

PREVENTING MINORITY RETURN IN
BOSNIA AND HERZEGOVINA:

The Anatomy of Hate and Fear

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PREVENTING MINORITY RETURN IN BOSNIA AND HERZEGOVINA

EXECUTIVE SUMMARY

The 1999 action plan of the Reconstruction and Return Task Force (RRTF)¹ represents the most determined effort yet to implement a policy of mass minority return in Bosnia and Herzegovina. But the signs at mid-season are that the results for 1999 will once again be disappointing.

The plan's fatal weakness (of which its authors were well aware) was the proposition that returns could be agreed with Bosnian authorities, using a mix of bribes, threats and any other available leverage. This in turn is based on the general theory that the role of the international community in BiH is to help the indigenous authorities implement the Dayton Peace Agreement. In fact few if any Bosnian authorities are prepared to promote inward minority returns (that is, return of alien minorities to their own area of control), and most are ready actively to resist.

This paper examines the motives driving the attitude of Bosnian authorities, ranging from simple racism to the genuine need to protect displaced people already occupying the property of potential returnees. It then looks at the factors underlying the decision of the individual prospective returnee whether to go back or not. It goes on to examine the record in several locations in Bosnia and suggests which factors have been at work in these cases.

The report concludes that many of the arguments used by Bosnian authorities to obstruct return appear reasonable to the authorities themselves but may conceal less reasonable arguments which are actually more important. It would be better to remove these 'justifiable' reasons from the argument altogether. Against this background the report examines the policy responses available to the international community, and advocates an approach based on treating return not as a separate problem but as an aspect of the more general question of rule of law throughout Bosnia and Herzegovina. The report suggests that, without sacrificing successful elements of the existing policy, this might change the terms of the debate, making opposition to return much more difficult to defend with reasonable-looking arguments, since rule of law is an ideal endorsed (in public) by all forces in BiH, and accepted as a necessary condition of entry into the Western family of nations and, in due course, the European Union.

Finally the report offers some policy measures along these lines.

¹ The RRTF was set up under the High Representative in 1997 to combine the task of co-ordinating the international effort on refugee return with a mechanism for applying political pressure to combat obstruction from host authorities. In its three years of life it has grown progressively stronger, and for 1999 it has a much extended network of field offices.



PREVENTING MINORITY RETURN IN BOSNIA AND HERZEGOVINA

I. INTRODUCTION

The 1999 action plan of the Reconstruction and Return Task Force (RRTF)² represents the most determined effort yet to implement a policy of mass minority return in Bosnia and Herzegovina. But the signs at mid-season are that the figures for 1999 will once again be disappointing. One reason for this is the conflict between NATO and neighbouring Yugoslavia, which began on March 24: for a while the atmosphere in Republika Srpska became difficult and even dangerous, so that any prospect of return brokered between the international community and authorities in RS was ruled out.

But even without this outside factor, the 1999 plan's chances of success were never very bright. Despite the intelligence and organisation which went into the plan, despite large numbers of dedicated staff all over the country, despite a thorough understanding of the barriers to return built up over three years, the plan had a fatal weakness. It was not a failure of thought or planning, it was a weakness built into the very concept of brokered mass returns. Underlying the plan was the proposition that returns could be agreed with Bosnian authorities, using a judicious mixture of bribes, threats and any other available leverage. This in turn is based on the general theory that the role of the international community in BiH is to help the indigenous authorities implement the Dayton Peace Agreement. In fact few if any Bosnian authorities are prepared to promote inward minority returns (that is, return of alien minorities to their own area of control), and most are ready actively to resist.

Everyone in the international community in BiH knows that this is the case. The 1999 RRTF plan explicitly acknowledges it:

"2.3. Despite the promises enshrined in Dayton, conditions for minority return do not exist in most parts of the country. The primary reason is an appalling lack of political will on the part of the authorities at all levels. This lack of political will manifests itself in a number of ways, from obstructionism in the passage and implementation of new property laws, to a failure to provide security for returnees and properly investigate crimes against minorities, to clear discrimination in the judicial and public administration systems. Lack of and unequal access to employment, scarcity of resources and politicisation in education policy further undermine minority return.

