced Bosnian Serbs to return to their pre-war homes. Up to 7,000 Bosnian Serbs currently living in Brcko RS are from the Sarajevo suburbs and Croat-controlled Jajce. Federation authorities, whose conduct during the next year will also be evaluated by the Brcko Tribunal for “satisfactory compliance”, must be urged to encourage the return of the displaced Bosnian Serbs to the Sarajevo suburbs and Jajce by concrete actions, including measures to reintegrate the police force in the Sarajevo suburbs and Jajce, return “abandoned” real property to their pre-war rightful owners and occupants, find alternative accommodation for the current occupants of those “abandoned” property, guarantee equal opportunities for returning minorities especially in regards to employment and education, and launch a media campaign to publicise those measures and encourage minority returns. In addition, and as a matter of priority, the Constitution of the Federation must be amended to include Serb minority citizens, along with “Bosniacs and Croats”, as a “constituent people” of the Entity.¹²⁶

In recent days, Brcko Supervisor William Ferrand has announced the plan through which he intends to expedite the voluntary return of non-Serb displaced persons to Brcko RS, and the voluntary return of Bosnian Serbs now resident in Brcko RS to their former homes in the Federation.

¹²⁵ *The Award of the Arbitral Tribunal for Dispute Over Inter-Entity Boundary in Brcko Area*, signed in Rome on 14 February 1997, par. II(B), p. 42.

¹²⁶ See Part I, Article I(1) of the Constitution.

The plan calls for displaced persons to submit statements of intent to return to the Return Commission for Brcko, which will then be submitted to the Property Commission for review. Once applications are approved, municipal officials will be required to give 60 days notice to current inhabitants of the houses to which displaced persons intend to return, and will be responsible for assigning the current residents to “reasonably adequate” substitute accommodations.

This is a straightforward and equitable procedure for launching a systematic return process that hastens the return of displaced persons to their homes, both in Brcko RS and in the Federation. Given adequate support by the international community and co-operation by local officials, the Brcko Supervisor’s plan stands a good chance of unravelling one of the most complex issues in Bosnia and Herzegovina. Its implementation should be the highest priority for the international community in 1997.

If such a focused approach to the return of substantial numbers of minorities to their pre-war homes is successful in Brcko, the Sarajevo suburbs and Jajce, it may have a catalytic effect in other areas.

5. Promote Minority Returns to Target Areas and Priority Target Areas

During 1996 UNHCR designated 22 communities as Target Areas based on a set of criteria discussed elsewhere in this report. For 1997, the number of communities targeted for return has been increased to 39, of which 15 are designated as Priority Target Areas (12 in the Federation and three in the RS Entity). The Reconstruction and Return Task Force (RRTF) under the auspices of the Office of the High Representative has adopted a similar approach of designating target areas in order “to strengthen the linkage between investment in reconstruction and return”.¹²⁷

The target area programme in 1996 was successful in promoting large-scale returns in general. However, minority return was not one of the aims of the programme and very few minorities returned in those areas. ***Authorities of communities designated as Target Areas or Priority Target Areas must be encouraged through economic incentives to accept the return of displaced persons belonging to minorities.*** Such incentives could include the grant of

¹²⁷ UNHCR 1997 Operation, p. 21.

additional funds to assist the receiving community improve its infrastructure, schools, and health services, as well as economic development funds to create additional employment opportunities. ***The benefits of accepting minority displaced persons back into the community must be tangible and well advertised.***

The Return and Reconstruction Task Force has designated five Priority Areas, including cities that have no minority populations (Doboj) or where human rights violations are serious (Bihac). Neither the RRTF nor UNHCR include Tuzla in their Priority Areas because the area is said to be over-populated. Yet Tuzla is the only city in the country governed by a moderate non-nationalist party and where substantial minorities continue to coexist. ***UNHCR's and RRTF's message to support minority returns through economic conditionality will be substantially undermined if the efforts of Tuzla authorities are not supported with economic assistance.***

