



ELECTIONS IN
BOSNIA & HERZEGOVINA

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ELECTIONS IN BOSNIA AND HERZEGOVINA

I. INTRODUCTION

On 13 August the International Crisis Group monitoring the implementation of the Dayton Peace Agreement (DPA) issued a report calling for the postponement of the elections in Bosnia and Herzegovina on the grounds that the minimum conditions for a free and fair poll did not exist. Although this call was partly answered by the decision of the Organisation for Security and Co-operation in Europe (OSCE) to postpone municipal elections because of the blatant manipulation of the registration of refugee voters in the Federal Republic of Yugoslavia and the Republic of Croatia, the OSCE did not regard this as sufficient reason for postponing the general elections. On 14 September the people of Bosnia and Herzegovina voted in multi-party elections for the first time since 1990. However, the Parties to the DPA (the Republic of Bosnia and Herzegovina, and its two constituent entities - the Federation of Bosnia and Herzegovina and Republika Srpska) had not created the minimum conditions for elections: repatriation and reintegration of refugees had not begun; indicted war criminals continued to exert influence behind the scenes; and freedom of movement and expression remained severely restricted. Under such handicaps the elections were bound to confirm the effective division of the country on ethnic lines and that proved to be so.

Events on the day showed that many thousands of voters were prevented from casting their ballot. Some were disenfranchised beforehand because of technical errors in the registration process; others were disenfranchised on the day through errors in the voter lists; yet others failed to cross the Inter-Entity Boundary Line (IEBL) to vote because of fears for their security, confusion over transport arrangements and restrictions on seeing their former homes; and some did not see any reason to cross the IEBL because the municipal elections had been cancelled. By contrast, tens of thousands of Serb refugees were bussed into Republika Srpska from the Federal Republic of Yugoslavia to vote where instructed or lose their refugee status and benefits.

Analysis of the preliminary results from the elections suggests that there was a serious discrepancy between the overall voter population and the number of ballots cast. It would seem that there was a turnout of over 100%. This calls in question the validity of the results.

On the basis of this failure to achieve the required conditions for holding the elections, disenfranchisement, electoral engineering, and the preliminary vote count results, the 14 September elections in Bosnia and Herzegovina cannot be considered free and fair as required by the DPA.

This report describes the recent historical context and analyses the campaign, the conduct and the outcome of the elections.

II. BACKGROUND

A. General

1. Bosnia and Herzegovina in Yugoslavia

Bosnia and Herzegovina was the most ethnically mixed of the six republics making up the Yugoslav state that emerged from the Second World War. While every republic contained more than one ethnic group, a single nation formed an absolute majority in each of the other five, and minorities tended to be concentrated in specific regions. In Bosnia and Herzegovina, by contrast, no nation formed an absolute majority and all three constituent nations were intermingled throughout the republic.

According to the last census, carried out in April 1991, 43.5 per cent of Bosnia and Herzegovina's 4,377,033 citizens declared themselves Muslim (Bosniac), 31.2 per cent Serb, 17.4 per cent Croat and 5.5 per cent Yugoslav (usually the offspring of mixed marriages). Another 2.4 per cent of the population did not belong to any of these categories.¹ Of 109 municipalities 37 had an absolute Muslim (Bosniac) majority, 32 an absolute Serb majority and 13 an absolute Croat majority.

2. Bosnian Election of 1990

Bosnians went to the polls for two rounds of voting in November and December 1990. The Bosnian vote followed elections in Slovenia and Croatia, Yugoslavia's two northern-most republics, in April that year.

As communism disintegrated and nationalists rose to power in neighbouring republics, Bosnians sought security within their own ethnic group to such an extent that the election results resembled those of an ethnic census. Of those who voted, 75 per cent opted for nationalist parties, the Bosniac Party of Democratic Action (*Stranka demokratske akcije* or SDA), Serb Democratic Party (*Srpska demokratska stranka* or SDS) and Croat Democratic Union (*Hrvatska demokratska zajednica* or HDZ). The SDA won 86 seats, the SDS 72, and the HDZ 44 -- a combined total of 202 out of 240 seats in the Bosnian Parliament.²

¹ *Nacionalni sastav stanovništva* (national population composition), Bosnia and Herzegovina Statistical Bureau, Sarajevo, December 1993.

² Suad Arnautovic, *Izbori u Bosni i Hercegovina '90*, Sarajevo, Promocult, 1996, p 108.

Although citizens of Bosnia and Herzegovina elected nationalists to power, they did not expect their vote to result in the wholesale destruction of their homeland. At that time, the nationalist parties were broad coalitions, and local candidates reflected the very different concerns of communities spread throughout the republic. Moreover, after the vote, all three parties joined together in a coalition government in which the President of the SDA party Alija Izetbegovic became the first President of what was supposed to be a collective, rotational Presidency.

3. War and Demographic Changes

Bosnia and Herzegovina's first elections in 1990 exacerbated national tensions that had already been strained by the rise of nationalist leaders in neighbouring republics. During the nearly four years of war that followed, relations between the peoples of Bosnia and Herzegovina disintegrated further, and people naturally rallied around their respective flags. Since the formal end to hostilities last December, Bosnia and Herzegovina has been hovering somewhere between a cease-fire and genuine peace, but psychologically Bosnians remain at war.

The Bosnian war began in April 1992. The initial Serb offensive conquered two-thirds of Bosnia and Herzegovina within three months and set in train a massive flight of population. In its wake, the phrase *etničko ciscenje* (ethnic cleansing) passed from Bosnian into the international lexicon. It encapsulates the brutality of a conflict aimed at expelling members of the "other" ethnic groups and eradicating all traces of alien culture. When a new round of fighting erupted in 1993 between Bosniacs and Croats, more of Bosnia and Herzegovina was "cleansed." And last year, when Croats and Bosniacs counter-attacked against Serbs in a joint offensive following massive NATO bombing of Serb positions, yet another wave of refugees—this time Serb—was created. Finally, when the Sarajevo suburbs were transferred in February and March of this year to Federation authorities, a new sort of bloodless "cleansing" displaced more Serbs.

The conflict and the cleansing have altered the country's pre-war demographic map beyond recognition. Estimates of war-time casualty figures vary. While some western officials have placed the death toll near 100,000, the Bosnia and Herzegovina Bureau for Health Protection reports that 278,800 people, or 6.3 per cent of the pre-war population, were killed, died or went missing in the war. Of these, 140,800 were Bosniacs, 97,300 Bosnian Serbs, 28,400 Bosnian Croats and 12,300 others. The Bosnian Serbs have never released a comprehensive report on

their losses.³ According to the Office of the High Commissioner for Refugees (UNHCR), the war also caused 60 per cent of the population to flee their homes. Of these, 1,282,257, or 29.4 per cent of the population, sought refuge within Bosnia and Herzegovina; and a further 1,329,333, or 30.5 per cent of the population, were dispersed throughout the world in 63 countries.⁴

B. Dayton Peace Agreement and Elections

1. The Dayton Peace Agreement and the OSCE

The Republic of Bosnia and Herzegovina, and its two constituent entities the Federation of Bosnia and Herzegovina and Republika Srpska (the “Parties”) agreed in the Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Agreement or DPA), signed on 14 December 1996, to ensure that conditions exist throughout the country for the organisation of free and fair elections, and they requested that the Organisation for Security and Co-operation in Europe (OSCE) assist the Parties to create such conditions. Also, the Parties requested that the OSCE organise the elections within nine months of signing the DPA, supervise the preparations and conduct of the elections,⁵ and take on two additional tasks: monitoring and promoting human rights, and promoting confidence and security building measures and arms control. OSCE was mindful that assisting the Parties in their creation of the electoral preconditions and monitoring as well as promoting human rights were closely linked—even mutually dependent—mandates.

The OSCE set up its mission in Bosnia and Herzegovina in early 1996 with U.S. diplomat Robert Frowick as the Head of Mission and created the Provisional Election Commission (PEC), the Election Appeals Sub-Commission (EASC), and the Media Experts Commission (MEC). In addition, the OSCE deployed some 40 human rights monitors in a central office in Sarajevo, in five regional monitoring centres, and in 26 field offices.

The OSCE grew out of the Conference on Security and Co-operation in Europe held in Helsinki in 1975. For the first 17 years it functioned as an inter-governmental conference with minimal staff. It served as a forum for Cold War dialogue and its personnel drafted human rights, security and disarmament standards. Since the collapse of communism in eastern and central Europe its name was changed to OSCE, and the

³ Elections B&H '96 Guide, Sarajevo, Media Plan, 1996.

⁴ UNHCR Information Notes, No. 6-7/96, June/July 1996.

⁵ Framework Agreement for Peace in Bosnia and Herzegovina, signed in Paris on 14 December 1995, Annex 3, Articles I and II.

organisation has taken on a more prominent and operational role in conflict resolution. Organising the Bosnian elections has been the most difficult task the organisation has ever undertaken, especially given the tight time frame mandated by the DPA.

2. Criteria for Free and Fair Elections

The criteria for measuring the conduct and results of the 14 September elections are outlined in the following agreements and instruments:

- 1) International human rights instruments contain the fundamental criteria for judging elections around the world and determining whether they were “free, fair and democratic.” These instruments, including the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, were incorporated in the DPA and agreed to by its signatories.
- 2) The Dayton Peace Agreement required the Parties to ensure the right to vote in secret and without fear or intimidation; freedom of expression and the media; freedom of association; freedom of movement; and the existence of a politically neutral environment during the period leading to election day.⁶ This last prerequisite bound the Parties to creating a climate of security, complying with human rights provisions, and respecting the general goals of the DPA, which meant refraining from any statements that advocated secession from the unitary state of Bosnia and Herzegovina.
- 3) In his speech certifying the existence of conditions for holding the elections, the OSCE Chairman-in-Office Flavio Cotti added that without the arrest and delivery of indicted war criminals to the International Criminal Tribunal for the former Yugoslavia and a credible start on the return and repatriation of refugees and internally displaced persons, the elections would produce results opposite to those intended.⁷
- 4) In an annex to the DPA the Parties also pledged full compliance with paragraphs 7 and 8 of the OSCE Copenhagen Document, which included provisions for universal and equal suffrage for all adult citizens; secret balloting and honest and public counting and reporting

⁶ DPA, Annex 3, Article I(1).

⁷ Certification of the Elections in Bosnia and Herzegovina, Declaration of the Chairman-in-Office, Federal Councillor Flavio Cotti, at the Permanent Council of the OSCE, 25 June 1996, Ref. CIO/35/96. The second requirement identified by Cotti was also included in DPA, Annex 3, article IV(1).

procedures; respect for the right of citizens to seek political or public office; respect for the right to establish, in full freedom, political parties or organisations, as well as legal guarantees to compete in the elections on an equal basis; a fair and free campaign atmosphere in which neither administrative action, violence nor intimidation barred the parties or candidates from freely presenting their views and qualifications, deterred citizens from learning and discussing them, or stopped voters from casting their ballot free of fear of retribution; unimpeded access to the media on a non-discriminatory basis for all political participants; and, finally, free access for international monitors of the electoral process.⁸

- 5) The OSCE Provisional Electoral Commission (PEC) Rules and Regulations (issued 16 July 1996) reiterate some of the requirements for free and fair elections identified in the DPA and the Copenhagen Document, and in addition promulgate the comprehensive and detailed requirements for the conduct of the electoral proceedings, outlining the rules for campaigning, registration of voters, conduct of the media, conduct of the governments, voting day events, counting procedures, announcement of final results, and PEC certification.

3. OSCE's Supervisory and Monitoring Bodies

a. Provisional Election Commission

The Parties to the DPA asked the OSCE to establish a Provisional Election Commission (PEC) and mandated it to adopt rules and regulations regarding: the registration of political parties and independent candidates; the eligibility of candidates and voters; the role of domestic and international election observers; the ensuring of an open and fair electoral campaign; and the establishment, publication, and certification of definitive election results. The PEC was also mandated to supervise all aspects of the electoral process, to elaborate a voter registration procedure, to ensure compliance with the electoral rules and regulations, and to ensure that appropriate action was taken to remedy any violation of DPA or the rules and regulations.⁹

The PEC, which was comprised of four international and three Bosnian members, was nominated in January and

⁸ Document of the Second Meeting of the Conference on the Human Dimension of the Conference on security and Co-operation in Europe, Copenhagen, 1990.

⁹ DPA, Annex 3, Article III.

held its first meeting on 1 February under the chairmanship of Robert Frowick, Head of the OSCE Mission in Bosnia.

Under the supervision of the PEC, Local Election Commissions (LEC) were established to organise the elections at the local level. This included arranging voter registration and securing facilities and staff to man polling stations and counting votes. The LEC members were nominated by authorities in each entity and approved by the PEC.

b. Election Appeals Sub-Commission¹⁰

The OSCE's Election Appeals Sub-Commission (EASC) consisted of four Judges. Bosnia and Herzegovina and its two entities, the Federation and Republika Srpska, each supplied a judge, and one senior international jurist served as the Chief Judge. The Judges were appointed by Ambassador Frowick.

The EASC was mandated to ensure compliance to the PEC Rules and Regulations and to adjudicate complaints about the electoral process. It had the power to impose penalties on any individual, candidate, party, or other body in violation of the PEC Rules and regulations or of the DPA. This could include fining parties or striking candidates' names from the electoral lists.

c. Media Experts Commission¹¹

The Media Experts Commission (MEC) was established to investigate media-related complaints. The MEC was mandated to monitor the security of journalists, to gauge whether the access provided to political parties and candidates was equitable, to observe erroneous news reporting, and to ensure that the media observed the PEC "Standards of Professional Conduct." The MEC was chaired by the OSCE Senior advisor for Media Development, and included representatives of the Parties, media specialists appointed by each of the Parties, representatives of the Ministries of the Interior of both entities, a representative of the High Representative, and a human rights officer of the OSCE. In each of the OSCE regional centres, Media Expert Sub-Commissions were also constituted.

¹⁰ PEC Rules and Regulations, Articles 137-144.

¹¹ PEC Rules and Regulations, Articles 145-150.

In essence, however, the MEC had no real powers. It could only report serious violations to the PEC which had the power to impose fines or other appropriate penalties.

d. OSCE Election Supervisors

By early September, some 1,200 OSCE Election Supervisors had arrived in Bosnia and Herzegovina to provide technical assistance in the organisation of the elections, and to solve technical problems before and during election day. The Supervisors were OSCE employees recruited by member states of the organisation. They reported to Ambassador Frowick.

e. Co-ordinator for International Monitoring

In January 1996, an International Expert Meeting on Elections in Bosnia and Herzegovina held in Stockholm concluded that a conflict of interest existed between the two roles assigned to OSCE - supervising the preparations and conduct of the elections through the PEC, and organising the independent monitoring of the elections. To resolve this potential conflict, the experts suggested that a separate electoral observation unit be established within the OSCE to prepare and co-ordinate the international observation of the elections.¹² Accordingly, the office of the Co-ordinator for International Monitoring (CIM) was set up within the OSCE in early March, and OSCE Chairman-in-Office Flavio Cotti appointed Ed van Thijn as the head of CIM. While CIM receives administrative support from the OSCE Mission in Bosnia, it was set up to operate independently of the Mission and has reported directly to the OSCE Chairman-in-Office in order to ensure neutrality and objectivity. On 22 May 1996, the PEC adopted the Rules and Regulations for international observers, authorising the CIM to invite, accredit and co-ordinate the work of international observers.