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Returns to Croatia remain hampered by continued constraints. Key obstacles outlined in the UNHCR Regional Strategy include the use of media to incite opposition to return or intimidate the displaced not to return; denial of access to public services and fundamental human rights; and the deliberate relocation of returnees or the internally displaced in order to consolidate control and further ethnically-motivated political objectives.”

So the *symptoms* of political obstruction are well understood. This paper attempts to contribute to the subject by examining the *motives* driving the attitude of Bosnian authorities. It then looks at the factors underlying the decision of the individual prospective returnee whether to go back or not. It goes on to examine the record in several locations in Bosnia and suggests which factors have been at work in these cases. It concludes with an examination of the available policy responses to the general problem.

II. BOSNIAN AUTHORITIES AND WHY THEY OBSTRUCT RETURN

The following analysis attempts to disentangle the various drives in the minds of Bosnian authorities when they address the possibility of allowing minorities to return to their territory. It does not suggest that any individual can be identified exclusively with any one of the factors listed. Most people will be driven by a mix of motives. But all the motives for obstructing return are mutually supportive, so they can easily become fused and confused into a complex of attitudes not clearly distinguished by the actor himself. Some responses which may be practically justified get mixed up with responses based solely on fear and hate: the latter then hide behind the former and transform them from reasons into excuses.

This loosely explains the frustrating experience of the international community in dealing with the Bosnian authorities: policy addresses the rational argument but does not touch the irrational. So repeatedly agreements are reached which are later not honoured, because the agreement has covered only the surface of the problem.

A. The Hardline Racist

Attitude: *“We fought a war against those people and we don’t want them back”.*

Comment: No Bosnian in a position of authority would say this openly. It is too clearly incompatible with Annex 7 of the DPA, and all authorities must at least appear to support the DPA provisions. But almost all Bosnians have an element of this feeling, not unnaturally. Decent people try to suppress it, or rationalise it to themselves by saying that the scars of war naturally take a long time to heal. Most seldom have to think about it. But for the community facing minority returns, or the politician or official who has to handle them, it remains a more or less unacknowledged root on which other negative feelings can take hold.

Racists exist in all societies. The situation in Bosnia has been intensified by the war, but at least some of the hostility felt by returning minorities is not derived from the war but simply based on antipathy to anyone perceived as Other. For example, some attacks in Stolac have been attributed to gangs of youths who have later been caught by police. Gangs of youths are a problem in every modern society: not all of Bosnia’s problems are caused by politicians.

But political obstruction is more persistent and determined. In many places (e.g. Modrica, Doboj, Teslic), the individuals in authority now obstructing return are the same people who orchestrated ethnic cleansing in the first place. These people must still have a strong element of pure Racism determining their attitude. This is even more so in areas where indicted war criminals are still at large.

The Hardline Racist is not always acting from hate. Fear is an important spur for him too. The general approach of HDZ authorities illustrates this. Given that the pre-war proportion of avowed Croats in the Bosnian population was some 19%, and is now estimated at 8% and shrinking, the HDZ has adopted a very restrictive attitude towards minority returns, particularly in western Herzegovina, where almost no-one now lives who is not a Croat. Croat identity is seen as vulnerable to swamping and in need of protection. The party plays on the population's (exaggerated) fears of muslim fundamentalism and loss of cultural identity, while the SDA makes its job easier by responding bitterly to every provocation and so contributing to the atmosphere of confrontation. This game is harder to play in central Bosnia, where daily contact between populations reduces their fear of each other, but there is still plenty of distrust there for politicians to exploit.

Serb Hardline Racists are actuated by a similar fear. Their view of history is different from everyone else's, centring not only on ancient wrongs but also on memories of the Bosniac-Croat political alliance in 1990-92 which reduced the Serbs to a permanent political minority in Bosnia. Nowhere does the DPA say that Republika Srpska is a Serb entity but that is how it is perceived by the majority of its inhabitants: a place where Serbs can be alone, and safe.

B. Power for Ever

Attitude: "We are comfortably in power now and nothing looks like unseating us. Returning minorities will certainly vote against us and so present a threat to our power. We can't let more than a few back."