6. Ensure Security for Minorities

The IPTF authority to supervise the restructuring and vetting of the Bosnian police forces, set forth in the DPA, was clarified and elaborated as regards the Federation Police in the Bonn-Petersberg Agreement of 25 April 1996. Pursuant to that and subsequent understandings, the Federation Minister of the Interior agreed to reduce the total number of police from 23,000 to 11,500 (10,500 for the ten cantonal forces and 1,000 for a proposed Federation-level force).¹²⁸ Police are to be removed from the force if they had inadequate police training (about half of the police are demobilised soldiers with no police training at all); if they committed serious violations of international standards of democratic policing documented by IPTF; if they refused to co-operate with IPTF; if they have been indicted by the International Criminal Tribunal for the Former Yugoslavia (ICTY) or if ICTY has substantial evidence of their guilt (contingent upon ICTY's development of appropriate due process safeguards); if INTERPOL has evidence against them; or if citizens present solid evidence that they had committed human rights violations during or since the war. The names of candidates for the newly reconstituted force are to be published in newspapers in the canton in which the candidate will work to give the public the opportunity to present evidence against officers who have committed abuses or who are unsuitable for other reasons. In vetting the police, efforts are to be made on a

¹²⁸ *Update on the Formation of the Federation Police and on the Vetting Process*, UN-IPTF, revised 7 February 1997, p. 3, par. 3.

canton-by-canton basis to reach an ethnic composition that reflected the canton's pre-war population.

The *quid pro quo* is that the international community agreed to provide assistance -- in terms of equipment, uniforms and training -- to each cantonal police force that completed the first phase of the process. To date, only the Sarajevo Canton Police Forces has done so, and Central Bosnia and Tuzla Cantons are expected to do so by May and July, respectively. In addition, all ten Cantons have completed the initial steps.

Pursuant to pressure from the IPTF Commissioner, several police chiefs were dismissed from their posts, including in Bihac, Prijedor, Teslic, and Bugojno; officers were vetted from the Sarajevo force; and dozens of officers have had non-compliance reports filed against them. While most of the ousted police chiefs continue to exercise power from other positions, their removal did send signals to the local police that their actions are being scrutinised. Monitors reported some improvements, if only temporary, following the dismissals.

The dismissals would have greater impact if the rogue chiefs were removed from all positions of influence and their paycheques and pension payments were terminated. The IPTF Commissioner should continue to press for the dismissal of police chiefs who encourage or tolerate human rights violations and, together with the High Representative, should do what they can to ensure that they are not simply moved laterally to other posts or even promoted. When police are disciplined by suspension, IPTF should monitor that they are not paid during that time. IPTF Headquarters in Sarajevo should follow-up on non-compliance reports which, by some accounts often "get lost in a black hole". IPTF Headquarters should design a clear system of levels of response, and should follow-up when interventions from the field prove inadequate.

Whereas the vetting and restructuring of the Federation police has had a slow start, it has not even begun in the RS Entity. According to a UN report of a meeting in January 1997 between IPTF and the RS Entity Minister of the Interior Dragan Kijac, Kijac refused the concept of vetting, and reiterated that training could be considered provided that they were "negotiated and not imposed". He added that "decisions could only be executed in accordance with the Republika Srpska laws and upon approval by the Republika Srpska Supreme Defence Council". Kijac denied that ICTY indictees were serving in the police force, adding that the Entity "does its own vetting and stressed

that details about police officers were considered a state secret".¹²⁹

IPTF has done what it can to press Minister Kijac to accept its supervision, as mandated by the DPA, but to no avail. The High Representative must give the problem higher priority. If Minister Kijac continues his intransigence, the High Representative should call on governments, especially those that have good diplomatic and economic relations with the RS Entity, to use their leverage and, if necessary, apply appropriate sanctions.