Under the authority of Co-ordinator van Thijn, CIM was tasked to observe the whole electoral cycle from registration to the announcement of the results—this included monitoring the out-of-country and in-country absentee voting, sorting and distribution of ballots; following complaints and appeals to the Election Appeals Sub-Commission; hearing the electoral concerns of political parties and NGOs; evaluating observations and complaints about the electoral process; preparing and co-

¹² Conclusions, International Expert Meeting on Elections in Bosnia and Herzegovina, Stockholm, 15-16 January 1996, p 16.

ordinating the activities of short-term observers; and, on the basis of these observations and reports, preparing a report for the OSCE Chairman-in-Office.¹³

By mid-July, the CIM had deployed some 25 long-term observers in all regions to observe the election campaign and to prepare the ground for the deployment of short-term observers. By election day, some 850 short-term international observers (including 150 recruited by the International Crisis Group from non-governmental organisations in the country) had been deployed to monitor election day events at more than 4,400 polling stations throughout Bosnia and Herzegovina and the counting of votes.

4. Certification of the Conduct and Results of the Elections

a. Pre-Election Certification

In DPA the Parties requested the “OSCE to certify whether elections can be effective under current social conditions in both Entities and, if necessary, to provide assistance to the Parties in creating these conditions.”¹⁴

The architects of the DPA intended this pre-election certification to serve as an effective tool to push the Parties into compliance in creating the conditions necessary to hold “free and fair” elections. The OSCE Chairman-in-Office Flavio Cotti was to announce the pre-election certification and set the date.

b. Post-Election Certification

In accordance with the DPA, the PEC adopted regulations on the publication and certification of definitive election results¹⁵—decreeing that the PEC itself would announce the election results at all levels, verify that the elections were valid and certify the results. The Chairman of the PEC, Ambassador Frowick, would officially publish the results, followed by a complete publication of all figures in the Official Gazette of Bosnia and Herzegovina, the Federation and the Republika Srpska.¹⁶

Independent of the PEC and in accordance with the OSCE Office of Democratic Institutions and Human

¹³ OSCE, Office of the CIM for the Elections in Bosnia and Herzegovina, Information sheet, 19 June 1996.

¹⁴ DPA, Annex 3, Article I(2).

¹⁵ DPA, Annex 3, Article III(1).

¹⁶ PEC, Rules and Regulations, Supplement No. 1, Article 221.

Rights (ODIHR), the CIM would certify independently whether the conduct of the elections was “free and fair” and report his finding directly to the OSCE Chairman-in-Office.

This two-track certification of the conduct and results of the elections would be sequenced as follows:¹⁷

- 1) The CIM would issue a preliminary statement within 48 hours of the close of polling stations. This would include an objective statistical analysis of short-term observers’ checklists completed on election day;
- 2) The CIM would issue a second preliminary statement when the vote count was completed by the PEC. This would include an objective statistical analysis of the observers’ second checklist completed at the vote count proceedings;
- 3) The PEC would announce the preliminary result of elections when the vote count was completed, but without any assessment of their “validity;”
- 4) The CIM would issue its final report after the vote count results were announced by the PEC and would determine the extent to which the conduct of the elections was “free, fair, and democratic” in accordance with the DPA. The final report would be addressed to the OSCE Chairman-in-Office and would be based on a more thorough evaluation of the short-term monitors’ reports and an assessment of the long-term monitors’ observations during the entire electoral process.
- 5) The PEC would issue its final report after the Election Appeals Sub-Commission had ruled on all appeals, and after the CIM final report had been published. This report will “follow the conclusions” of the CIM final report and determine whether the conduct of the elections was “valid” and certify the results accordingly;
- 6) The OSCE Chairman-in-Office would forward the PEC final report and presumably the CIM final report to the Parties and the High Representative.
- 7) The High Representative would then report to the UN Security Council through the Secretary General on the conduct and results of the

¹⁷ OSCE Secretariat, Department for the Chairman-in-Office, Press Release No. 53/96, 9 September 1996; Memo dated 19 August 1996 from Ed van Thijn to the OSCE Chairman-in-Office; OSCE CIM, Press Release, 9 September 1996.

elections. The UN Security Council would then automatically lift the sanctions on Republika Srpska and the Federal Republic of Yugoslavia if the elections were determined “free and fair”. (A new imposition of sanctions would require the unanimous vote of the whole UN Security Council. Sanctions were “suspended” in November following the Parties’ approval of the DPA.)¹⁸

III. LEAD-UP TO ELECTIONS

A. OSCE’s Decision to Proceed with the Elections

1. Decision to Proceed

On 25 June 1996, the OSCE Chairman-in-Office Flavio Cotti issued the long expected certification that “elections can be effective under current conditions in both Entities”¹⁹ and gave the green light for it to take place on 14 September. He warned that if certain minimal prerequisites were not met during the remaining three months, the elections ought not take place as they would lead to further tensions and “pseudo-democratic legitimisation of extreme nationalist power structures.” In particular Cotti noted the need to establish freedom of movement, freedom of expression and media, freedom of association, and, more generally, a politically neutral environment.²⁰ The most important prerequisite, in Cotti’s view, was the elimination of “every single possibility of direct or indirect exertion of influence by indicted war criminals.” Cotti acknowledged that, “after [the] years of war and suffering, perfectionism is out of place,” but he stressed that “just the same: minimal prerequisite conditions must be met so that ‘free, fair, and democratic elections’ can take place,” preconditions that he said plainly had then, “in spite of the small progress mentioned, not been fulfilled.”²¹

The OSCE Chairman-in-Office added, “we have scarcely three months separating us from the election day. This period must be employed in order to improve the framework conditions. This is absolutely imperative for us all. With this in mind, I appeal to

¹⁸ UN Security Council Resolution 1022 (1995), 22 November 1995, par. 4 states: “The Security Council ... decides that it will terminate the ... [sanctions] on the tenth day following the occurrence of the first free and fair elections provided for in annex 3 of the Peace Agreement...”

¹⁹ DPA, Annex 3, Article I(2).

²⁰ DPA, Annex 3, Article I(1).

²¹ Certification of the Elections in Bosnia and Herzegovina, Declaration of the Chairman-in-Office, Federal Councillor Flavio Cotti, at the Permanent Council of the OSCE, 25 June 1996, p 4, emphasis added; hereinafter referred to as the Cotti Statement.

all of the actors both in Bosnia and Herzegovina and abroad to observe their commitments to the fullest extent. I appeal to the international community and to the international organisations to persevere in their efforts for the implementation of the Peace Agreement with even more determination than before.... Improving the freedom of movement and establishing transportation links and telephone communications beyond the boundaries of the Entities, is an unalterable and concrete must. The same holds true for facilitating the factual return of the refugees and displaced persons, as well as for the realisation of media projects..., and for a generally enhanced freedom of the media.”²²

However, despite his own warning that the prerequisite conditions did not exist in Bosnia and Herzegovina, the Chairman-in-Office certified that the elections could be effective taking into consideration the “global context”, and urged the Parties and the international community to redouble their efforts in the remaining months to meet at least minimum conditions.

Since June, not only have prerequisite conditions not improved, but in many respects they have deteriorated.

2. Response to Arguments for Proceeding with the Elections

OSCE officials have offered the following reasons for holding the elections despite the inadequate conditions. In a report published on 13 August, the International Crisis Group argued that those reasons were not convincing, and offered the following analysis:

The elections are not an end in themselves, but a step in the long process of reconciliation and democratisation, and an instrument for bringing stability to the region.

Elections held under the current conditions may in fact have the opposite effect. Instead of furthering reconciliation, the elections advance the likelihood of violence -- either when on election day a large number of voters cross the former confrontation lines that were hitherto hermetic, or when the time comes to install newly elected leaders to areas from where they have been cleansed. Instead of taking a step in the process of democratisation, the Parties, especially Republika Srpska and “Herzeg-Bosna,” have manipulated the registration process and additionally suppressed freedom of expression and association. Thus the run-up to the elections has exacerbated not reduced instability. When voters are directed to vote according to the wishes of the ruling political parties, elections cannot be described as stabilising.

²²

Cotti Statement, p 6.

Postponing the elections will not improve conditions.

This concern would be justified only if the international community continues to respond as indecisively as it has to date to violations of the DPA. However, ICG is proposing that the international community take resolute actions that would convince the Parties that certain minimum standards must be met before elections are put back on schedule.

By not setting a firm date for the elections, the international community will heighten political uncertainty, increase the likelihood of political division, provide a stimulus to the forces of separation, and cause chaos and uncontrollable developments.

Holding the planned elections on September 14 under the present conditions will produce precisely these undesirable results - not only will the extreme nationalist parties be elected, but their hold on power and the territories they control will be legitimised by the OSCE as well as the international community and consolidated. The leaders of the SDS and HDZ have made no secret of their goals -- creating an independent, sovereign and exclusivist state in the case of the former, and creating a separate, exclusivist "Herzeg-Bosna" entity in the case of the latter. Both have also stated that their ultimate goal is unification with their respective "mother" countries. Though the status quo without elections may also provide such a stimulus, holding the elections now, before democratisation has been given a chance to heal the wounds of war, will only expedite the partition and remove a major incentive for the ruling parties to improve conditions: the eventual acquisition of legitimacy.

Thanks to the poll a political opposition in conjunction with absentee, displaced voters will have a chance to start the "reconstruction of ethnically-mixed communities."

Because of the manipulations of the voter registration process in Republika Srpska and "Herzeg-Bosna" as well as the Bosnian voters living in "mother" countries, the exact opposite results have been achieved. Since most Bosnian Serbs displaced from the Federation territories have been forced to register to vote in Republika Srpska, and many Bosnian Croats forced to vote in "Herzeg-Bosna," it is not possible to discuss even symbolic reconstruction of ethnically-mixed communities.

The parties themselves want to hold the elections.

The ruling parties urgently seek a democratic stamp and fear that time works against them. The opposition parties, who have been repeatedly disillusioned in the last four years by the international community's broken promises and half-

hearted commitments, appreciate the sudden bout of international resolve to hold elections and fear it may be short-lived. As the date for the elections approaches, and as conditions deteriorate, a number of opposition parties are increasingly changing their view and threatening boycott.

Inter-governmental organisations active in Bosnia recommend that elections take place as planned.

These inter-governmental organisations are without exception subject to the political imperatives of various governments around the world. When exerting pressure or giving the green light to proceed with the elections, these governments were more motivated by domestic political concerns -- their own electoral campaigns necessitate the staging of symbolic, tangible events that represent tangible achievement in foreign policy. In the same vein, for those countries that hope to withdraw or reduce their troop presence in Bosnia, the elections supply a useful exit benchmark. In fact many nations hold an underlying belief that partitioning Bosnia would be a simpler solution than the laborious facilitating of reintegration. This short-sighted partition approach will only guarantee another round of fighting in Bosnia, perhaps spawn further conflicts in the region, and, in the long run, cost the international community far more than extending IFOR's mandate for another year, implementing DPA more resolutely, and holding the elections shortly after the conditions in Bosnia have improved.

Elections should take place while IFOR is still present in Bosnia, and, since the future of IFOR cannot be predicted, that means September.

IFOR, like OSCE, should tie its presence not to a calendar, but to concrete progress measured by the implementation of DPA.

Elections will permit the creation of the State-level joint institutions foreseen in the DPA.

In the current politically charged environment, those joint institutions elected are bound to be paralysed by the diametrically opposed agendas of the Parties, which could precipitate the demise of Bosnia as a single country. The example of Mostar is an overwhelming argument.

Elections will permit some opposition parties and leaders to be elected, thus reducing the three ruling parties' monopolistic grip on power.

This is a compelling argument, especially in the case of Bosniac controlled parts of the Federation. However in Republika Srpska, the strongest challenge to the ruling party will come from the Socialist Party of Republika Srpska --

which answers to Serbian President Milosevic and which can hardly be considered a healthier alternative to SDS, given the responsibility that Milosevic shoulders for the catastrophic events in former Yugoslavia.

The preparations for elections are too far underway to turn back now.

In fact one major reason for postponing elections is that preparations lag so far behind. Virtually every one of OSCE's deadlines was postponed, and even then, huge logistic hurdles will have to be scaled in the next month to ensure the elections will be able to go ahead. If they do, thanks in part to the chaos inherent in an election on this scale and novelty (in a country where even the main towns have no constant power supply), in part to the enormous number of displaced and refugee voters, and in part to OSCE's slow start, voter registration figures are so low that huge numbers of Bosnian citizens will likely be disenfranchised.

B. Consequences of the 25 June Certification of Conditions for Elections

1. Decrease of OSCE's Credibility and Leverage

OSCE was not responsible for creating the "free and fair" conditions for elections, but the organisation had great leverage—both as the body that would certify the elections and as the body empowered to penalise the parties that violated the election rules. The OSCE could have employed the leverage and sanctions to force concessions from the Parties and thus improve the circumstances in which elections were to be held. It did not do so effectively.

In theory, the OSCE was to decide whether to certify the holding of the elections on the basis of prevailing conditions in Bosnia and Herzegovina. The organisation was to gauge these conditions largely on the basis of its human rights reports on the ground. Yet, although these reports drew a picture of deteriorating conditions and although the OSCE Chairman-in-Office Cotti publicly conceded that conditions did not exist for free and fair elections, he concluded - as was said above - that the poll should go ahead. By all accounts, this decision was not made independently either by Ambassador Frowick or Chairman-in-Office Cotti. It was made under heavy pressure from the governments of the "Contact Group" countries—the United States, United Kingdom, Russia, Germany and France, as well as Italy, which at the time held the presidency of the European Union.

In a string of public pronouncements, senior international statesmen and government spokesmen effectively pre-empted the certification decision and undermined the OSCE's authority. On 22 May, for instance, State Department spokesman Nicholas Burns informed reporters that the Bosnian elections would go ahead even if Bosnian Serb leader and indicted war criminal Radovan Karadzic remained in power saying: "The elections can go forward and will go forward with him [Karadzic] sitting in his bitter isolation in Pale."²³ Then on 4 June after a meeting in Berlin the Contact Group insisted that the Bosnian elections proceed on schedule. The meeting's chair Foreign Minister Klaus Kinkel said that: "This is of central importance for the implementation of the peace plan... This timetable must be adhered to."²⁴ And on 7 June Italian Foreign Minister Lamberto Dini stated: "The international community considers the holding of elections not later than 14 September to be essential for the peace process to go ahead."²⁵ In effect, these governments chose to stick to the time-frame spelled out in the DPA and to ignore the fact that the DPA's preconditions had not been fulfilled. And Chairman-in-Office Cotti was left to present the decision (see above) and Ambassador Frowick to implement it, irrespective of the prevailing conditions or, indeed, the consequences.