Comment: Politicians are always interested in the preservation of their power. Places where a complete restoration of the pre-war ethnic balance would guarantee a loss of power for existing ruling parties include Prijedor, Zvornik, Derventa, Srebrenica, Modrica and Doboj (held by Serbs); Sanski Most, Maglaj, Travnik and Bugojno (held by Bosniacs); Glamoc, Kupres, Stolace, Drvar, and Jajce (held by Croats). Even in Sarajevo the SDA would be under threat from returnee votes combined with the Bosniac votes for opposition parties.

Elected office is not enough to secure power, as mayors in Srebrenica, Brcko and Drvar can all confirm. There absentee voting has already installed a nominal local authority of the pre-war dominant group (or a power-sharing arrangement), but power remains with those who control the local armed forces, both police and military.

Similarly, power in Bosnia is not simply a matter of holding elected office. The real question is territorial and economic control. Within the ethnic areas there is no serious opposition to the hegemony of the nationalist parties, so they have held office continuously, often since 1990. This has given plenty of opportunity for the political and business elites to combine. Any threat to political dominance is also a threat to the pocket, and so is even more firmly resisted.

Still, the local dominant party has a natural preference for retaining power through the ballot box. The few minorities who have actually returned so far pose an electoral threat in no area, but the politician knows that once return has started it becomes more difficult to stop.

C. The Majoritarian

Attitude: *"We are comfortably in the majority now, and that is the safest position. Returning minorities present a threat to our safety."*

Comment: This is the common man's equivalent of attitude (B), and in a similar way is based on fear but manifested as hate. The feeling is widespread, even though in very few places have minorities returned in numbers which remotely threaten the majority status of the host population. Drvar and Stolac are the closest examples, and in both of these places violence against returnees has been a regular feature of life; reports of returnees being driven off by hostile villagers in the Doboje area appear similar.

This attitude sits very well alongside (A) and so can provide camouflage for it. Few people will admit to a Hardline Racist attitude, but everyone feels that group security is a legitimate interest.³

D. The Venal

Attitude: *"The foreigners are prepared to pay good money if we let minorities return. Let us exploit this generosity."*

Comment: This attitude was identified early on by the international community as a possible chink in the nationalist armour which could be exploited to promote minority returns. The idea was, broadly, that as Hardline Racist attitudes began to die down over time after the war, direct economic self-interest could be used to hasten their demise. This led to mechanisms like the UN Open Cities Initiative, and to many schemes of aid conditionality operated by various donors. At the highest level it was built into major international projects like the Banja Luka and Sarajevo Declarations in 1998.

The results have generally been disappointing. Firstly this attitude is a negotiating technique, so that authorities naturally seek to derive as much benefit as possible from the process while giving as little as possible in return. Second, the Venal authority will, at worst, hold some background view along the range (A)-(C). At best, he will have no direct interest in promoting return for its own sake. If, indeed, he delays complying with the conditions imposed, he might get not only some support now but also additional support later to induce him to comply. Witness, for example, the new money pledged for Republika Srpska at the Brussels Donors' Conference in May 1999, after a year of almost no minority returns following government promises that 70,000 would return in 1998.

Still, used effectively, conditionality can work, but it depends on (a) not releasing too much money before promised behaviour is delivered; (b) keeping up effective monitoring. These are very manpower-intensive conditions, which most donor organisations are unable to fulfil. On the other hand, there is pressure from

³ To put it another way, in July 1998 72% of Serbs living in RS said it was necessary for their town to contain only Serbs in order to maintain 'harmony' (from a survey carried out for NDI-USAID).

Headquarters to spend the budget. The trend result is that donors release money for projects against promises (including written agreements) and then the local authorities fail to keep their side of the bargain.

The Venal attitude works in other ways too. It helps to account for why no politician in Bosnia and Herzegovina wishes to be seen as a Hardline Racist. The reasoning here seems to be: "If we show opposition to return in principle then the foreigners will claim we are hostile to Dayton. Not only might this cut us off from aid funds, it will certainly bring us a lot of unwelcome pressure. Best to appear to agree and trust to others to hold things up."