In the absence of an agreement between IPTF and the Ministry of the Interior, IPTF has virtually no ability to discourage obstruction of minority returns and other DPA violations. Accordingly, ***IPTF and SFOR should agree on ways to fill the vacuum of international supervision of the RS Entity police. For instance, SFOR might increase its spot checks of the RS Entity police stations for illegal weapons.***

While IFOR's principal task was to supervise the military aspects of the agreement, the DPA also establishes the right of the NATO-led force "to fulfil its supporting tasks" which include "to observe and prevent interference with the movement of civilian populations, refugees and [internally] displaced persons and to respond appropriately to deliberate violence to life and person."¹³⁰ During the latter half of 1996, when returns were met with increasingly violent obstruction, IFOR commanders along with NATO political leaders did relatively little to prevent interference with the return of minorities, stating that the responsibility of guaranteeing freedom of movement and secure conditions for return lay with the Parties and was not a NATO task.¹³¹ ***Leaving the responsibility for guaranteeing the security of returning minorities to local authorities, many of whom only recently ethnically cleansed them from their respective regions, amounts to severely undermining the return process.***

SFOR, together with UNHCR and IPTF, should develop options as to how to provide better security for minority returnees. One obvious measure is to increase their

¹²⁹ UN Mission in Bosnia and Herzegovina, Weekly Situation Report, 7-13 January 1997. In fact, there is solid evidence that six men indicted by ICTY worked for the RS Entity Police Force in Prijedor, Samac and Omarska, four of whom were "temporarily suspended" after a series of articles about them were published by the Boston Globe in November. In addition, four indictees are working as police in Foca. News, published by War Criminals Watch, 4 April 1997.

¹³⁰ Annex 1-A, Article VI, Par. 3.

¹³¹ U.S. Secretary of Defence William Cohen stated that SFOR was not in Bosnia and Herzegovina "to enforce resettlement [of refugees] and guarantee ... security" and suggested that local police provide the security guaranties, Reuter, 10 March 1997.

presence and visibility by conducting more patrols through neighbourhoods, villages and towns to which minorities have returned. SFOR and IPTF should provide security for the UNHCR bus lines when requested (in particular, the Sarajevo-Gorazde buses which continue to be pelted by rocks on a regular basis). "Robust" patrols such as the ones carried out in Mostar after the 10 February Bajram-shooting should be activated in areas where returns are obstructed. When people are forced out of their homes, IPTF and SFOR should take prompt action to re-instate them. This worked successfully in Mostar following the expulsions in mid-February; the key is that firm action must be taken promptly.

The IFOR/SFOR stance on security in the ZOS contains an inherent anti-return bias. As soon as IFOR's initial military tasks were completed, NATO's bedrock priorities became "force protection" and keeping the way clear for an early departure from the country. As a result, IFOR/SFOR commanders appear to take a dim view of all developments that complicate the situation, and they have been sterner with Bosniacs, who have been asserting their right to return, than with RS Entity authorities who are defending the status quo.

Destruction of homes owned by minorities is one of the most flagrant manifestations of disdain for the right of minorities. Given the control of the police and the local militaries in virtually all areas where these destructions have occurred, the culpability of the local authorities cannot be doubted.

Thus far SFOR has not found a way to respond to the local authorities who are responsible, behind the scenes, for the destruction of houses in areas under their control. This has been extremely costly to SFOR's image. There is, however, a simple means by which to apply the acts-have-consequences principle even-handedly. When minority owned property are destroyed, SFOR could remove an equal number of tanks from cantonment sites in the Entity in which the incident occurred and destroy them.

A "tank-for-a-house" response would be measured and proportionate, easy to explain and transparently fair. It could be implemented without complicated operations that expose NATO personnel to inordinate risk. It would do much to restore SFOR credibility in both the Federation and the RS Entity. More importantly, it is likely to bring the destruction of houses to a screeching halt.

C. Freedom of Movement and Communications

For reasons noted in the introduction, the three nationalist parties are pursuing separate policies, and many of the authorities are working to defeat reintegration either because they are ideologically committed to secessionist nationalist politics, or because they profit from them. This means that virtually all the normal means that link the citizens of a modern state -- phone lines, mail delivery, free movement on highways, rail and bus service, distribution of printed material, electronic media -- have been disrupted. Moreover, many of the nationalist authorities, particularly in the RS Entity and Bosnian Croat-controlled territories of the Federation have a clear political interest in keeping them blocked.