The decisive influence of foreign governments in the scheduling of the Bosnian elections was harmful not only because it did not take adequate account of the prevailing conditions, but also because it vastly undermined the authority and the leverage of the OSCE. It made it very difficult for the OSCE certification of conditions to be taken seriously and deprived the Parties of any incentive to improve the conditions. Once the Contact Group decided - and publicly announced - that elections would proceed, the international institutions on the ground (the OSCE and the Office of the High Representative) were obliged to shift tactics. Instead of pressuring the ruling parties to implement the DPA, they had to seduce them into co-operating with the electoral process. Since it was the local authorities, and not the OSCE, that were in fact to organise the ballot, the ruling parties were in a position to sabotage the elections by instructing the local electoral commissions to resign if ever they were dissatisfied. The precedent for an effective employment of this leverage had been set in Mostar in May when the Bosniac authorities withdrew from the local election commissions in order to secure concessions from the European Union Administration of Mostar (EUAM), thus delaying the vote there

²³ Reuter, 22 May.

²⁴ Reuter, 4 June.

²⁵ Reuter, 7 June.

by one month. After this certification, therefore, the OSCE found itself at the mercy of the Parties.

2. Deterioration of Conditions

The military aspects of DPA were implemented in the beginning of 1996 without major problems. Though the civilian aspects of the peace agreement were destined to be more problematic, early on it seemed possible that with concerted international pressure compliance would be forthcoming. In May nationalist leaders on all sides and especially those indicted for war crimes had begun to worry about their positions. Indicted Bosnian Croat General Tihomir Blaskic had given himself up to the International War Crimes Tribunal in The Hague on 1 April; Dusko Tadic, the first indicted war criminal in custody, was already on trial; and the Tribunal had decided to hear in absentia testimony against Radovan Karadzic and the Bosnian Serb military leader Ratko Mladic.

Once the ruling parties realised that elections would be rammed through irrespective of the prevailing conditions, however, they stopped even paying lip service to implementation, and conditions deteriorated rapidly. In mid-August, Ambassador Frowick himself sounded the alarm, stating: "In a number of communities, government officials have attempted to thwart the development of democratic conditions by discouraging or prohibiting freedom of movement, the return of refugees and displaced persons, freedom of expression and of the press, and freedom of association." Mentioning the municipalities of Capljina, Bugojno, Drvar, Sanski Most and Stolac in the Federation, and Doboje, Lopare, Prijedor, Teslic and Zvornik in Republika Srpska, Ambassador Frowick warned that "the OSCE reserved the right to invalidate electoral results, including the election of individual candidates, in those towns or municipalities where there is systematic interference with democratic freedoms, including freedom of movement, and gross manipulation of election procedures [until] 14 September, or in the immediate aftermath of the elections."²⁶

a. Repatriation

Repatriation was guaranteed in the Constitution of Bosnia and Herzegovina,²⁷ and described in the DPA as an "important objective of the settlement of the conflict in Bosnia and Herzegovina."²⁸ The Parties committed themselves to preventing activities that might "hinder or impede the safe and voluntary return of refugees and

²⁶ Statement of the OSCE Head of Mission, Ambassador Robert H. Frowick, 19 August 1996.

²⁷ DPA, Annex 4, Constitution of Bosnia and Herzegovina, Article II(5).

²⁸ DPA, Annex 7, Article I(1).

displaced persons,”²⁹ and pledged themselves to creating the political, economic, and social conditions necessary for the start of returns.³⁰ With these commitments in mind, the Parties concluded that “by Election Day, the return of refugees should already be underway.”³¹ However, this did not take place. By mid-September, only 200,000 of more than 2.5 million refugees and internally displaced persons had returned, and principally to areas where the returnees belonged to the majority ethnic group. And even this is a misleading figure because the Office of the UN High Commissioner for Refugees (UNHCR) reports that close to 90,000 persons belonging to minority groups have been displaced since the signing of the DPA. Indeed, expulsions of the few remaining Bosniacs and Croats in Republika Srpska continued up to the election itself—with another wave of ethnic cleansing from Banja Luka taking place four days before the poll.³²

When refugees and internally displaced persons did return to territories controlled by one of the other nationalities, they were frequently subject to arbitrary police controls and detention, open discrimination, expulsions, and violence. In late August, for instance, Bosniacs who attempted to return to the town of Mahala (which had a pre-war Bosniac majority but which now lies within Republika Srpska) stoned the Bosnian Serb police who in turn opened fire, prompting IFOR intervention and the arrest of 47 Bosnian Serb policemen.³³ Even short assessment visits by groups of displaced persons across the inter-entity boundary line (IEBL) were prevented by mob violence or other threats - only four out of some 40 visits planned and organised by UNHCR have been successful. Individual initiatives were even more at risk. In a small sample of cases reported by the International Police Task Force (IPTF): on 28 July one Bosniac man who attempted to visit his former home near Doboje, Republika Srpska territory, was found in a ditch with his thumbs severed and ribs smashed - he died later; another Bosniac died of injuries from beatings in Banja Luka police custody; and, in early August, a Bosniac mob stoned a Serb attempting to return to his home in a suburb of Sarajevo. The local authorities usually tolerated these incidents, and in some cases actively participated in them.

²⁹ DPA, Annex 7, Article I.

³⁰ DPA, Annex 7, Article II(1).

³¹ DPA, Annex 3, Article IV(1), 5th sentence.

³² International Herald Tribune, 12 September 1996.

³³ OSCE Democratisation and Human Rights Periodic Report: 27 August - 3 September 1996.

b. War Criminals Act with Impunity

As of mid-September, out of a total of 75 war criminals indicted by the International Criminal Tribunal for the former Yugoslavia (Tribunal), only seven indictees had been arrested or had surrendered to the Tribunal in The Hague. The rest remained at large and, in most cases, their whereabouts in Republika Srpska, Yugoslavia, Croatia and Croat-controlled parts of the Federation are well known. Some of the accused are still exerting influence behind the scenes on their communities in a manner incompatible with the goals formulated in the DPA.

When OSCE Chairman-in-Office Cotti gave the green light to hold the elections, he said that the Parties' full cooperation with the Tribunal was a precondition for creating the necessary political conditions for free, fair, and democratic elections, and that "every single possibility of direct or indirect exertion of influence by indicted war criminals of the likes of Radovan Karadzic, must be hindered." Cotti went beyond merely calling for the removal of suspected war criminals from office; he said, "Co-operation with the Tribunal at The Hague must become a fact.... If no actions are undertaken right now against the indicted war criminals, it can be taken for granted that the elections will very quickly give way to developments diametrically opposed to those which they were expected to yield. There exists the most serious danger that they then degenerate into a pseudo-democratic legitimisation of extreme nationalist power structures and ethnic cleansing. Instead of the peaceful evolution in keeping with the Peace Agreement, the elections would lead to further dramatic tensions. Under no conditions whatsoever ... should we permit such a development to ensue."³⁴

c. Absence of Politically Neutral Environment

The Parties to DPA agreed to "ensure that conditions exist for the organisation of free and fair elections, in particular a politically neutral environment".³⁵

It is difficult to imagine how the environment in Bosnia and Herzegovina could be characterised as "politically neutral" when refugees and internally displaced persons are unable to return to their homes, indicted war criminals

³⁴ Cotti Statement, p 6. "Co-operation," as defined in the Statute of the International Tribunal adopted 25 May 1993, Article 29, includes the arrest and transfer to The Hague of those indicted by the Tribunal.

³⁵ DPA, Annex 3, Article I(1).

remain at large, the IEBL and even the former Bosniac-Croat front-lines are still difficult and dangerous to cross, and only the ruling parties enjoy freedom of expression in most areas of the country.

During the election campaign, the ruling parties in fact went to great lengths to propagate fear and insecurity among voters. For example, on 15 June in the northern Bosnian town of Cazin near Bihac, former Prime Minister and current leader of the opposition *Stranka za Bosnu i Hercegovinu* (Party for Bosnia and Herzegovina or SBiH) Haris Silajdzic was struck on the head with a metal bar when supporters of the ruling Bosnian party SDA disrupted his rally.³⁶ On 2 August, another senior official of the same opposition party was again physically assaulted in Cazin. In late July in Brcko, explosives were found in the room where the opposition *Socialisticka partija Republike Srpske* (Socialist Party of Republika Srpska or SPRS) was scheduled to have a meeting. During the same week, an automobile used by an SPRS member was blown up in downtown Doboje.³⁷ Advertisements of the Croat Democratic Party (HDZ) informed Croat voters that the “survival of their nation” was at stake on 14 September. Republika Srpska television, for its part, announced that a vote against the Serb Democratic Party (SDS) would constitute a vote “against the Republika Srpska and the Serb people.”

Perhaps the most graphic evidence of the climate in the country can be seen in the tactics used by the Bosnian Serb and Bosnian Croat authorities in voter registration (see below). Both groups manipulated the electoral rules to suit political ends and consolidate with the ballot that which they won with the bullet, to the extent that a new word “electoral engineering” entered the vocabulary.

d. Freedom of Movement

The Parties to the DPA agreed to “ensure ... freedom of movement.”³⁸ At the June implementation conference of the DPA they reaffirmed their belief that the right to move freely and without fear throughout Bosnia and Herzegovina was a cornerstone of elections.³⁹ In order to ensure that election preparations were conducted as smoothly as possible, the Parties committed themselves to facilitate the traffic of vehicles between the two entities,

³⁶ Reuter, 16 June 1996.

³⁷ OSCE Democratisation and Human Rights Periodic Report: 30 July - 12 August 1996.

³⁸ DPA, Annex 3, Article I(1).

³⁹ Agreed Statement, Geneva, 2 June 1996, par. 10.

to ensure that local authorities cease confiscating identity documents issued by either entity, to re-establish telephone connections between the entities, and to allow all candidates and parties to engage in political activity and campaign freely and without obstruction in both entities.⁴⁰

Individuals who ventured into areas or entities not under the control of their own ethnic group were often threatened, subjected to violence, detained, or even murdered (see above, on individual ventures across the inter-entity boundary lines - IEBL). Despite bureaucratic obstacles concocted by authorities mainly in Republika Srpska, seven UNHCR sponsored bus-lines succeeded in ferrying displaced persons between the two entities. However, the buses were frequently stoned and passengers harassed, even detained. Because the license plates of private cars generally are different in the two entities as well as in the Croat-controlled areas of the Federation and are therefore a liability, individual visits could only take place by foot, bicycle, taxi, or foreign-plated car, to avoid harassment.

C. Campaign

1. OSCE's Start-Up Problems

Unlike the United Nations or the European Commission, the OSCE, a newcomer to the inter-governmental organisations scene, does not have the institutional ability to hire staff directly or even borrow money for its operations. Instead, it is dependent on personnel seconded from and money donated by the member states. Since these states did not concentrate their energies on the OSCE or its Bosnia mission early on, the operation was severely under-staffed and under-funded during its first months. Thus in many ways, the logistics of the elections have exceeded the capacity of OSCE, a problem that has marred the whole elections' organisation.

Even when a full OSCE contingent had arrived in Bosnia and Herzegovina, the mission lacked sufficient personnel experienced in the fields of elections, human rights and information technology. Publication of provisional voting lists was delayed and it set the voter registration process back more than two months. Whereas the plan was to begin registration on 1 April, the process did not finally get underway until 10 June.

⁴⁰ Annex to Agreed Statement, Geneva, 2 June 1996, Administrative and Confidence-Building Measures, Par. 1.

2. Electoral Campaign

Campaigning effectively began the moment the DPA was signed since most parties and citizens assumed the election would take place within nine months of the 14 December signing. The official launch of the campaign came on 19 July. The OSCE used a 7.5 million DM fund to provide all political parties with the financial means to fund their electoral campaigns. Independent candidates were entitled to 11,250 DM; individual political parties received up to 375,000 DM depending on how many candidates they were fielding and what level; and coalitions a maximum of 600,000 DM.

With minimal inter-action between Republika Srpska, Bosniac-controlled Federation and Croat-controlled Federation territories, three very different election campaigns were fought across Bosnia and Herzegovina. Parties from Republika Srpska did not field any candidates in the Federation. Parties from the Federation, by contrast, did contest the elections in Republika Srpska. However, apart from television debates on TV Srpska, Federation-based parties made no attempt to campaign or to hold rallies within the Serb entity for security reasons and because most of their natural supporters, the Bosniacs and Croats from Republika Srpska, had been ethnically cleansed during the war or in its aftermath. Within the Federation the HDZ did campaign and hold rallies in Bosniac-controlled territory, especially in Sarajevo, where a small Croat electorate remains.

a. War criminals

Though the international community managed after much pushing and scrambling to finally force the resignation of Radovan Karadzic from the presidency of the Republika Srpska as well as of the SDS, he remained an omnipresent campaign force. Towns in Republika Srpska were covered with his posters, SDS politicians introduced themselves on behalf of their “closest associate” and made frequent reference to Karadzic, and, as US Assistant Secretary of State John Kornblum stated, there was “evidence [Karadzic] could be participating in decisions.” Ambassador Frowick put it even more poetically: “Karadzic is out of public life but he is still being mentioned in some speeches directly or indirectly - I asked that even the spirit of Karadzic be removed.”⁴¹ One example of Karadzic's lingering political influence is provided in a statement issued by the SDS on the occasion of Karadzic's resignation from the party presidency - “President Karadzic's view is that everyone

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Reuter, 10 August 1996.

must vote at the elections, and vote for the SDS, in order to prevent puppet and Bosniac parties from getting the one-third of the vote they need to drown the Republika Srpska in Bosnia and Herzegovina.”

b. Intimidation

Since the ruling nationalist parties, the SDS, HDZ and SDA, hold a vice-like grip over the economy and all aspects of society in the territory under their control, they are almost always exerting covert intimidation. They can easily generate mass turn-outs at their own election rallies. Due to the absence of inter-action between Serb, Croat and Bosniac-controlled territories, the electoral campaign was principally a battle between the ruling nationalist parties and their internal opposition. And the level of violence and intimidation in the campaign reflected the relative strength of the internal opposition - the stronger the internal opposition, the greater the intimidation of candidates. Here is how it looked in the three entities:

i. Republika Srpska

The principal opposition to the ruling SDS in Republika Srpska came from two five-party coalitions, the *Savez za mir i progres* (Union for Peace and Progress or SMP) containing the *Socialisticka partija Republike Srpske* (Socialist Party of Republika Srpska or SPRS) and the *Demokratski patriotski blok* (Democratic Patriotic Block or DPB). Both coalitions complained that their members faced harassment, intimidation and physical violence and that their meetings and rallies were systematically disrupted.⁴² SPRS members, it seems, were especially targeted since that party is the best organised of the opposition and most closely linked to Belgrade and Slobodan Milosevic.