This behaviour is prudent. Experience shows that the international community will seek a relationship with anyone who might possibly be perceived as a moderate. Milorad Dodik has benefited greatly from this, without delivering much in return.⁴ And in areas where the local authorities scorn to court the international community, the result is indeed that aid money fails to arrive. Almost the whole of the eastern half of Republika Srpska demonstrates this.

E. The Weak

Attitude: "I accept the right of return, but my own side is opposed to it. It's easiest and safest not to try too hard."

Comment: Standing up in defence of an unpopular principle is hard at the best of times. For officials whose job and accommodation depend on remaining in favour with the ruling local party it risks self-sacrifice which is likely in the end to prove ineffective anyway. When it is obvious that the prevailing political culture in your organisation is unfavourable to a particular policy, such as promoting minority return (even if that culture is not public or avowed), the wish to conform to that culture is likely to be stronger in most individuals than the drive to stand up for a countervailing moral scruple. Besides, in all but a tiny number, the moral scruple arguing for return will be tainted by admixtures of some other of the anti-return attitudes. The result is an impenetrable forest of bureaucratic barriers to return.

Passing the buck is a very characteristic sign of the Weak attitude. The returnee goes to the local authority to press his claim to return and is told that the authority can do nothing since the issue is a question of law which must be decided in the courts. Once the court case is resolved the returnee returns to the local authority with his eviction order and is referred to the police. The police then say they cannot act without direction from the authorities. No-one is prepared to break the circle.

F. We Protect Our Own People

Attitude: "Minority return must not be at the expense of our own people. I will not throw my kin on the street to make way for other nationalities."

Comment: This view is so universal that it passes as respectable in political society everywhere in Bosnia. It has even been accepted by the OHR that families will not be evicted if they have nowhere to go. But at the very least it brings delay in resolving cases, and provides a valuable tool to discriminate between cases where

⁴ Though his supporters would argue that his contribution in freeing RS from total dependence on FRY has been worth the money.

the original occupant wishing to return is a member of the local ethnic majority or a minority.

As a principle the attitude can be justified: the human rights of the displaced people occupying properties must be respected as well as those of the original owners. But the principle needs to be distinguished from its abuse in practice. Advanced as a reason, it can really be playing the role of a sensible-looking excuse for inaction.

For example, the situation starts to look indefensible when aspiring returnees take their case to court and succeed in establishing by law their right to return to their property, and even obtain an eviction order, but the local authorities refuse to enforce the order. Cases have come to light in Sarajevo, Banja Luka and Mostar, and no doubt elsewhere (they do not tend to attract publicity from official media, for obvious reasons). In these cases a wish to protect displaced people is clearly in conflict with the rule of law. Common sense suggests that at least in such cases the authorities should comply with the evictions and seek to re-house the evicted people. Equity also suggests this, since typically the aspirant returnees will have been told by those same authorities to pursue their claim through the courts (a typical 'weak' attitude, see above).

An obvious test of the sincerity of authorities is to ask what steps are being taken to overcome the problem. Most local authorities have some flats available, but the scale of the problem is such that new or buffer accommodation will typically be needed. The Sarajevo government has announced that it is building new settlements in Stup for displaced Bosniacs, to make way for the rightful owners of the flats they occupy.⁵ This looks like a good policy against a background of 'No Evictions', but it remains to be seen how long the new flats take to build (delay itself is a barrier to return) and how they are used when ready (double occupancy is always a danger when new flats become available).

Given that the governments in BiH have little spare money, and that flows from donors are likely to decline, some effort should be made to attract private money into new building. BiH remains an unattractive environment for private investors, but a combination of incentives from donors (subsidies) and BiH governments (tax holidays and low ground rents) might be effective. Any measure which brings market mechanisms into play to ease the accommodation blockage will be welcome.

G. You-Go-First (Reciprocity)

Attitude: "Why should I let minorities come back here when my own people cannot go back to their homes? Let the other sides show some goodwill, then we can talk about us making a move."