Little by little some cracks have appeared in the walls. The first, and in many ways, the most important was the rebirth of commercial ties exemplified by the establishment of the so-called Arizona Market in the ZOS near Brcko only a few days after the DPA was signed. Citizens of all three ethnic groups, and of the nearby states, began flocking to the Arizona Market to do business and make money. The mixture of license plates was striking, and so was the number of vehicles that showed no license plates at all, indicating that their drivers are moving across the IEBL in defiance of the separatist plans of those trying to break Bosnia and Herzegovina apart.

Another sign of the desire of "normal people" to overcome the inter-Entity divisions has been the overwhelmingly favourable response to the free bus service established early last summer by UNHCR. Despite some friction and occasional roadblocks or stones thrown along the highways, and despite the determined resistance of authorities in some, but not all, parts of the RS Entity and Bosnian Croat-controlled territories of the Federation, passengers were still determined to travel and, on many routes, the buses were packed. These signs suggest that there is indeed both a silent majority of non-nationalist Bosnians and an "informal economy" which could become a force for normalisation and reintegration. Unfortunately, however, the process remains largely blocked.

At least part of the answer to the problem of displaced persons' returns will lie in a strategy of creative incrementalism, a range of intermediate steps aimed not at a fundamental shift in the Entity/state power relationship, but at increasing inter-Entity trade, and other forms of commercial and social normalisation.

It is easy to list steps that ought to be taken to promote the reintegration of Bosnia and Herzegovina: institute a uniform

vehicular licence plate system in all Entities; open and sustain the train lines, for example from Sarajevo to the Dalmatian coast, from Tuzla to Brcko, from Doboj to Zenica; expand and then privatise the UNHCR bus lines, reconnect the phone lines and establish a country-wide TV and radio network. All these steps would enhance the probabilities of displaced persons' returns. All, however, are more easily listed than done because of the resistance of recalcitrant authorities who either oppose freedom of movement for ideological reasons or because they have a financial interest in maintaining the status quo.

One of the most important challenges facing the International Supervisor in Brcko will be using what leverage and persuasive powers he has to establish inter-Entity commercial ties, which should accelerate social and cultural linkages in that part of Bosnia and Herzegovina. This would not only support the return of displaced persons to Brcko, but would begin to undermine the IEBL by establishing links between the entire former Brcko Municipality and the Tuzla region.

The Brcko Supervisor has an exceedingly difficult job due to the complexity of the issue, the short time frame in which he is working and his relatively limited leverage, compared for example with that of the Transitional Administrator in Eastern Slavonia. **It will be vital for the international community to give him all possible co-operation and support, financial and otherwise, so that the Brcko administration lies up to its potential for breaching the IEBL and launching a reintegration process.**

D. Breaking the Grip of the Nationalist Parties

Ever since the outbreak of hostilities in the former Yugoslavia, international mediators have attempted to achieve a lasting settlement on the basis of agreements brokered between nationalists. This policy failed miserably during more than four years of war and, as detailed in this report, has yielded minimal results as far as the return of minority displaced persons is concerned in the first 16 months of peace.

Displaced persons will not return to their homes if those who expelled them in the first place and were possibly also responsible for the deaths of friends and relatives remain in positions of authority. As UNHCR notes in a recent report: "The *sine qua non* condition for minority returns to begin in large numbers is a positive change in the political climate from one of separation to one of reconciliation."¹³²

¹³² UNHCR 1997 Operation, p. 17.

The nationalist parties, the SDS and the HDZ in particular, but also increasingly extremist elements in the SDA, stand for partition and ethnic division, not DPA implementation and certainly not the return of minority displaced persons. Many key members of the nationalist parties have profited directly from the war and have frequently compromised themselves in the process to such an extent that they now have a vested interest in maintaining the status quo. Moreover, if minorities return to their homes and again live together in peace with their former neighbours from different ethnic backgrounds, the very ideology on which the nationalist parties justified the war and continue to base their rule will be proved to be false.