Several key SPRS members throughout Republika Srpska were dismissed from their jobs or threatened with dismissal in the course of the electoral campaign. These included Rade Pavlovic and Zdravko Stojic, the directors of the two biggest enterprises in the town of Teslic, *Destilijacija* and *Kardial* who were forced to resign

⁴² Conditions for Free and Fair Political Campaigning are Still Lacking in Bosnia and Herzegovina, International Helsinki Federation for Human Rights, 29 August 1996, p 1; hereinafter referred to as Helsinki Federation Report.

in August after armed stand-offs at their homes and workplaces in which shots were fired. At about the same time, SPRS members in Priboj were threatened with unemployment if they did not switch their allegiance to the SDS; one member received a letter saying that his daughter would be raped unless he left the party; and four SPRS members in Dubica were dismissed.⁴³

Attempts by the SPRS to hold political meetings were often obstructed by the SDS-affiliated local authorities who refused to issue permits or to lease buildings. For example, on 9 August in Banja Luka, the SPRS was denied a permit to organise a rally, but went ahead anyway. During the week of 15 July the SPRS was unable to hold a rally in the village of Grbovica because the community building they planned to use was occupied by armed SDS members led by the municipal minister for Demobilised Soldiers. Moreover, both SMP and DPB rallies and meetings were violently and deliberately disrupted. Bomb threats were a common occurrence and on occasions, such as in the Brcko incident on 8 August (described above) when explosive devices were actually placed in meeting rooms. Moreover, at a SMP rally in Bijelina on 25 August a hand grenade was hurled into the crowd.

ii. Croat-Controlled Federation Territory

The atmosphere for the September elections in Croat-controlled, allegedly-defunct “Herzeg-Bosna”, was foreshadowed during the Mostar poll in June. At that time, an opposition multinational coalition came forward under Jole Musa to challenge the nationalists. Many candidates standing on the Musa ticket had themselves been elected in the 1990 elections only to be ousted by hard-line nationalists during the war. These nationalists did not intend to relax their hold on power. In the week before the June vote, Musa was evicted from his office, and four of the Croat candidates in his coalition were so intimidated by threats that they dropped out.⁴⁴ As a result, the principal moderate Croat party, the Croat Peasant Party or HSS (*Hrvatska seljacka stranka*), did not

⁴³ IPTF Election-Related Human Rights Tracking, 28 August 1996, p 13.

⁴⁴ ICG Report, The Mostar Election Political Analysis, 12 July 1996, p 4.

dare to campaign in western Herzegovina. The only alternative to the HDZ that ran openly in west Mostar were the far-right parties, *Hrvatska stranka prava* (Croat Party of Right or HSP) and *Hrvatska cista stranka prava* (Croat Pure Party of Right or HCSP), which complained that they were unable to campaign properly because of HDZ intimidation.

Meanwhile, the evictions and beatings so characteristic of life in Mostar and to which the HDZ authorities turn a blind eye, continued unabated up to election day. Such incidents were not limited to Mostar. In the Livno area for example, during a one week period at the end of July there were five bombs explosions, several arsons, and shooting incidents. Also at the end of July, a Catholic church was bombed in Bugojno, possibly in retaliation for a mosque in Prozor which was set on fire the day before.⁴⁵

iii. **Bosniac-Controlled Federation Territory**

The level of intimidation and violence in Bosniac-controlled Federation territory was often worse than that in either Republika Srpska or in Croat-controlled Federation territory. The tone of the campaign was set early on by Edhem Bicakcic, a vice-president of the SDA, who threatened that the party would show no mercy to the opposition.⁴⁶ As the campaign evolved, it became clear that this was not an idle threat.

The most serious attack (described above) was that on Haris Silajdzic, president of the SBiH and candidate for Bosniac member of the Bosnian Presidency, who was badly beaten on 15 June during a rally in Cazin (northern Bosnia) by members of the SDA. Sadly it was not an isolated incident. Another senior figure in Silajdzic's party was beaten up in Cazin on 2 August. Earlier, on 26 May the UBSD (Union of Bosnian and Herzegovinian Social Democrats) representative Zoraid Mehicic was beaten up by masked police after a radio show in Tesanj. And on 3 August a group of unidentified males fired through the front door of the home of Ismet Subasic, UBSD representative in Maglaj, yelling that they "wouldn't

⁴⁵ OSCE Democratisation and Human Rights Periodic Report: 16 July - 29 July 1996.

⁴⁶ IWPR Monitoring Report, 19 June 1996, p 2.

allow the UBSD to divide Bosniacs, because as a nation they didn't need more than one party."⁴⁷

The worst excesses took place in Cazinska Krajina, that is the region around Bihac, Cazin and Velika Kladusa. In August, for example, the Bihac police seized 349 campaign posters and 5,000 leaflets belonging to the *Zdruzena Lista* (United List), the leading opposition coalition. The reason for the seizure - according to a receipt issued by the police - was that the paraphernalia was "against the ruling party". Opposition posters were systematically removed by the authorities, but when private individuals attempted to take down unwanted SDA posters from their own houses they were on several occasions arrested and taken for interrogation. Yet more menacingly, a bomb exploded outside the Cazin headquarters of the *Socialisticka demokratska partija* (Social-Democratic Party or SDP) on 20 August and several opposition politicians had grenades lobbed into their homes. In addition, former supporters of Fikret Abdic were detained and beaten by the police.⁴⁸

Elsewhere in Bosniac-controlled Federation territory, opposition rallies were occasionally disrupted by SDA supporters. For example, a *Zdruzena Lista* rally in Gradacac on 10 August was broken up by young men wearing SDA tee-shirts. And opposition supporters were threatened and even dismissed for their political views. The most blatant case of this occurred in Ilidza where the deputy mayor and three of his staff were sacked after they changed their political allegiance and joined Silajdzic's party. The deputy mayor was eventually reinstated.

c. **Media War - Absence of Freedom of Expression**

In the course of more than three and a half years of war, what had formerly been an integrated Bosnian media split into three completely separate and mutually antagonistic media. As a result, three very distinct media battles were fought in the course of the election campaign in Republika Srpska, Bosniac-controlled Federation territory and Croat-controlled Federation territory.

⁴⁷ Helsinki Federation Report, p 2.

⁴⁸ IPTF Elections-Related Human Rights Incident Tracking, 28 August 1996.

One feature common to all three of these battles was the overwhelming influence of state television. An opinion poll in the Sarajevo monthly magazine *Dani* on the eve of the election indicated that 46.6 per cent of people in Bosniac-controlled Federation territory declared television as their principal source of information—far ahead of the second most influential medium, the daily newspaper *Dnevni Avaz*, which, according to the same poll, was the principal source of information for 7.54 per cent.⁴⁹ In Republika Srpska and Croat-controlled Federation territory the influence of state television was even more pervasive, since virtually no alternative medium exists in those parts of Bosnia and Herzegovina, although in the former constant power shortages often interrupt the TV and radio broadcasts.

As was mentioned above, the Provisional Election Commission drew up an Electoral Code of Conduct containing standards for the media and journalists. Moreover, the Media Experts Commission was set up to monitor compliance with these standards.

Both RTV Bosnia and Herzegovina (RTV B&H) and RTV Srpska, adopted the PEC's rules of conduct with their own variations. Only HTV Mostar, the Croat broadcaster, refused to agree to the code.

According to the Institute of War & Peace Reporting's Media Monitoring Report,

"[t]he essence of both sets of rules [those of RTV B&H and SRT] is to specify equal principles and equal access in the coverage of parties' and independent candidates' election activities... Both broadcasters also pledge not to affirm or support those political parties and candidates who denigrate their opponents in the election campaign, let alone use any form of violence or intimidation against other parties during their participation in programmes."

"Differences appear in the policies which will determine the conduct of the broadcasters. RTV B&H's programme policy is to take into account the 'fact that B&H is a democratic, sovereign and politically and territorially independent state in which Bosniacs, Croats and Serbs are all constituent nations (together with others) and citizens.' SRT's policy, on the other hand, is to 'affirm the sovereignty and integrity of Republika Srpska, determined by the DPA'. SRT also declares that it 'will not present those

⁴⁹ *Dani*, September 1996, number 47, p 25.

political parties and factions whose programmes promote violent change of the constitutionally determined order of RS and threaten either its territorial integrity or the degree of independence which it has attained'.⁵⁰

i. Republika Srpska Media

In Republika Srpska two of the most important candidates in the elections and leading figures in the ruling SDS also directed the key media. Momcilo Krajisnik, speaker in the Bosnian Serb parliament and candidate for Republika Srpska's representative in the three person Presidency of Bosnia and Herzegovina, chaired and still chairs the management board of RTV Srpska; and Velibor Ostojic, deputy premier and the fifth candidate on the SDS party list for the Bosnian parliament, controlled and still controls Radio Srpska. The consequences are predictable. Indeed, so offensive was the output of the official Bosnian Serb media that High Representative Carl Bildt accused them of putting out propaganda that "even Stalin would be ashamed of".⁵¹

Because it had signed up to the OSCE code of conduct, RTV Srpska went through the motions of complying via nightly elections broadcasts which began on 8 July. Party representatives were given 10 minutes to present themselves and their platforms and then the bulk of the hour and a half program was devoted to a question and answer session in which the presenter both asked questions and relayed those of viewers, or at least acted as if he was doing just that. In practice, the programmes were little more than an attempt to smear all opposition to the SDS. As a result, aspiring politicians spent most of the allotted time defending themselves and their war records from accusations made by pre-selected and carefully rehearsed viewers. Moreover, when they complained about their treatment, the RTV Srpska editorial board issued a statement saying that the station was defending the national interest and Republika Srpska and concluding that:

"[Bosnian] Serb television will not allow certain parties and their leaders to attack, humiliate

⁵⁰ IWPR Monitoring Report, 10 July 1996, p 6.

⁵¹ Reuter, 12 July 1996.

and hurt its journalists and editors with their groundless accusations. Political parties and coalitions which think that they will generate support from viewers through lies and still take part in the pre-election campaign, must expect to be pulled from the screen of [Bosnian] Serb television.”⁵²

Ironically, since Serb parties refused invitations to appear on RTV B&H, it was only on RTV Srpska that politicians from the Federation and Republika Srpska appeared together. The welcome for politicians from the Federation was invariably frosty and frequently descended into farce. When, for example, Mirsad Ceman, the SDA general-secretary appeared on RTV Srpska on 25 July he greeted the audience with “Good evening and makuz selam to all of those people for whom this means something.” Ten minutes later, the programme was interrupted and Ceman disappeared from the screen. After 40 seconds the word “*smetnje*” (disturbance) appeared on the screen and 14 minutes later TV Srpska began broadcasting pop videos without any explanation.⁵³

TV Srpska’s news output and especially the flagship early evening *Novosti u 8* (which became *Novosti u 7.30* in the course of the campaign) was even more partial. According to IWPR, “*Novosti u 8* provides unreserved support to RS authorities. It 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.”⁵⁴ Bosniacs were generally referred to in derogatory terms such as *Balija* or Muslim hordes, and reports from the Federation were regularly placed in the section *Iz sveta* (From Abroad), thereby suggesting that Republika Srpska was not part of Bosnia and Herzegovina.

The election itself was effectively presented as a referendum on independent statehood and an opportunity for the people of Republika Srpska to demonstrate their faith in the SDS, its leaders and in particular the indicted war criminal Radovan

⁵² Editorial Board statement, 31 July 1996.

⁵³ IWPR Monitoring Report, 31 July 1996, p 4.

⁵⁴ IWPR Monitoring Report, 10 July 1996, p 5.

Karadzic. Blanket coverage of rallies in support of Karadzic and fellow indictee General Ratko Mladic effectively signalled the beginning of serious electoral campaigning. And even after Karadzic had officially left the political scene and the OSCE vowed to ensure that he did not appear in the Bosnian Serb media, his personality and usually his posters remained a key element of all SDS rallies, most of them broadcast on TV. As election day approached, the main early evening news was postponed an hour and a half to make way for triumphalist SDS rallies.

The only beacons of light in the Republika Srpska media were *Radio Krajina*, an army-run radio station, and a handful of alternative newspapers, in particular *Nezavisne Novine* and *Novi Prelom*. *Radio Krajina*, which is run by Ratko Mladic's spokesman Milovan Milutinovic, was the "lone broadcaster to act as something other than a government transmission belt"⁵⁵ and consistently produced lively political phone-in debates featuring every party which wished to take part. *Nezavisne Novine* moved from being a fortnightly newspaper filled with scandals to a weekly in June and to a daily in August. The daily consisted essentially of informative agency news without commentaries. Meanwhile, *Novi Prelom* was bold enough to produce, for instance the week after Radovan Karadzic stepped down, a front cover with a split face - half Karadzic and half Biljana Plavsic. However, none of these alternative media had much influence beyond Banja Luka, and even then it was limited to the intellectual elite.

The role of Serbian television (RTS) was crucial in the campaign. While news originating in the Federation was invariably viewed as suspect by Bosnian Serbs in Republika Srpska, that coming from the Federal Republic of Yugoslavia (FRY) could not be tarnished to the same extent. As a result, RTS, whose signal covers nearly as much of Bosnia and Herzegovina as that of TV Srpska and is also viewed by Bosnian Serb refugees in Serbia, carried great weight. Moreover, its output often contrasted starkly with that of TV Srpska because Belgrade's preferred choice in the elections was clearly the *Savez za mir i progres* (Coalition for Peace and Progress) which

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IWPR Monitoring Report, 24 July 1996, p 2.

contained the SPRS a close ally of Milosevic. Indeed, according to IWPR, “The nightly news programme *Dnevnik* follows the Socialists like the local football club.”

ii. Media Battle in Croat-Controlled Federation Territory

The official Bosnian Croat media, which included HTV Mostar, HR Herzeg-Bosna and HR-Radio Postaja Mostar, never signed the PEC electoral Rules and Regulations and made no effort to open themselves up to the opposition during the election campaign and did it with complete impunity; no actions were ever taken by EASC or any other OSCE-run institutions. The result was an all-pervasive propaganda campaign equating “a vote for the ruling (nationalistic) party with support for nation and/or (para)state”—in other words “one-party television for a would-be one-party state”.⁵⁶ As if this was not sufficient, *Hrvatska Radio-Televizija*, that is television from Croatia proper, whose signal covers most of Bosnia and Herzegovina, broadcast daily appeals to Bosnian Croats in Bosnia and Herzegovina and abroad to vote for the ruling HDZ. According to IWPR, “in the world of Croatian Television, the HDZ is the indisputable representative of the Croat people.”⁵⁷

iii. Media Battle in Bosniac-Controlled Federation Territory

The most free of the state-run media in Bosnia and Herzegovina was without doubt that in Bosniac-controlled Federation territory, even though the director of TV B&H, Amila Omersoftic, was herself a candidate for the *Stranka zena BiH* (Women’s Party of Bosnia and Herzegovina). According to IWPR, “TV B&H has shown increasing professionalism ... The station not only allows opposition parties to take part in political programmes, it also gives them an opportunity to comment on the news.”⁵⁸ Indeed, when TV B&H failed to cover the Sarajevo campaign launch of the *Zdruzena Lista* (United List), on 6 August, the leading opposition coalition complained bitterly

⁵⁶ IWPR Monitoring Report, 26 June 1996, p 5.

⁵⁷ IWPR Monitoring Report, 24 July 1996, p 4.

⁵⁸ IWPR Monitoring Report, 8 August 1996, p 4.

and their entire complaint was read out on the following day's news broadcast. RTV B&H's election-related broadcasts started on 15 July and ran every night up to the elections, giving all parties—including the HDZ—and all presidential candidates ample opportunity to introduce themselves to the electorate and present their platforms.