Comment: This approach was raised to the status of official policy in February 1999 when Alija Izetbegovic, as Bosniac member of the BiH joint Presidency, proposed an exchange of displaced people between Sarajevo, Banja Luka and West Mostar.⁶ Ante Jelavic (Croat) and Zivko Radisic (Serb) agreed, although gradually the working group set up to implement the initiative failed to meet and the plan has so far achieved nothing. Whatever the sincerity of the leading players in this case, the

⁵ e.g. *Dnevni Avaz*, 8 March 1999, p2.

⁶ *Dnevni Avaz*, *Oslobodjenje etc*, 23 February 1999 and most subsequent days. This idea appears to have been born at a meeting with the NATO Secretary-General a week earlier.

episode showed that all three ethnic groups, at the highest level, were prepared to accept the principle of reciprocity.

Reciprocity can be criticised on the grounds that it establishes a market in human rights, suggesting that one individual's right can only be upheld in exchange for someone else's. But at least this let's-work-together approach to reciprocity is a plausible way to advance the debate. Not so the you-go-first attitude more usually encountered, which supports a Hardline Racist policy. Example: a Bosniac owned a house in Bijeljina. Leaving it at the start of the war he installed a Serb tenant. After the war the two of them agreed amicably to live together in the house. Nonetheless the Bosniac was evicted by the local authority. He asked for an explanation and was told: "As long as we can't return to our houses in Sarajevo you people can't come back here."⁷

This is an easy and useful way to prolong deadlock and inactivity. The Sarajevo government is able to complain that returns to Republika Srpska are insignificant. The RS government says return to RS cannot succeed until Croatian Serbs displaced to Banja Luka are able to go home. They and the HDZ also point to underfulfilment of the promises made in the Sarajevo Declaration as a sign of bad faith by the Sarajevo authorities. Sarajevo retorts that its record is better than any place under Serb or Croat control. And so on.

Many people no doubt sincerely believe that the onus is on the other sides to make the first move (think how hard it is to resolve a domestic quarrel without a background atmosphere of trust and goodwill). For these people the lack of reciprocity is a reason for resisting returns, standing on its own feet alongside Racist or Weak attitudes. Others are simply using reciprocity as an excuse to cover up genuine reasons which are likely to be Racist or Majoritarian.

H. Human Rights Hero

Attitude: "Return is a basic human right. I will do all I can to promote it, whatever others do."

Comment: The characteristic of the Hero is that he accepts no discrimination between persons, irrespective of their ethnic or party background. This is in fact the only attitude possible under the Dayton Peace Agreement, whose Annex 7 is quite unambiguous on the subject. But it is rare to find any Bosnian in a position of authority prepared to follow this line, and indeed such a person would be unlikely to remain in authority very long. Nonetheless Heroes do exist in positions of prominence: Sejfudin Tokic of the Social Democratic Party, a determined public opponent of any form of discrimination; and Mirhunisa Komarica of the Council of Refugees, who has organised public meetings in Mostar, Sarajevo and Rudo to try to give the displaced a forum to make their views and needs known, are examples.

Honourable mention in the Hero category must also go to those groups of neighbours who make efforts to welcome back the returnee. Such tales come in from all parts of the country, of lamb-roasts, voluntary help with reconstruction, even contributions to bills. They offset the more numerous stories of returnees greeted with hostility and suspicion by their former neighbours. There seems to be a general rule that, if nobody in the family or neighbourhood died of violence during the war, then returnees

⁷ This case was encountered by a BBC radio team.

are accepted back more easily than if a direct local loss was suffered. Indeed, ordinary people all over Bosnia will volunteer this view quite naturally.

But note that the complete absence of any sort of warmth from official sources, where there are no Heroes, can be a powerful deterrent to return, since people in the post-war environment cannot feel safe where they feel unwelcome.

III. REFUGEES AND THE DECISION WHETHER TO RETURN

The decision to return is not simple. It does not depend on the repair of a roof and official acquiescence. Each individual's decision will be made for a different balance of reasons, but the following broad factors can be identified:

A. The Determined

Attitude: *"I'm going back because I have a right to live in my own home."*

The ideal conditions for this attitude to produce results are in villages which were ethnically homogeneous before the war and were not settled by new population afterwards. The returning population is not too visible from the point of view of authorities in nearby towns, and there is no complication of evicting sitting tenants. It is usually not too hard to find international money to help repair the house. Drvar, Prijedor and some settlements along the Neretva valley provide examples.