Any strategy to help minorities back to their homes must also be one which seeks to break the vice-like grip which the nationalist parties hold on all aspects of Bosnian society and thus give "normal" Bosnians a chance to take control of their own destiny. Instead of considering the nationalists as the key to a potential solution, therefore, it is time that they were viewed for what they are, namely the problem, and treated accordingly. Given the level of intimidation which exists throughout the country and the strangle-hold which the nationalist parties currently have over the country, this is a daunting task. The following suggestions should be key components of such a strategy.

1. Arrest and Put on Trial Indicted War Criminals

In his latest report to the UN Secretary General, High Representative Carl Bildt made it clear that an indicted war criminal continued to run the RS Entity. He wrote that: "In spite of his undertakings to the contrary, and those of the RS Entity leadership, he [Karadzic] seeks consistently to influence the political process. He is a force of evil and intrigue which can only taint those personalities and institutions of the RS Entity which continue to tolerate his activities... It remains my opinion that these issues must be resolved if we are to carry the political part of the peace process forward as envisaged."¹³³

No matter how much some in the international community might wish the issue of war crimes to disappear, it will not go away and must be tackled head on if the peace process is to be given a chance and refugees, in particular minorities, are to return home. The impact of arresting Radovan Karadzic, who is still in a position of influence, cannot be over-estimated. This move alone would break the cycle of impunity which has to date characterised the conflict in the

¹³³ OHR Report, p 24.

former Yugoslavia and potentially generate a sea-change in attitudes. However, ICTY will be most effective if it is widely perceived to be even-handed. ***It is vital, therefore, that ICTY complete investigations and issue indictments of other high level suspects who may continue to exercise political power in other areas.*** Finally, after more than six years, individuals would be held answerable for their actions. It would also help shatter the confidence of the nationalist parties as well as their ideology of ethnic hatred and intolerance, especially if accompanied by a televised trial and a sustained media campaign to explain the prosecution to ordinary Bosnian Serbs and Croats.

2. Create Mechanism to Remove Obstructionist Officials at All Levels

The nationalist cancer extends much deeper in Bosnian society than the leadership of the nationalist parties, and obstructionist officials are in positions of authority at all levels. A mechanism is therefore required to secure their removal. A properly funded ICTY would be a start. Given the resources, this body could build cases against, indict, and prosecute many more individuals, in particular the most notorious war lords, for war crimes. Moreover, many of these individuals continue to wield great influence. ***This route, however, will only yield results in the long-term, hence the immediate need for a DPA Implementation Council with the power to dismiss obstructionist officials.***

ICG originally urged the creation of a DPA Implementation Council last year.¹³⁴ As such it was based on the proposal of Federation Mediator Dr. Christian Schwarz-Schilling for a Federation Implementation Council to examine complaints against persons holding public office for violations of internationally recognised human rights, the DPA, Federation law, cantonal or local law, or for serious obstruction of co-operation with the ICTY. The DPA Implementation Council should be chaired by the High Representative or his Principal Deputy, and should include representatives of the governments of the state and both Entities, as well as additional representatives of the international community. To date, however, there has been no move to form such a body. The proposal to establish a Federation Implementation Council, by contrast, was adopted by the Federal government on 27 March 1997 and will be presented to the Federal parliament shortly.

¹³⁴ *Aid and Accountability: Dayton Implementation*, ICG Report, 24 November 1997.