Journalists of RTV B&H's news programmes, however, in the good old communist tradition slavishly reported on the daily agendas of all key ministers, irrespective of the relative significance of their actions, thus favouring the ruling SDA. More alarmingly, however, RTV B&H failed to report the full story on many occasions and, as the campaign came to a head, moved markedly closer to the SDA.⁵⁹

The picture was less healthy, however, in the local electronic media outside Sarajevo, especially in Tuzla and Cazinska Krajina, the area of northern Bosnia around Bihac, which were firmly under SDA control. The best illustration of the quality of the news of these hard-line SDA stations is that Radio Bihac chose not to report the attack on Haris Silajdzic in Cazin on the day itself. And a day later, when it briefly mentioned the event, it was the fourth item on what was otherwise a thin news day.⁶⁰

The print media in Bosniac-controlled Federation territory, which boasts three daily papers in Sarajevo, also generally performed well and professionally for most of the campaign. Largely funded from abroad and employing more experienced journalists than the electronic media, papers like the daily, *Oslobodjenje*, the fortnightly *Slobodna Bosna* and the monthly *Dani* consistently provided their readerships with informed and informative articles.

iv. **Failure of International Media Initiatives to Have Impact**

The most influential international media projects aimed at Bosnia and Herzegovina pre-date the DPA. These are the Serb, Croat and Bosnian

⁵⁹ IWPR Monitoring Report, 4 September 1996, p 1.

⁶⁰ IWPR Monitoring Report, 19 June 1996, p 2.

language radio broadcasts of Voice of America, *Deutsche Welle*, BBC World Service, *Radio France Internationale* and Radio Free Europe. All these services offer an alternative to the three state-controlled media in Bosnia and Herzegovina and have built up audiences over many years.

More recent international attempts to influence the Bosnian media have thus far failed to make an impact or to address the fundamental problems. Instead of tackling the media within Republika Srpska or Croat-controlled Federation territory where the need was greater, the international community focused on Bosniac-controlled Federation territory. A Swiss-financed radio station, the Free Election Radio Network (FERN), began broadcasting on 15 July and ran until the elections. With a staff of 20, including stringers, it claimed to cover 81 per cent of Federation territory as well as 66 per cent of Republika Srpska. However, it broadcast out of Sarajevo and the full-time staff was concentrated in Bosniac-controlled Federation territory. Moreover, the Republika Srpska authorities banned FERN's broadcasts because it had not sought their permission.⁶¹ As a result, FERN effectively only covered the part of the country where the media was already the most open and was not on the air long enough before the elections to build up an audience.

TV-IN, the \$11 million television station sponsored by the Office of the High Representative that was supposed to span Bosnia and Herzegovina and provide an alternative to the state-controlled media, began broadcasting a very basic programme only on 7 September. Technically the project was very difficult to put together before the elections' deadline; politically, it proved even more problematic because of successive Bosnian government protests and obstructions. The station, which is based on a network of five existing, independent Bosniac stations, broadcasts from Sarajevo, but this location minimises its potential impact in Republika Srpska and Croat-controlled Federation territory. Moreover, the first week of broadcasting was characterised by massive in-fighting between its component parts, including a boycott of the network by one of its member stations, and consistently sloppy

⁶¹ IPTF Elections-Related Human Rights Incident Tracking, 28 August 1996, p 11.

production. Worse still, the picture quality was too poor for most Bosnians to tune in and its outreach was limited.

D. Disenfranchisement of Refugees

Many Bosnian refugees were unable to vote in the elections through no fault of their own. This was in part a result of the complexity of the voter registration process and the fact that Bosnians are dispersed throughout the world. But it was also in part a result of the OSCE's own organisational problems and the tight time-frame within which it worked. According to the Embassy of Bosnia and Herzegovina in Vienna, 200,000 refugees in 54 countries had been disenfranchised because of these difficulties.

With refugees dispersed across 63 different countries, it was critical to begin registering voters as early as possible to ensure maximum participation. However, as mentioned in Section C1 above, because of severe under-funding of the OSCE's operations during the first six months and a critical lack of information technology experts, voter registration only began on 10 June. Worse still, an already tight time-frame was exacerbated by a decision to press ahead with municipal elections at the same time as the national elections—a decision that was not required by the DPA and one that was revoked later after it was already too late to prolong the registration period.⁶²

The initial decision to stage municipal elections at the same time made the logistical task much greater, since applications for absentee ballots had to be broken down into municipalities. As a result, the final deadline for voter registration abroad, which was itself extended several times, was 8 August - barely one month before the ballot. In the process out of an estimated 900,000 refugee voters,⁶³ only 641,000 had registered to vote.⁶⁴

E. Electoral Engineering

The DPA stipulates that “[a] citizen who no longer lives in the municipality in which he or she resided in 1991 shall, as a *general rule*, be expected to vote, in person or by absentee

⁶² The DPA states: "The Parties request the OSCE to supervise ... the preparation and conduct of elections for the House of Representatives of Bosnia and Herzegovina; for the Presidency of Bosnia and Herzegovina; for the House of Representatives of the Federation of Bosnia and Herzegovina; for the National Assembly of the Republika Srpska; for the Presidency of the Republika Srpska; and, *if feasible*, for cantonal legislatures and municipal governing authorities." DPA, Annex 3, Article II(2), emphasis added.

⁶³ UN Mission in Bosnia and Herzegovina, Estimated Structure of the Electorate in Bosnia and Herzegovina.

⁶⁴ OSCE Mission in Bosnia and Herzegovina, announcement of August 24.

ballot, in that municipality,” and continues, “Such a citizen may, however, apply... to cast his or her ballot elsewhere.” However, DPA continues “[b]y Election Day, the return of refugees should already be underway, thus allowing many to participate in person....”⁶⁵

It is clear that most displaced Bosnians were expected by the international community to be voting in the municipalities in which they were living in 1991 in order to start the process of reintegration. Voting elsewhere was to be the exception. Under the electoral rules and regulations drawn up by the Provisional Election Commission (PEC), displaced persons wishing to vote not where they lived in 1991 but in the municipality in which they were currently living or in a different municipality in which they intended to live, had to fill out a so-called form P-2, apply to the PEC and then vote in person on the day.

1. In-Country Voter Registration

Displaced Bosniacs and Croats now living in the Federation generally registered to vote in the municipalities in which they were living in 1991 by absentee ballot (187,414) and many others expressed their intention to travel on the voting day to their former homes and cast the ballot personally. Only 59,473 asked to vote where they currently lived. For displaced Serbs from the Federation now living in Republika Srpska the numbers were almost perfectly reversed: 78,196 wanted to vote by absentee ballots and 241,741 chose to vote in their current place of residence. ICG analysts operating as international observers on election day visited the northern town of Derventa in Republika Srpska and found that many of the absentee voters were in fact casting their ballots for another town (Srpski Petrovac) within Republika Srpska. The OSCE has apparently been unaware of this vast inside-entity absentee vote intention and had not prepared enough ballots for Srpski Petrovac (envelopes printed for Bosanski Petrovac were stuffed with Drventa ballots). This may explain the high figure of 28.5% invalid votes in Drventa (10,126 of a total of 25,466).⁶⁶

Had these displaced Serbs chosen of their own free will to switch their vote from their previous homes in the Federation to their new place of residence in Republika Srpska, this might have been acceptable. However, the Bosnian Serb authorities systematically pressured them into registering to vote in Republika Srpska and not in the municipalities in which they were living in 1991. In the former front-line town of Doboij, for example, the official SDS-controlled Commission for Refugees

⁶⁵ DPA, Annex 3, Article IV, emphasis added.

⁶⁶ OSCE information sheet, 21 September 1996 17.52.

and Displaced Persons decreed that displaced persons would only receive housing, humanitarian aid, and other benefits on presentation of a special certificate which they could acquire by showing voter registration form P-2.⁶⁷ These tactics were subsequently extended to many other regions of Republika Srpska.⁶⁸ As a result, what was supposed to be the exception in practice became the rule, distorting the spirit if not the letter of the DPA.

OSCE Co-ordinator for International Monitoring Ed van Thijn described the voter registration as “fraud”, saying: “It is not fraud in favour of a political candidate but it is fraud in favour of solving territorial problems.” And he concluded: “It’s very sinister. Displaced persons ... are moved around against their will in order to fulfil all sorts of political aims. I think it’s a serious violation of human rights.”⁶⁹

Soren Jessen-Petersen, UNHCR special envoy for Former Yugoslavia, agreed: “In some cases, the authorities threatened to withhold humanitarian aid to coerce voters to opt for Registration Form [P-2]. Many received registration forms which already indicated the location at which they were to vote. We know only of cases of people who had the courage to report them. The real scale of the problem, however, may be much greater.” And he warned: “Results of the registration for the September elections herald a dismal future for multi-ethnicity in Bosnia and Herzegovina.... [T]he tactics used in the campaign will produce hard-line winners and xenophobic nationalists committed to the maintenance of hostile homogenous statelets.... Unless all refugees and displaced people are allowed to vote freely on election day and unless the results of the elections are fully enforced, the winners once again will be those who waged the war and the losers will be their victims, i.e. refugees and displaced peoples.”⁷⁰

2. Voter Registration Abroad

The results of voter registration abroad or more specifically the registration of Bosnian Serb refugees currently living in the Federal Republic of Yugoslavia (FRY) were the “widespread abuse of rules and regulations” which persuaded Ambassador Frowick to postpone municipal elections.⁷¹ In the words of one official in the Office of the High Representative who prefers not to be named, “Because the Americans were so determined to hold elections, the Serbs could have succeeded in carrying out

⁶⁷ OSCE Human Rights Periodic Report, 18 July 1996, par. 14.

⁶⁸ OSCE Human Rights Periodic Report, 5 August, 1996, par. 14, 15.

⁶⁹ Reuter, 9 August 1996.

⁷⁰ UNHCR statement, 26 August 1996.

⁷¹ Reuter, 27 August 1996.

a huge amount of manipulation, but the scale of manipulation of refugees in Yugoslavia was so massive that we had to react.”

In total, 123,007 Bosnian Serb refugees in FRY registered via form P-2 to vote in person on the day of the election in municipalities across Republika Srpska in which they supposedly intended to live. This included 31,278 in Brcko, 19,746 in Srebrenica, 12,365 in Zvornik, 11,362 in Doboje, 8,595 in Foca, 5,878 in Prijedor, and 3,159 in Modrica.⁷² In practical terms, all formerly Bosniac-majority municipalities were strategically stacked with Serb refugee votes.

The Helsinki Committee for Human Rights in Serbia monitored voter registration there and took testimonies from refugees who fled from areas of Bosnia and Herzegovina that are now under the control of the Federation. It concluded that: “The whole [voter registration] process is being carried out along most precise instructions. The aim is that fewest possible refugees register for the list of BH Federation. Local authorities at the registration polls in municipalities have skilfully avoided giving any explanations to refugees, as they are bound to do by the rules of the procedure.”⁷³

Specifically, officials of all three governmental entities (Republika Srpska, FRY and the Republic of Serbia) discouraged and prevented refugees from registering to vote in their home areas (either in person or in absentia) and directed them to register to vote in person in areas of Republika Srpska that used to have Bosniac majorities. The Helsinki Committee obtained testimony from refugees from Drvar, now in the Federation, who attempted to register to vote in absentia or in person in their home town. Serb election officials tried to persuade the Drvar refugees to register to vote in Srebrenica, Brcko, Zvornik and other Serb-held districts where Serbs comprised a minority of the population before the war. In the case of the refugees in Serbia, few were informed that they had any possibility to vote in Federation territory or to choose an intended place of residence in RS; they were simply handed form P-2s with polling stations already chosen for them. At a polling centre in one Belgrade suburb voters coming to register were told: “All those from the Federation can vote in one of the offered places in Republika Srpska.” Some refugees were told that they would get new houses if they voted for the SDS.⁷⁴

⁷² OSCE Report on Refugee Voter Registration, Annex B4, 23 August 1996.

⁷³ Registration of Bosnian Refugees for the September Elections, Helsinki Committee for Human Rights in Serbia, 31 July 1996, p 1; hereinafter referred to as Helsinki Committee Report

⁷⁴ Helsinki Committee Report.

F. OSCE's Responses

1. Election Appeals Sub-Commission

The Election Appeals Sub-Commission (EASC) is (as stated above in section II(B)(3)(b)) the one organ within the OSCE which could effectively ensure compliance with the DPA and the PEC Rules and Regulations during the electoral campaign and election day. As of 13 September, the EASC had issued 53 judgements and seven advisory opinions since its first meeting on 2 July. Significantly, 27 of these decisions were published during the last two weeks of the electoral campaign, thus minimising the deterrent effect they could have otherwise had. Of the 53 decisions 33 were dismissals of complaints, two were interim judgements on complaints in need of further investigation, four were limited to warnings of future action or censoring of local officials, one judgement ordered the OSCE to correct registration errors for 13 voters, and 13 decisions resorted to punitive action. Seven of those punitive decisions were made against SDA or Bosniac officials, including against members of LECs, five were entered against SDS or Bosnian Serb officials, including against a member of an LEC, and one was against HDZ and a Bosnian Croat member of an LEC.

Only in three decisions did the EASC use the most potent sanction available in its mandate—the removal of candidates from party lists for violations of the PEC Rules and Regulations. On 11 July, the EASC found that SDA was responsible for a physical attack on opposition candidate Haris Silajdzic and removed the first seven names on the SDA party list for municipal elections in Cazin. In a second such decision on 15 August, the EASC found HDZ responsible for the unauthorised removal of voter registration forms from the registration centre in Mostar and ordered the immediate removal of one HDZ candidate's name from the party list for the Neretva Canton. In a third decision on 3 September, SDA was again found responsible for disrupting an opposition political rally and one of its candidates for municipal election was removed from the party list.

Another sanction available in the EASC arsenal is fines. In five cases the EASC penalised the three ruling parties: the SDA was assessed penalties of US \$25,000 (DM 37,500) and 15,000 (DM 22,500) in two separate cases; the SDS was fined 25% of its entitlement of campaign funds from the OSCE in a first case, and \$50,000 (DM 75,000) in a second case; and the HDZ was fined \$10,000 (DM 15,000).

Other penalties were also included in EASC's 13 punitive decisions, with multiple penalties assessed in most cases: in three cases the violators were censored; in two cases involving

voter registration fraud or irregularities, the registration was repeated; in six cases party officials or candidates were ordered to broadcast public apologies or statements promising that the particular violation would not be repeated; in seven cases, those responsible were warned that the EASC would take stronger action if the violations were repeated; and in one case offensive posters were ordered removed.

The EASC was reluctant to resort to serious sanctions despite the considerable powers available to it. This is best illustrated by three decisions and opinions that involved one of the most egregious violations of the DPA: the SDS advocacy of secession, an open threat to the territorial integrity of Bosnia and Herzegovina. Throughout the electoral campaign, the SDS and other Bosnian Serb parties and candidates had asserted that they would not permit the drowning of Republika Srpska in a Muslim state, and that their only goal was to confirm with the ballot what they had won during the war, working toward the unification of all Serbs in one state. On 8 August, the OSCE Mission issued a press statement noting “with mounting concern statements from the Republika Srpska arrogating to this Entity the right to assert sovereignty as an independent State.”⁷⁵ Yet such statements continued, as the SDS ignored the OSCE appeal to adhere to the spirit and the letter of DPA. Finally in a 6 September Advisory Opinion, the EASC declared: public statements that undermine or deny the sovereignty and territorial integrity of the state of Bosnia and Herzegovina constitute serious violations of the DPA; candidates who have made such statements must retract them and declare their commitment to uphold the DPA should they be elected to public office; parties must distance themselves from such statements and must discipline any member who makes such statements; and candidates or parties who make or tolerate such statements will be penalised.⁷⁶

At an SDS campaign rally on 8 September, party candidates and leaders again made statements denying the territorial integrity of Bosnia, and asserting that if the SDS retained power it will quickly lead the Republika Srpska to independence and union with Serbia. In a decision published on 10 September, the EASC responded to several complaints about the SDS statements, and found that the “tenor and content of the SDS campaign is in breach of the General Framework agreement and the Rules and Regulations of the PEC.” Accordingly, the EASC ordered the SDS to pay a civil penalty of US \$50,000 (DM 75,000), ordered SDS candidates and officials to refrain from any such further statements, and put SDS on notice that if

⁷⁵ OSCE Mission to Bosnia and Herzegovina, Press Statement, 8 August 1996.