The case is much more difficult in urban centres. Firstly because there is a much greater likelihood that property will be occupied by a tenant dispossessed from elsewhere, and the procedure for evicting them is daunting and unreliable. Secondly because the attitude of authorities is more discouraging, and the bureaucratic tools available to them more powerful, in areas where there is already a settled majority community and administration. Your chances are better if you had time and forethought to install a friend in your property when you left, but even this does not guarantee your return (cf. The Bijeljina case in section II(G) above). As a result, most minority returns have been to villages.

B. The Hesitant

Attitude: *"I want to go home but..."*

Comment: The prospective returnee faces many legitimate fears grounded in his justified perception that the receiving authorities do not really want him.

Unemployment is the most persistent complaint among re-established minority communities. Even among majority communities the unemployment rate is high, but among minorities it approaches 100%. As a policy, employers tend to favour members of their own ethnic group when recruiting. A familiar case is the Aluminium plant near Mostar, now run by the former mayor of West Mostar Mijo Brajkovic, which employs only Croats despite attracting national attention and much international pressure. Recruiters also build into job advertisements preferences for war veterans, war widows and other factors which discourage candidates who lived out the war on the other side.

This is a problem not only for returning communities but for the small number of Serbs who stayed behind in early 1996 when their neighbours abandoned the Sarajevo suburbs transferred from RS control to the Federation under the DPA.

Having lived on the 'wrong' side during the war, they face the same discrimination as returning communities. Among their number are many with professional qualifications actually needed in the job market; nonetheless they have not worked since the war.

Given the high proportion of minority returnees who are retired, the payment of pensions is also controversial.⁸ There exists no mechanism to transfer a pension between RS and Federation authorities, or between Bosniac and Croat pension authorities within the Federation, so the returnee is typically faced with a long journey to collect a meagre pension. There are even cases where the authority in the area where a person was a refugee refuses to pay the pension once the person returns to his old home, so that the pension is wholly lost – the West Mostar authorities for example use this as a device to deter Croats from moving out, evidently in order not to create vacancies for others to move in. Similar cases have been reported where RS authorities have refused to pay pensions to people now living in the Federation.⁹

Security is an obvious worry. Returning communities have suffered violence in many locations, Stolac and Drvar being the most publicised. They cannot count on the police, who are under the control of local authorities; even in those forces which have been ethnically mixed (always by international pressure) the minority presence does not affect overall policy.

Education is a factor for some. Returnees face a choice between sending their children to a local school where they may learn that their parents were responsible for the war and other evils, or sending them away to live with relatives and attend a school in friendly territory. They are not prosperous enough to establish their own schools, and local authorities are unlikely to help.

The list goes on: difficulties in securing valid identity papers in the new environment,¹⁰ access to social services, the threat of military service in an uncongenial army, connection to water and power utilities, access to religious services, even the possibility of inheriting the utility debts of one's predecessor,¹¹ are all factors tending to make the less-than-determined returnee think twice about coming home.¹²

All of this can be summed up very easily: while prospective returnees perceive that they face a hostile environment if they return, they are likely to conclude that life is better as a majority. A little friendliness, whether from neighbours or authorities, can make a big difference. Neighbours occasionally oblige; authorities, as far as one can tell, never.

C. The Salvager

Attitude: "I don't want to go home but I have rights to my property and at least I can use it to help me start a new life."

⁸ See for example 'Ima li penzija naciju?', *Oslobodjenje*, 3 May 1999.

⁹ Ibid. The article also points out that some people manage to get two pensions, one in each entity!

¹⁰ See for example UNHCR: *Registration of Repatriates in the Republika Srpska and Entitlement to Identity Documents, Food Assistance and Medical Care*, April 1999, presented to the RS government on 19 May 1999.

¹¹ A complaint reported by Serb returnees to properties around Sarajevo, where utility bills had not been paid since their departure in 1996. See 'Tuzbe zbog tudih dugova', *Oslobodjenje*, 2 April 1999.