3. Strengthen Moderate Non-Nationalist Alternatives

The moderate opposition parties are the best hope for a democratic future in Bosnia and Herzegovina. As such, they merit generous backing from the international community in terms of financial support, security and access to the media. In particular, they require support just to be in contact with each other across the inter-Entity divide. The recently-formed shadow government and the alternative citizens' parliament in Tuzla should, in particular, be promoted as legitimate alternatives to the nationalist parties, worthy at the very least of visits from key international leaders. ***Further, aid should as a matter of principle be channelled to municipalities such as Tuzla which are held by non-nationalists. Non-nationalist rule must in time come to be equated with economic prosperity.***

4. Create Conditions for Free, Fair and Democratic Municipal Elections

The 14 September 1996 national poll was deeply flawed and took place in the absence of even minimum conditions for free, fair and democratic elections. In the interest of ramming the event through and adhering to the strict timetable set in the DPA, the nationalist parties were effectively allowed to dictate the terms in which the elections were fought and thus ensure their own victory. Other deadlines and conditions mandated in the DPA were conveniently ignored. In these circumstances, elections were bound to confirm the division of the country along ethnic lines, which indeed they did.

The consequences of the national poll make it much more difficult to insist on higher standards at the local level. ***Nevertheless, municipal elections can be an effective weapon against the nationalist parties, if the international community is prepared to insist on minimum conditions to make them free, fair and democratic.***

The electoral engineering which took place with the registration process in 1996 must not be repeated. The OSCE's Democratisation Office, and various other organisations working on "democracy projects" should assist Bosnian civic groups in spreading information to displaced persons aimed at helping them make informed decisions about where to register to vote. These municipal elections provide the best opportunity for displaced persons themselves to try to improve conditions for return. Electoral victories by minority parties, if followed by their full

participation on municipal councils, would be an effective step to improve prospects for security and equal rights for minorities over the long-term. Conversely, if minority parties cannot get toe-holds in a number of municipalities across the country, chances for the country's reintegration are substantially diminished.

The Election Appeals Sub-Commission (EASC) of the OSCE could play a critical role in preventing actions that discourage minority returns or in any way hinder displaced minorities from registering and voting in their home municipalities. The EASC has the authority to terminate the candidacies of, or impose other penalties against, candidates who obstruct "conditions conducive to the conduct of a free and fair election and a climate of democratic tolerance" or who fail "to ensure that the [Electoral] Code [of Conduct] is strictly observed by all their representatives, campaign workers and active supporters."¹³⁵ Since obstruction of minority returns clearly has an impact on the "conditions for free and fair elections", disqualification of candidates can be a powerful tool with which to stimulate the return process. Only if minimum conditions are created will Bosnians have an opportunity to make a rational choice about their future and opposition parties have a chance to be elected.

Once the OSCE publishes the list of candidates for the 1997 municipal elections, the OHR, UNHCR and others should document actions by candidates that obstruct minority returns and forward these complaints to the OSCE. In particular, the OHR and OSCE should broaden their efforts to document obstruction by authorities of the right of minorities to return and of other conditions necessary for free and fair elections. When offices of the OSCE receive well-documented reports of such obstruction, they should forward them to the EASC.

5. Boost Alternative Media and Pursue Aggressive Anti-Nationalist Public Information Campaign

ICG's recommendations on media policy were published in a recent report.¹³⁶ ***In essence there are two key components to a strategy aimed at breaking the grip of the nationalist parties. On the one hand, alternative media must be boosted. On the other, international organisations operating in Bosnia and Herzegovina must pursue an***

¹³⁵ Provisional Election Commission (PEC) Rules and Regulations, Arts. 119, 140-41.

¹³⁶ *Media in Bosnia and Herzegovina: How International Support can be More Effective*, ICG Report, 7 March 1997.

aggressive anti-nationalist public information campaign in the local media.

The great success of international media projects is without doubt the Swiss-sponsored Free Elections Radio Network (FERN) which has developed a quality product and built up an audience in a very short period. ***As a matter of urgency, this project must be expanded so that the station's signal can be picked up throughout the country.***

In addition, international organisations must switch the focus of their public relations from the international to the local media and explain again and again what they are doing in Bosnia and Herzegovina and what they aim to achieve. In the process, they must take on the nationalists in their own media, articulating why, for example, it is imperative that indicted war criminals are handed over for trial.

Sarajevo 30 April 1997