⁷⁶ EASC, Advisory Opinion # 5, Statements that Advocate Sovereignty for a Part of the Country or that Otherwise Threaten its Territorial Integrity, 6 September 1996.

its candidates continue to make such statements, “they can expect to have their candidacies for public office terminated” and that “they will be removed from the list.”⁷⁷

The very next day on 11 September and again in the following days, SDS leaders including Biljana Plavsic, President of Republika Srpska after Karadzic’s stepping down, delivered inflammatory statements at SDS campaign rallies in Banja Luka and elsewhere. Plavsic said “all nations have their goals, ... our ultimate aim is to have a unified Serb state in the Balkans.”⁷⁸ In a third opinion addressing the same issue in less than one week, the EASC concluded that “[I]t is hardly idle speculation to suppose that the oratory of today, which flouts the international community as dangerously as it challenges the constitutional foundation of Bosnia and Herzegovina, could lead to violence in the near future. If the SDS is allowed to make these statements with impunity, after having received such a clear warning of the consequences, the unmistakable message that is sent to SDS supporters throughout Republika Srpska, is that they can act in accordance with these statements, with equal impunity.” Yet despite the “clear warning” in the 10 September decision that SDS leaders or candidates who continue to make such statements “will be removed from the list”, the EASC merely ordered Biljana Plavsic to make an apology on Srpska Television and issued another warning that if the apology comes late or is distorted “three of the first five candidates will be removed from the SDS Party list.”⁷⁹

A second illustration of EASC’s restraint is its decision on a complaint filed against the SDS for displaying throughout Republika Srpska campaign posters with the photograph of indicted war criminal and fugitive Radovan Karadzic. In a decision published on 10 September, the EASC concluded that the display of such posters “represent a serious breach of the Rules and Regulations of the [PEC];” it ordered the SDS to broadcast and publish a statement addressed to its members ordering the removal of the posters and to prevent the appearance of Karadzic posters in its rallies; and it promised that the EASC will take no further action if the SDS “complies with its undertaking in an appropriate manner.” However, the EASC also admitted that “the enforcement powers of the Sub-Commission do not extend to private individuals.” Exploiting this loophole, the SDS failed to remove similar placards with the photograph of Karadzic, displayed no doubt by “private individuals” over whom the EASC had no jurisdiction. During the following days, the SDS was not alone flouting the prohibition on pictures of indicted war criminals on campaign

⁷⁷ EASC, Case Number 96-24B (Consolidated Appeal), Judgement, 10 September 1996.

⁷⁸ Associated Press, 11 September 1996.

⁷⁹ EASC, Case Number 96-34B, Judgement, 13 September 1996.

posters; the HDZ was also displaying pictures of Dario Kordic during a campaign rally in Vitez.⁸⁰ The EASC decision ordered the SDS to remove “all posters of Radovan Karadzic which are on display inside or in the immediate vicinity of polling stations” (this was 48 hours before the vote and the rule allowing no posters whatsoever in or near polling stations entered into effect), and threatened otherwise to remove SDS candidates from the party list for the National Assembly of Republika Srpska.⁸¹

All those decisions came late in the campaign, when they already had no deterrent effect on possible violations. Moreover, by not using its mandate to sanction offenders more resolutely, even in cases when the violations could lead to serious conflict and threaten the whole fabric of the DPA, the EASC has encouraged some of the Parties to escalate the extreme nationalist rhetoric and to flaunt their immunity. Furthermore, the EASC’s failure to follow up on its own warnings that candidates will be removed from the party lists if serious breaches of DPA and the PEC Rules and Regulations were repeated, makes a mockery of the international community’s effort in Bosnia and Herzegovina.

2. Media Experts Commission

The Media Experts Commission (MEC) has been even less effective than the EASC. Mirza Hajric, representative of the Bosnian government in the MEC, resigned on 8 September citing his frustration with the ineffectiveness of the commission. In his resignation letter to Ambassador Frowick he wrote: “Though the MEC received a mandate from the PEC, the most powerful body within the OSCE, and has all necessary facilities to do its job, I consider that the results of its work and that of its five regional commissions is well below an acceptable minimum.”⁸²

The MEC held nineteen meetings between 3 May and 5 September 1996. The first ten meetings addressed mainly technical issues—including definitions and terminology—and very few complaints. Also, the MEC used the better part of the first 10 meetings to reach a decision on the issuance of press accreditation.⁸³ The MEC addressed some 30 complaints, for most of which it asked for additional explanations. In the few cases in which the MEC decided to take action, it merely required apologies and referred a few others to the PEC for further action.

⁸⁰ International Herald Tribune, 12 September 1996, page 7, “Cleaning up on ethnic cleansing.”

⁸¹ EASC, Case Number 96-29B, Abbreviated Judgement, 10 September 1996.

⁸² Mirza Hajric, resignation letter to Robert Frowick, 8 September 1996.

⁸³ Decisions, MEC Official Records, 10th Meeting, 4 July 1996.

The first substantive ruling was made by the MEC in July. After a complaint was lodged on the basis of the independent Media Monitoring Report regarding an offensive statement made in June on Srpska Radio and TV (SRT) by its editor in chief, on July 11 the MEC decided to order the SRT editor in chief to apologise “to people whom he qualified as ‘good for nothing ... who are ready to surrender practically the whole [Republika Srpska] state to Alija Izetbegovic’s hands...’.”⁸⁴ In a follow up decision on the same case the MEC added that “should [the editor in chief] not abide by this decision, further measures will be taken against SRT.”⁸⁵ The apology was finally delivered on SRT on 27 August.

In a complaint regarding press accreditation in Republika Srpska, local police denied entry to a Finnish journalist who had IFOR press credentials. After considering the complaint for four weeks, the MEC recommended that the official responsible for the incident be censored by the Republika Srpska authorities so that “in the future he will not be in a position to hinder journalistic work on the territory of RS”.⁸⁶ However, harassment of journalists in Republika Srpska continued unabated.⁸⁷

When the MEC referred cases to the PEC with a recommendation for further action, they were equally ineffective. In a case in which Croatian TV (HRT) had broadcast HDZ political material, the MEC decided that the case involved the clear interference of one country in the electoral process of another in direct contravention to the DPA and the PEC Rules and Regulations. The MEC referred the case to the PEC with a recommendation that the “PEC draw the attention of HRT on the matter.”⁸⁸ In a case in which the Republika Srpska authorities did not allow FERN Radio to broadcast from its territory, the MEC referred the case to the PEC with a “recommendation to the PEC that Republika Srpska be ordered to immediately grant the appropriate permit to Radio FERN or to take any appropriate action as deemed necessary.”⁸⁹ Republika Srpska eventually complied with the PEC order.

The MEC’s ineffectiveness is best illustrated in another case involving RTV Srpska. Despite several appeals and admonitions from the MEC, as of 5 September, SRT had refused to properly broadcast voter education material as required by the OSCE. One week before the elections, the MEC once again ordered SRT to broadcast the OSCE Voter

⁸⁴ Decisions, MEC Official Records, 11th Meeting, 11 July 1996.

⁸⁵ Decisions, MEC Official Records, 13th Meeting, 25 July 1996.

⁸⁶ Decisions, MEC Official Records, 7th Meeting, 13 June 1996.

⁸⁷ Decisions, MEC Official Records, 17th Meeting, 22 August 1996.

⁸⁸ Decisions, MEC Official Records, 14th Meeting, 1 August 1996.

⁸⁹ Decisions, MEC Official Records, 16th Meeting, 15 August 1996.

Education material.⁹⁰ SRT finally complied with the MEC order during the last week of the campaign.

IV. ELECTION DAY

A. Introduction

Despite the fears of the international community, the 14 September elections in Bosnia-Herzegovina took place in a calm atmosphere. This is in part because of the meticulous security preparations of the international organisations working in Bosnia and Herzegovina, in particular IFOR, IPTF, and the ministries of interior of the Parties. It is also in part because the three ruling political parties across Bosnia-Herzegovina were themselves keen on holding the elections and wanted the day to pass off without incident. Though on the day itself foreign statesmen hailed the elections as a great triumph for democracy, their verdict may have been a little premature. Since polling day, observers' reports brought to light a number of problems.

On 16 September, the Coordinator for International Monitoring (CIM) issued a preliminary report summarising the international observers' findings on election day. The report noted that despite the complexity of the ballots, voting throughout the country was "conducted properly at 97% of polling stations" and that "the Polling Station Committees conducted their work in a professional and impartial manner." However, CIM pointed to "three major areas of the election process in which significant problems occurred": voter registration, absentee polling stations, and freedom of movement.⁹¹ (For more detailed description, see below).

Voting was completed the same day as scheduled. Some polling stations had few voters and remained virtually empty all day. Others were overcrowded and unable to process all voters by 19:00. The most serious single incident took place on the night of 13 September in Bugojno when a grenade exploded outside the house of a Croat member of the Local Electoral Commission. In protest Bosnian Croats withdrew members of polling committees from polling stations the next day for one hour, thus temporarily interrupting voting.

The massive security operation, the late and contradictory information on freedom of movement, and the segregation of voters crossing from one entity to the other minimised both the

⁹⁰ Decisions, MEC Official Records, 19th Meeting, 5 September 1996.

⁹¹ The Elections in Bosnia and Herzegovina, 14 September 1996, Preliminary Statement of the Coordinator for International Monitoring (CIM), 16 September 1996, page 2; hereinafter referred to as CIM Preliminary Report.

problems on the day and the turn-out of displaced persons. Once displaced persons realised that they would not be able to see their homes, many decided that it was not worth voting.

B. General Voting Problems

1. Voter Registration

In its preliminary report CIM stated that the problems in voter registration “undoubtedly jeopardised the integrity of the list”, as a result of which thousands of people found themselves unable to vote, because they could not find their names on voter registration lists. In the Federation of Bosnia and Herzegovina, 50% of polling stations reported such problems. In Republika Srpska, CIM observers reported that in 37% of polling stations, voters experienced similar problems. However, comments by observers indicate that the registration checking in polling stations was conducted properly and the problem could be attributed to errors in the voter registration list.⁹² Nonetheless, the end result was that thousands of voters were disenfranchised.

When the extent of the problem became known, OSCE issued instructions to the Local Election Commissions (LEC) and Polling Station Committees to direct voters whose names did not appear on voter lists to verify with the LEC, obtain a certificate, and return to polling stations to cast their ballots. However, this happened late in the day, when many voters had already returned home and given up on voting, and this instruction was not received uniformly in all localities. Furthermore, displaced persons who had crossed the IEBL to cast their ballots could not venture away from the secured polling stations where they arrived in buses and appeal to the LECs. In the event, thousands of voters could not vote. In two municipalities in Sarajevo, hundreds of disgruntled voters besieged the LEC offices, demanding that their right to vote be respected. In response, some municipalities extended the voting hours until 22:00 to accommodate voters who had experienced registration problems.

OSCE could have foreseen this problem and prepared a contingency plan to address the issue. During the Mostar elections on 30 June this year, an estimated 2.8% of voters could not find their names on the voter lists.⁹³ The same problem was bound to repeat itself in the country-wide elections.

The PEC Rules and Regulations (Article 213) require that a record be made of all significant events which occur at the

⁹² CIM Preliminary Statistics, pages 4-5.

⁹³ Mostar Elections Day, a Technical and Legal analysis, ICG report, 8 July 1996.

polling station during election day. Following this requirement, some but not all polling station committees made a list of all voters who were turned back as a result of registration problems, so it is not possible to estimate the number of voters who were disenfranchised. Nonetheless, some observers reported that about 5% of voters were not able to cast their ballots in polling stations they visited, others reported that the rate was between 10 and 15%. In Mostar for example, the OSCE Director Regional Centre Gen. Wolfgang Odendahl reported that between 12 and 15% of voters could not find their names on the voter lists.⁹⁴ However if the lower 5% figure is used, then some 120,000 to 145,000 voters out of a total of “between 2.4 and 2.9 million” registered voters⁹⁵ may have been disenfranchised.

Following the vote, the Election Appeals Sub-Commission (EASC) received a number of complaints regarding the voter registration problems. The EASC Decision on these complaints stated it was “difficult to estimate the number of voters affected by the difficulties with the voters list”, however without more it rejected “exaggerated allegations which have appeared in media and other reports,” and dismissed the complaints concluding that it was satisfied “the numbers affected [were] not sufficient to call into question the integrity of the elections.”⁹⁶

2. Absentee Stations

In the case of absentee polling stations, the preliminary report of CIM noted that “significant problems of crowd control and voter safety occurred at some absentee stations and polling had to be suspended for a period or extended.” Nine absentee ballot polling stations in Sarajevo, for example, had to be closed when the crowds of voters began pushing and shoving and a large window in one of the polling stations was shattered. As a result, a handful of polling stations stayed open an additional three hours until 22:00 to allow more voters to cast their ballots.

3. Other Problems

The EASC addressed complaints filed based on election day violations. In one polling station in the Republika Srpska (Kozluk), the EASC found “organised fraud with a level of planning that calls into question the integrity of the vote at this station” and ordered the results annulled.⁹⁷ In a military polling station in Croat-controlled territory of the Federation, the EASC

⁹⁴ Mostar press conference, 16 September 1996.

⁹⁵ Press conference of Elections Director General, Jeff Fischer, 16 September 1996.

⁹⁶ EASC, Case No. 96-123 (Consolidated Cases), Judgement, 18 September 1996.

⁹⁷ EASC, Case No. 96-140, Judgement, 18 September 1996.

also annulled the results after finding widespread fraud.⁹⁸ In another post-election decision, the EASC found that the three ruling parties (SDS, SDA, HDZ) were responsible for campaign posters displayed in or near polling stations on election day and fined them each US \$5,000 (DM 7,500).⁹⁹

Other irregularities were not addressed by the EASC as complaints were apparently not filed. For example, international observers reported that a US delegation entered a polling station in the Mostar area with their security guards brandishing M16 automatic rifles despite warnings from OSCE Elections Supervisors that the PEC Rules and Regulations prohibited such acts. More serious irregularities were reported in the Brcko area. One international observer team monitoring the Bosanski Samac region witnessed ballot box stuffing by polling committee members, unauthorised persons in the polling station, persons voting for family members not present, and polling committee members acting partially.