¹² A comprehensive but accessible treatment of the full range of obstacles to return can be found in *Update of UNHCR's Position on Categories of Persons from BiH who are in Continued Need of International Protection*, UNHCR Sarajevo, May 1999.

Comment: Salvagers include all returnees who do not actually intend to live in their property. They may intend to sell it, rent it out or exchange it. The salvager is also usually Hesitant, that is he might like to return home but sees many obstacles to putting back together the life he had pre-war. By renting his property he has an income while he waits for conditions to improve. By selling or exchanging he can start a new life elsewhere. The salvager is only exercising his right to dispose of his property as he wishes, but he is attacked from two sides.

First, where his house has been repaired with donations from the international community, the donor is naturally upset that its efforts have gone towards enriching the owner, rather than promoting his return. Many donors build into their projects, or agreements with owners, the proviso that properties are not to be sold for a certain number of years after re-occupation, but most organisations have limited resources to follow up these agreements. Criticism of the salvager from this quarter, where he has broken an agreement freely made, is justified on the grounds of breach of contract.

But politically the salvager is also used as scapegoat or stock villain by authorities wishing to find respectable-looking reasons to obstruct returns. "We repair their houses and they sell them straight away"¹³ is an accusation levelled by the Sarajevo authorities against Serbs who have retaken possession of the properties they abandoned in 1996, as though this were a form of trickery on their part. This is so far mostly a Sarajevo phenomenon, since Sarajevo is the only urban centre to which minority refugees have returned in any number. In Sarajevo the accusation has been used to sow a climate of mistrust against returning refugees, and to create a myth that people who express a wish to return in fact have ulterior and mercenary motives.

D. The Beneficiary

Attitude: "I don't want to go home because life is better here."

Urban drift is normal in societies in transition. Some at least of the people who were violently displaced from villages would have come to the cities in any case, seeking work or a more interesting life: the war only speeded this process up. But because of the war the incomer is always living in someone else's property. The incomer does not want to leave and his host authority is reluctant to evict him.

The Beneficiary has no reason to return home, and every reason to be hostile to the return of refugees on principle.

A variation on the Beneficiary attitude is the 'At-least' Beneficiary. He may not in fact be living in circumstances better than those he enjoyed before the war, but he is at least better off than if he returned to his home, or believes so. He differs from the Hesitant because he has already decided not to return – but he is familiar with the Hesitant's doubts, and he would be a Salvager if he could. This attitude is particularly strong among Serbs displaced from Sarajevo and now living in eastern Republika Srpska, who are still radicalised and traumatised by the war, and believe there will be no welcome for them from a 'Muslim' government. This is the attitude underlying the support for organisation like 'Ostanak', formed to protect the rights of those who do not wish to return to their pre-war homes.¹⁴

¹³ The quote is from Igor Gaon, mayor of Sarajevo Centre, see *Dnevni Avaz*, 4 March 1999, p4.

¹⁴ At a meeting in Rudo, Eastern RS, organised by the independent Council of Refugees on 17 June 1999, the local mayor announced that he had conducted a survey of local displaced Serbs. Only 10% wished to return home, although most of the rest did not want to live permanently in Rudo. The atmosphere at the meeting suggested these figures were reliable.

Many refugees still living outside Bosnia come into the Beneficiary category, but these people often do not have the option to stay where they are, as they come under pressure from their host authorities to return to Bosnia. In this process they can easily become Losers if they return to no job and without permanent accommodation rights. The great majority of refugees returning from abroad continue to 'return' to areas where their ethnic group is a majority, even if they have never before lived in that exact place. Where the question at issue is return to an area where the refugee will be a minority, he is likely to be Hesitant. A survey carried out for the International Organisation for Migration (IOM) throughout 1997/8¹⁵ suggested that 48% of refugees returning to Bosnia from abroad are doing so primarily because their host authorities will no longer let them stay.

E. The Loser

Attitude: "I want to go home because I have nothing in the new place".

This attitude is most likely among people who had a particularly good life before the war: the Loser is the reciprocal of the Beneficiary. Farmers who had houses in their own grounds, a tractor and enough land to make a living are cramped into urban flats or left on smallholdings working unfamiliar soil with no mechanised equipment. The Loser is very likely to be Determined to return no matter what, which helps to explain why a Serb community in Drvar, and a Bosniac community in Stolac, have been re-established despite a hostile local environment and difficulties in securing even basic utilities and services.