The choice of premises for some polling stations for displaced persons was tactless at best, gross at worse: one station in Foca was located at a notorious execution site where bullet holes from the massacre of Bosniacs could still be seen. In Lazete, near Zvornik, the voting took place at the exact spot where Bosniacs had been rounded up and detained in 1992 before being shot. A polling station in Doljani was located in a Roman Catholic church which is also the residence of the Catholic priest; Bosniac voters refused to vote there. And in Koraj in Republika Srpska, the polling station for displaced Bosniacs was located next to a destroyed mosque. The polling station for Bosniacs who wanted to vote in Zvornik was situated 16 km from the town on the edge of the municipality. It consisted of two green army tents set up by US IFOR at the end of a muddy quarry. “[T]he hundreds of refugees wait[ed] in the mud to be allowed to vote.”¹⁰⁰

In Republika Srpska voting procedures for Bosniacs were often significantly slower than those for Serbs as if to discourage Bosniac voters and thus prevent them from casting their ballot before the 19:00 closing time. In the divided municipality of Gorazde/Kopaci where there were two polling stations - one for Serbs and one for Bosniacs; a third station was on reserve to be used if needed but was not opened until 13:30. The Bosniac polling station, which was in a factory behind a wire fence, opened late, at 7:30 and had only processed 250 people by 14:00. At the same time, between 7:00 and 16:00, the neighbouring Serb polling station processed local residents and

⁹⁸ EASC, Case No. 96-122, Judgement, 18 September 1996.

⁹⁹ EASC, Case No. 96-90, 94, 99, 132, Judgement, 18 September 1996.

¹⁰⁰ *Transition* bi-weekly, September 1996 (in print).

over 30 busloads of Serb refugees coming from the Federal Republic of Yugoslavia.

In addition to these major concerns, a lesser number of violations at polling stations were reported by the CIM in its preliminary report. Those were as follows: campaigning at polling stations - Federation of Bosnia and Herzegovina (FBH) 3% and Republika Srpska (RS) 2%; other problems with voting circumstances - FBH 9% and RS 6%; insufficient or wrong ballot materials - FBH 4% and RS 2%; voting outside booths - FBH 3% and RS 2%; ballot boxes not sealed properly - FBH 5% and RS 3%; other problems with procedures - FBH 12% and RS 10%; voters not well informed - FBH 12% and RS 10%; other problems with comprehension - FBH 5% and RS 5%; other than impartiality and competency problems with polling station committees - FBH 9% and RS 8%; unauthorised persons present in polling stations - FBH 4% and RS 6%; local police present inside polling stations - FBH 12% and RS 8%; difficulties with physical access to polling stations - FBH 10% and RS 11%; and other accessibility problems with polling stations - FBH 6% and RS 5%.¹⁰¹

C. Displaced Persons Voting

The most serious concern voiced by the Coordinator of International Monitoring (CIM) was the freedom of movement, and access by displaced persons returning to vote where they lived before the war. CIM concluded that on election day the climate had not been established for such voters to cross the IEBL to cast ballots without fear of intimidation or personal safety, and that "the small number of voters that crossed the IEBL is an indicator that the Dayton principle of freedom of movement has not been met, and thus points to a disintegrative trend."¹⁰²

Had all displaced persons in the Federation who had not registered for absentee ballots attempted to travel to the municipalities in Republika Srpska in which they had been living in 1991 to vote, more than 150,000 would have crossed the inter-entity boundary line.¹⁰³ Moreover, the number of people crossing the IEBL could have included a further 7,000 persons from Republika Srpska making their way to the Federation, principally to the former Serb-majority towns of Drvar, Glamoc and Grahovo. However, on the day only 14,700 crossed - 13,500 from the Federation into Republika Srpska and 1,200

¹⁰¹ CIM Preliminary Report, Annex 1, Preliminary Results, Report of CIM Statistical Unit, 16 September 1996; hereinafter referred to as CIM Preliminary Statistics.

¹⁰² CIM Preliminary Report, page 3.

¹⁰³ UN estimates based on analysis of in-country registration figures, Voter Analysis on Election Day: Detailed Estimates, 9 September 1996.

from Republika Srpska into the Federation.¹⁰⁴ This was a long way below the pre-election forecasts, less than the 25,000 initially reported and only marginally more than crossed without incident from one side of Mostar to the other during that divided city's municipal elections in June. As the head of CIM Ed van Thijn said during his first preliminary assessment of the voting day peace reigned on election day, but "peace and silence went together because of the low number of [people] crossing the IEBL."¹⁰⁵

Given the potential number of displaced persons crossing the IEBL, the key international organisations in Bosnia-Herzegovina - IFOR, OSCE, IPTF and OHR - in collaboration with the interior ministries of both Republika Srpska and the Federation mounted a massive security operation to prevent any possibility of violence on the day. In practice, this meant special voter IEBL crossing points, mandated group crossings in buses, and segregated polling stations located just inside Republika Srpska. In total, 19 crossing points were designated "voter routes" and only vehicles equipped to carry eight or more passengers were permitted to cross the IEBL. The agreement by Ministers for Internal Affairs specifically noted: "To minimise traffic congestion and route congestion which could delay or restrict peoples' ability to reach their destination, *smaller vehicles will not be permitted to utilise the voter routes.*"¹⁰⁶

Furthermore, the information on these security arrangement was contradictory: later on, the IEBL were declared totally open, even to cyclists, although this was, again, not enforced in practice. Delivered at the eleventh hour, changing until the last moment, it certainly was a deterrent for many voters. Besides, the chicanery and unexplained delays of buses in the morning of 14 September further discouraged prospective voters. It must be said however that a great part of the blame goes to the authorities on the Bosniac part of the Federation who failed to properly organise the bus network and disappointed many displaced people. Since pedestrians, people on bicycles and in private cars were going to be turned back at the IEBL, buses had to be at key points to ensure a respectable turn-out. However, the SDA only made a final decision to contest the elections in the week before polling day and failed to motivate prospective voters or to organise transport where it was required. As a result, at the IEBL crossing point by Doboje, for example, there were no buses in the morning so that the first displaced persons did not arrive at the polling station until after 13:00.

¹⁰⁴ Reuter, 16 September 1996.

¹⁰⁵ Press Conference of Ed van Thijn, Head of CIM, 16 September 1996.

¹⁰⁶ Agreed Statement by Ministers for Internal Affairs on Election security, 13 September 1996, emphasis added.

The exceptionally low turn-out among voters who were scheduled to cross the IEBL on the day may be attributed to a variety of reasons. Of these, the location of polling stations is probably the most significant. Many Bosniacs had chosen to vote in the municipality in which they had been living in 1991 rather than by absentee ballot in the hope of returning, albeit briefly, to see their houses. However, since the designated polling stations for voters crossing the IEBL were often only a few hundred meters inside Republika Srpska and invariably well away from the towns and homes of displaced voters, the incentive to make the journey was minimised. Some voters who nevertheless crossed the IEBL in the hope of seeing their houses chose not to cast their ballots rather than vote at a designated polling station far from their homes. When, for example, a bus with 12 Bosniac passengers intending to vote at Gornji Seher was stopped by Bosnian Serb police in Krupa-na-Vrbasu and the OSCE officer advised the voters to cast their ballots where they were, the 12 refused and returned to Travnik without voting. The same happened with 52 Bosniac voters headed for Vlasenica.

Another significant factor contributing to the low turn-out was the postponement of the municipal elections. Once this decision was announced much of the incentive to cross the IEBL disappeared. Displaced persons were no longer able to vote for the kind of municipality administration to which they would feel comfortable returning. The absence of a candidate from the displaced persons' ethnic group on the ballots for the tri-person Bosnian Presidency was a deterrent to cross the IEBL to vote in the general elections.

The string of well-publicised incidents involving displaced persons who crossed the IEBL in recent months and memories of the bitter personal experiences of many members of ethnic groups venturing inside the territory of the other group clearly put off other less-determined, potential voters.

Many of the buses assembling in Sarajevo to take voters to Republika Srpska were empty. One bus which was to go to Rudo, for example, never set off because only six voters turned up.

There were similar shortcomings on the other side of the IEBL. More than 600 displaced Bosnian Serbs from Drvar in the Federation currently living in Banja Luka attempted to return home on election day. However, only 200 made it in four buses which they chartered themselves. The Republika Srpska authorities refused to lay on transport for the remaining 400.

D. Refugee Voting: Massive Electoral Engineering

1. Out-of-Country Polling Stations

Refugee voting started earlier than expected and was extended later than planned because of a series of mishaps and logistical problems. While the OSCE's final plan had been for voting to begin on 28 August and to last until 3 September, it actually began on 25 August and postal ballots which arrived up to 14 September were accepted.¹⁰⁷

Voting started in Ankara and Bajrampasa, a municipality of Istanbul, in Turkey as well as in Hungary on 25 August without the knowledge of the Bosnian parties. Indeed, the SDA, the ruling Bosniac party, only heard that the elections were under way when it received phone calls from voters asking whether they should participate. Moreover, refugees from Mostar claimed that they had received ballots for the municipal elections there even though these had taken place in June and were not being repeated.¹⁰⁸ As a consequence, party representatives were unable to attend the voting on 25 August in either Turkey or Hungary.

The Provisional Election Commission extended polling abroad on 5 September after refugees throughout the world complained about mix-ups in their ballots and late mail. In Australia, for example, ballots had not arrived on time¹⁰⁹ and in Germany and Austria large numbers of refugees from the Federation had received ballots for Republika Srpska and vice versa.¹¹⁰ Elsewhere, in Croatia where more than 117,000 refugees had the right to vote, a high proportion of voters in Republika Srpska spoiled their ballots because they were in Cyrillic and there appeared to be no natural Croat candidates.¹¹¹ And in Dubrovnik refugee voting was rescheduled for 14 September because of a shortage of the correct ballots.¹¹²

2. Refugees Coming to Vote from the Federal Republic of Yugoslavia

An estimated 37,000 Bosnian Serb refugees currently living in the Federal Republic of Yugoslavia came by bus to vote in Republika Srpska on the day.¹¹³ Virtually all were originally from the Federation and many were visiting for the first time the

¹⁰⁷ *Oslobodjenje*, 6 September 1996.

¹⁰⁸ SDA press conference, 26 August 1996.

¹⁰⁹ *Oslobodjenje*, 4 September 1996.

¹¹⁰ *Oslobodjenje*, 6 September 1996.

¹¹¹ Reuter, 9 September 1996.

¹¹² UPI, 2 September 1996.

¹¹³ This number was reported by the Interior Ministry of the Republika Srpska.

towns in which they were voting and in which they supposedly intended to live.

In a massive logistical operation, refugee voters from Yugoslavia had to set off in the middle of the night in order to arrive in time to cast their ballots. The operation was facilitated by refugee associations in Yugoslavia which effectively organised a day out for their members laying on buses and supplying food for voters. Concentrations of refugees in Yugoslavia were clearly twined with towns in Republika Srpska to ensure that the operation ran smoothly. In this way, refugees living in Novi Sad, for example, were directed to Brcko, and those living in Uzice were directed to Visegrad. Meanwhile refugees from Kikinda and Zrenjanin, of whom there were 24 and 37 bus-loads respectively, were directed to Derventa. At least 25 buses arrived from Sremska Mitrovica to Zvornik, and 34 from Subotica to Modrica. To ensure a massive turn-out, refugees were told that they had to produce confirmation of *potvrda* (voting slips) to maintain their status and their entitlement to benefits and also to get on the bus taking them back to FRY. These were being handed out by appointed foremen outside the polling stations.¹¹⁴ Many refugees complained that they had not been given the option to vote by absentee ballot where they had been living in 1991.

V. VOTE COUNT AND RESULTS

A. Preliminary Results

As expected, preliminary results suggest that nationalist parties swept the board.¹¹⁵ In the key battle for the triumvirate Presidency of the state of Bosnia and Herzegovina, which according to the Constitution has to consist of one Bosniac, one Croat and one Serb, both Bosniac Alija Izetbegovic (SDA) and Croat Kresimir Zubak (HDZ) had a landslide with more than 80 per cent of the vote for their respective slots. Victory for Momcilo Krajisnik (SDS) in Republika Srpska was not as overwhelming. He polled 67 per cent of the vote for Serb member of the Presidency compared with close to 30 per cent for his nearest rival Mladen Ivanic jointly representing the two opposition blocs in Republika Srpska. However, Ivanic's relatively strong performance may be largely attributed to the absentee votes of Bosniac and Croat refugees and displaced persons. In total, Izetbegovic polled 724,733 votes, Krajisnik 698,891, and Zubak 297,976, making Izetbegovic the probable President of the Bosnian Presidency until the next elections in

¹¹⁴ Members of the CIM observer team, ICG political analysts, spoke with refugees who arrived to vote in Drventa from Kikinda and with their "excursion guide" Mirko Knezevic.

¹¹⁵ OSCE preliminary results as of 14:30 21 September 1996.

two years' time. A further 9 per cent of the ballots were spoiled in Republika Srpska, and 4 per cent in the Federation.

In the contest for President of Republika Srpska Biljana Plavsic (SDS) polled 65 per cent of the vote. Her nearest rival was Zivko Radisic of the *Savez za mir i progres* (SMP) who polled 16.5 per cent. Adib Dozic, a Bosniac candidate of the SDA, came third with just over 10 per cent of the vote.¹¹⁶

In the House of Representatives of Bosnia and Herzegovina, the assembly which contains members from both Republika Srpska and the Federation, the SDA will be the largest party with 19 out of 42 seats. Of these SDA seats, 16 come from voters in the Federation and three from voters in the Republika Srpska. The SDS is the next largest block with eight seats and the HDZ has seven seats. The seven remaining seats are shared between non-nationalist parties, two from the Federation, the *Zdruzena Lista* (three seats) and *Stranka za BiH* (two seats), and the *Savez za mir i progres* from the Republika Srpska (two seats).

In the House of Representatives of the Federation the SDA has an absolute majority. It polled 55 per cent of the vote which translates into 78 of 140 seats. With 23 per cent of the vote and 33 seats, the HDZ forms the second largest block. Non-nationalists polled about 15 per cent. The *Stranka za BiH* polled 7.5 per cent and won 11 seats. The *Zdruzena Lista* polled 7 per cent and won 10 seats.

In the National Assembly of Republika Srpska, the SDS has an absolute majority. It polled 59 per cent of the vote. The *Savez za mir i progres* was second with 12 per cent. The *Srpska patriotska stranka* and the SDA both polled about 7 per cent.¹¹⁷

In the contest for the ten cantons in the Federation, the SDA took six cantons and HDZ four. The combined votes of the two nationalist parties ranged from a low of 65 per cent in canton 9 (Sarajevo) to highs of 93 per cent in cantons 6 and 7 (Central Bosnia and Neretva). The closest battle between the nationalists was in canton 6 (Central Bosnia) where the SDA polled 49.7 per cent and the HDZ 43.5 per cent.

B. Vote Count Discrepancies

The preliminary election results announced by the OSCE, lead to the conclusion that a serious discrepancy exists between the overall voter population and the number of ballots cast. A

¹¹⁶ The cited results do not include the absentee ballots cast by displaced persons from Republika Srpska in the Federation (about 90,000).

¹¹⁷ The cited results do not include the absentee ballots cast by displaced persons from Republika Srpska in the Federation (about 90,000).

comparison of those two figures suggests that the turnout for the 14 September elections was a mathematical impossibility.

On the basis of the results from the election for the Serb, Bosniac and Croat members of the Bosnian Presidency, the voter turn-out appears improbably high. In total, 1,033,345 votes were cast for the four candidates standing for Serb member of the Bosnian Presidency and a further 102,432 ballots were spoiled. Another 905,188 votes were cast for the eight candidates standing for Bosniac member of the Bosnian Presidency. And 339,228 votes were cast for the four candidates standing for Croat member of the Bosnian Presidency. In addition, 51,364 ballots cast for the Bosnian presidency in the Federation were spoiled. To obtain these results 2,431,554 voters must have cast ballots.¹¹⁸

According to UN, OSCE, IFOR and OHR estimates of the electorate in Bosnia-Herzegovina, the maximum theoretical electorate was 2,920,000.¹¹⁹ This consists of 1,345,000 Bosnian voters who are currently living in their homes, 675,000 internally displaced persons (IDPs) with the right to vote living within Bosnia-Herzegovina and 900,000 voters, now refugees living abroad. However, of the potential 900,000 refugee voters only 641,000 registered to vote, reducing the maximum electorate to 2,661,000. For 2,431,544 voters to have cast ballots in the election for the Bosnian Presidency, the turn-out had to have been 91.4 per cent of the electorate. To put the figures into context, turn-out in the 1990 elections for the Bosnian Presidency was 74.42 per cent of the then electorate and only 2,339,958 Bosnians voted.¹²⁰

The following points should also be taken into consideration:

- i. Only 14,700 voters crossed the IEBL¹²¹ out of a potential figure greater than 150,000 of IDPs who did not register for absentee vote and therefore had to cross the IEBL in order to vote;¹²²

¹¹⁸ OSCE Preliminary Results, 20 September 1996, 12:00.

¹¹⁹ Internal memorandum - Electorate Estimates - signed on 16 September 1996 by official experts from UNMIBH, OSCE, IFOR, and OHR; Also, UNMIBH Estimated Structure of the Electorate in Bosnia and Herzegovina, OSCE Elections in Bosnia and Herzegovina Facts and Figures (information sheet); and OSCE Director-General Elections, Jeff Fischer, press conference 16 September 1996.

¹²⁰ Suad Arnautovic, *Izbori u Bosni i Hercegovini '90*, Promocult, Sarajevo, 1996, p104.

¹²¹ Alex Ivanko, IPTF, press conference, 15 September.

¹²² UN estimate based on analysis of in-country voter registration figures, Voter Movement on Election Day: Detailed Estimate, 9 September 1996.

- ii. A maximum of 98,400 out of 123,000 Serb refugees from the Federal Republic of Yugoslavia returned to vote in person on the day;¹²³
- iii. Of 260,000 refugees¹²⁴ living in other countries (except for FRY) who registered for absentee ballots (form P-1) to vote in Republika Srpska, it appears that only about 100,000¹²⁵ voted.

The above, highly conservative figures yield a total number of 2,341,000 votes (explained in the following table), giving a voter turn-out of 103.9 per cent.¹²⁶ This figures do not take into consideration estimates that more than 120,000 voters could not cast their ballots as a result of voter registration errors (see section IV(B)(1) above).

Maximum theoretical electorate	2,920,000
<u>Voters who did not cast ballots</u>	
Refugees who failed to register	259,000 ¹²⁷
IDP voters who failed to cross IEBL	135,300 ¹²⁸

¹²³ The figure of 98,400 was the OSCE’s highest estimate in advance of the poll. It comes from a letter from Ambassador Robert Frowick to Mirza Hajric, adviser to Alija Izetbegovic, of 13 September. The Republika Srpska interior ministry calculated that only 37,000 actually crossed on the day.

¹²⁴ ICG Analysis of OSCE Report on Refugee Voter Registration, 23 August 1996. Figure arrived at by examination of annex B2 which breaks down refugee form 1s (absentee ballots) by municipality and entity. The figure is an approximation of the Republika Srpska total excluding those from the Federal Republic of Yugoslavia.

¹²⁵ Figure based on ICG analysis of preliminary results of presidential ballot as well as that of the joint House of Representatives of Bosnia and Herzegovina. It errs massively on the side of caution and was arrived at by comparing the absentee ballot of Bosniac and Croat IDPs (warehouse seats) with the combined turn-out of the obvious Federation parties in the ballot within Republika Srpska for the House of Representatives of Bosnia and Herzegovina. Since about 89,000 Bosniac and Croat IDPs voted for Ivanic in the presidential election, these same voters are likely to have opted for the SDA, *Zdruzena Lista* and *Gradanska demokratska stranka* in the ballot for the House of Representatives of Bosnia and Herzegovina. Since a total of 185,059 cast ballots for those parties before the full ballot had been counted, close to 100,000 votes are likely to have come from refugees.

¹²⁶ The cited figures do not take into consideration the many voters who attempted to vote but could not find their names on the voters’ register. This is estimated by ICG to be about 5 per cent of the electorate.

¹²⁷ This figure is arrived at by subtracting the UN’s estimate for refugees from the number of refugees (UNMIBH Estimated Structure of the Electorate in Bosnia and Herzegovina) who registered to vote according to the OSCE (Report on Refugee Voter Registration).

¹²⁸ This figure is arrived at by subtracting the 14,700 voters who, according to IPTF, crossed the IEBL on polling day from the UN-estimated 150,000 who needed to cross from the Federation into Republika Srpska to cast their vote on the day. Again it is a conservative figure because

Serb refugees in FRY who failed to return on the day	24,600 ¹²⁹
Refugee voters who failed to vote	<u>160,000¹³⁰</u>
Maximum theoretical voter turn-out	2,341,100
Number of voters who cast ballots	2,431,554
Turn-out as proportion of maximum electorate	103.9 %

The one problem with the above figures concerns the numbers of registered refugee voters. According to the OSCE's *Report on Refugee Voter Registration* a total of 641,010 refugee voters registered to vote. This included 220,640 from the Federal Republic of Yugoslavia of whom 123,000 had registered for form P-2, i.e. to vote in person on the day. In the OSCE's *Elections in Bosnia and Herzegovina: Facts and Figures* it indicates that a total of 138,000 refugees registered for form P-2, and that 503,000 registered to vote by absentee ballot. However, according to the master sheet of absentee ballot registration sorted by *opstina* (annex BII of *the Report on Refugee Voter Registration*), only 423,284 refugees had registered to vote by absentee ballot. It therefore appears that approximately 80,000 refugees have been double counted. In the above analysis, the figures have only been counted once among the refugee voters who failed to vote.

The results of the vote count indicate that a serious discrepancy exists. While ICG does not have evidence to suggest fraud, nonetheless the discrepancy casts serious doubt on the validity of the elections. As a consequence, on 21 September ICG filed a complaint with the Election Appeals Sub-Commission (EASC), urging a recount of the votes cast, and a postponement of any publication or certification of the results until a recount. The ICG complaint further urged that, if the discrepancy is confirmed, then the election results should be declared null and void, and the voting repeated.

Four hours after ICG filed the complaint, at a press conference on 21 September, OSCE announced that they were experiencing computer programme errors as well as other problems with the vote count, and that they would address the difficulties shortly. OSCE also announced that the total voter

the IPTF figure included all crossings, i.e. those from Republika Srpska into the Federation as well.

¹²⁹ This figure is arrived at by subtracting the 98,400 OSCE maximum turn-out estimate for Serb refugees in FRY (letter from Ambassador Frowick to Mirza Hajric) from the 123,000 who had registered to vote in person on the day (OSCE Report on Refugee Voter Registration). Again it is extremely conservative since the Republika Srpska interior ministry calculated that only 37,000 actually crossed on the day.

¹³⁰ This figure is arrived at by subtracting the number of Bosniac and Croat refugees who registered to vote in Republika Srpska from the number who actually voted.

population estimates should have been between 3.2 and 3.5 million, and that they had erred when they used the 2.9 million figure earlier. However, OSCE failed to produce any documentation or rationale to support their new numbers for total voter population.

VI. CERTIFICATION OF THE ELECTIONS

In a preliminary report based on a statistical analysis of short-term observers' checklists and reports from long-term observers monitoring the campaign, media and the context of the elections, the Co-ordinator for International Monitoring (CIM) concluded that it was

“difficult to assess the election process in Bosnia and Herzegovina, after four years of war, in accordance with the term ‘free and fair’ as it is usually understood.

The criteria as expressed in the OSCE Copenhagen Commitments^[131] ... and the Dayton Peace Agreement remain the only relevant yardstick. Yet the election must also be considered in a conflict solving capacity. Whether the election leads to integration or disintegration will only become clear as immediate events unfold.

Within the context of the election in Bosnia and Herzegovina, several of the OSCE Copenhagen commitments were only partially met. In particular ... the right to establish in full freedom political parties..., ... political campaigning to be conducted in a fair and free atmosphere, and ... unimpeded access to the media, were not fully met.

The Dayton Peace agreement outlines the following five basic conditions which were only fulfilled to varying degrees: a politically neutral environment; the right to vote in secrete without fear or intimidation; freedom of expression and the press; freedom of association...; and freedom of movement.”¹³²

The Co-ordinator for International Monitoring, Ed van Thijn concluded that the elections went well technically, however, “the general climate in which the elections took place was in some cases below the minimum standards of the OSCE Copenhagen Document.” Although the elections were characterised by “imperfections”, CIM continued, they “provide a first and cautious step for the democratic functioning of the governing structures of Bosnia and Herzegovina.” CIM also cautioned that “the international community, having started its support for this process, should face up to the longer term responsibility of helping to see it through.” Finally CIM stated, it “anticipates that this statement will be fully considered before the municipal elections take

¹³¹ See Criteria for Free and Fair Elections, section II(B)(2) above.

¹³² CIM Preliminary Report, page 2.

place. Until the problems affecting the integrity of the elections have been addressed and solved, these elections should not be held.”¹³³

While CIM concludes that the Copenhagen Document criteria contained in paragraphs 7 and 8 (attached to DPA Annex 3 - see section II(B(2) above) were only “partially met” and that the five conditions formulated in DPA were “fulfilled to varying degrees”, he found it difficult to assess the freedom and fairness of the elections because the country was emerging from four years of war. In essence then, CIM was unable to find the September 14 elections “free and fair.”

VII. CONCLUSIONS

When on 25 June the OSCE Chairman-in-Office Flavio Cotti certified that elections in Bosnia and Herzegovina could go ahead, he admitted that minimum conditions for holding free, fair and democratic poll did not exist. Those conditions deteriorated further in the intervening months between Cotti’s certification and 14 September polling day. Indeed, the past, present and future Chairmen-in-Office of the OSCE (the Troika Ministers) declared on 19 September that “they are concerned that the conditions for ‘free, fair and democratic’ elections ...] have not been satisfied.”¹³⁴ Although the day of the elections passed off with minimal violence, the event cannot be considered a triumph of democracy.

Once the date for the poll had been fixed under considerable outside pressure, the OSCE had an enormous task to accomplish in a very short time. It had neither the experience nor the means to conduct highly complicated elections. Serious problems encountered by the organisation during the voter registration process and onerous security measures on polling day disenfranchised tens of thousands of voters. There was no effective protection against refugees in neighbouring countries to vote twice by first casting absentee ballots and then voting in person after travelling to the country. Yet more alarming, preliminary results published by the OSCE showed a voter turn-out of more than 100%. OSCE officials were forced to admit one week after the elections, and after ICG sounded an alarm, that they had discovered numerous errors in their vote count procedures. However, figures published subsequently by OSCE confirmed the same discrepancy. Thus, the validity of these elections is in serious doubt, the results cannot be certified, and the elections must be rerun at a later date.

These elections should not be declared free, fair, or democratic either. If they are, the international community will have seriously undermined its own credibility. While the international community has an overwhelming desire to use whatever result as a basis for pressing ahead with building new institutions while IFOR is still present, there is

¹³³ CIM Preliminary Report, page 5.

¹³⁴ OSCE Department for Chairman-in-Office, Press Release, OSCE Troika Ministers Issue Statement on the Elections in Bosnia, 19 September 1996.

no guarantee that this is possible. The history of trying to build the Federation without effectively dealing with the extreme nationalists who have obstructed its development indicates the kind of problems the international community will face.

If these elections are not declared free, fair and democratic, sanctions on Republika Srpska and the Federal Republic of Yugoslavia suspended by the UN Security Council will not have to be automatically lifted until a next round of nation-wide elections in Bosnia and Herzegovina satisfies the conditions for a free, fair and democratic poll.

Furthermore, it is wholly irresponsible to hold the municipal elections in November. ICG fully agrees with the statement by OSCE Troika Ministers who “deem it indispensable that before these municipal elections are held, the problems which led to postponing the elections be solved.”¹³⁵ Experience shows that fixing polling day before minimum conditions exist merely acts as a disincentive to the Parties to live up to their DPA obligations. The Troika Ministers recalled that indicted war criminals have not been delivered to the Tribunal. ICG believes they must not simply be marginalised or shielded from public view; they must be sent to The Hague. The international community must proceed to arrest at least those criminals whose whereabouts are known. IFOR’s continued refusal to do that, and the international community’s approach to the whole question of capturing the indictees, has been recently termed “pusillanimous” by Judge Richard Goldstone, the outgoing Chief Prosecutor of the International Criminal Tribunal for the former Yugoslavia.¹³⁶

The arrest of indicted war criminals will send a signal to the local municipal authorities who obstruct the return of displaced persons and refugees that their violations of DPA will not be tolerated. OSCE must deal more forcefully with recalcitrant local officials, political parties and media by more effectively using its own rules and regulations. The proposal of Federation Mediator and ICG board member Dr. Christian Schwarz-Schilling earlier this year to remove municipal authorities if they obstruct the implementation of the DPA should be adopted as a strategy of the OSCE for the state of Bosnia and Herzegovina as a whole. In this sense the statement of the OSCE Head of Mission, Ambassador Frowick of 19 August 1996 in which he threatened to “invalidate electoral results, including the election of individual candidates, in those towns and municipalities where there is systematic interference with democratic freedoms” is encouraging.

The OSCE should issue a statement along the same lines, identifying clearly which behaviour by the municipal authorities will not be tolerated and what will be the consequences of misbehaviour, spelling out the possible punishments. Perpetrators of violent attacks against displaced persons and refugees making assessment visits to their former homes have to be punished to the full extent of the law. A

¹³⁵*Idem.*¹³⁶

International Herald Tribune, 19 September 1996.

sustained policy of punishing all wrongdoers will brake the cycle of impunity, will help re-establish some credibility to the Organisation, and will be a step towards creating the conditions for free, fair and democratic elections. If obstruction to freedom of movement punished systematically, there will be less of a problem for the international community to enforce it on the day of the municipal elections.

Once obstructions to the repatriation and reintegration are removed, the DPA provision that Bosnians will vote “as a general rule” where they lived in 1991 can be implemented, otherwise the municipal elections will serve to ratify the ethnic cleansing. Indeed without genuine freedom of movement, repatriation and reintegration, the municipal elections will only lead to the appointment of “governments in exile,” whose installation will be impossible with or without IFOR.

The role of OSCE’s supervising organs must be drastically strengthened. The Organisation’s human rights department must be given more freedom to press publicly for the improvement of conditions, and the Organisation as a whole must be more committed to its own standards and benchmarks. The Election Appeals Sub-Commission and the Media Experts Commission must be given the adequate human and financial resources to strengthen their credibility and the deterrent effect of their decisions.

Finally, without an immediate announcement by the Contact Group that IFOR and IPTF will remain in Bosnia for another two years, the goals of DPA will remain unattainable.

Sarajevo, 22 September 1996