But there must be many Losers in transit camps and damaged accommodation all over Bosnia, and those who have actually returned must be a small proportion. It looks as though just being a Loser is not enough to ensure Determined return. In both Drvar and Stolac the next attitude has also been a determining factor.

F. Security in Numbers

Attitude: "I want to go home but I'm not going alone. I'll only go if my friends go."

The urban returnee may be used to the individualism of life in cities, and be prepared to fight his own battles and resolve his own case, if he can. But rural communities are used to the feeling of togetherness in villages, and a life of self-reliance based on mutual support to and from family and neighbours.

Return as a community is easiest to villages which were depopulated by ethnic cleansing or fighting, and never repopulated. This helps to explain Drvar and Stolac, and also villages around Prijedor and in the Neretva valley, where claim and counter-claim have not needed to be resolved one by one in the courts, and where a little donor money can be spent in a relatively uncomplicated manner.

It remains to explain why return has been comparatively successful in these few places but no progress has been made elsewhere. Certainly the host authorities in Drvar and Stolac have not been friendly towards the returning communities. It must be significant that the international community exerted massive pressure in these places at key moments, so massive that the local authorities were not powerful enough to resist. In Stolac there was also pressure from the SDA on Bosniacs to repopulate the area. After the initial movement of a sizeable community including

¹⁵ 'Back to Bosnia and Herzegovina', IOM December 1998.

families, campaigns of harassment have not proved strong enough to demoralise the incoming community, while the local authorities have not dared to revert to active expulsion. Once a community has been re-established it takes deep root rapidly: the trick seems to be the first step. Politicians interested in holding Power for Ever have no doubt made the same calculation.

G. The Dual Occupant

Attitude: *“My family are living in three flats now, though we only had one before the war. But my children have grown up and married, and they need a place of their own.”*

The Dual Occupant often has no bad conscience about spreading out his family into more suitable living space. In other case he may be quite deliberately profiteering from his knowledge of vacant properties and his contacts in the system, and making money out of the properties he controls. In either case he has become one of the stock villains of the return process. Even Alija Izetbegovic has no time for him.¹⁶ But the well-connected dual occupant is protected from eviction by his friends (and he may well be making a good income from rents, and sharing that income around to strengthen his position). And even the ordinary dual occupant benefits from an almost universal attitude of “We Protect our own People”: he may live in constant apprehension of being evicted, but only in a few cases does it happen.

The well-connected Dual Occupant is not a threat only to minorities. Thanks to his connections he can prevent members of his own ethnic group from returning to properties he occupies: this occurs for example when the returnee has spent the war abroad, and has little sympathy from officials who spent the war under fire. A really powerful Dual Occupant can override the law indefinitely, and even one without connections but with determination can continue to occupy properties while the owner seeks slow justice through the courts.

IV. CASE STUDIES

Sarajevo – bureaucracy versus rule of law?

Sarajevo is no longer the cosmopolitan city it once was. Many educated people of all groups have left for new lives abroad, and thousands of refugees have come in, mostly Bosniacs from villages and small towns. The need to Protect their interests has been a powerful factor in blocking the return of the rightful owners of the spaces they occupy. In the past the cantonal bureaucracy has, either spontaneously or under political instruction, used procedural tricks and delays to prevent former occupiers from regaining possession, and the complaint that Serb returnees immediately sell or rent out their homes has been used as an argument against return.

The official atmosphere in Sarajevo remains indifferent or hostile to return, and without pressure from the international community even now little would happen. But the internationals have been able to ally with genuinely progressive elements in the SDA and the cantonal authorities to insist on implementation of property laws, and a quiet process of evictions and returns has begun. Evicted families are being housed

¹⁶ E.g. *Dnevni Avaz* interview, 27 May 1999.

in temporary accommodation pending a permanent solution, or in dual occupancy cases are simply made to live in the property to which they are entitled.

As always in Bosnia, it is hard to be sure that good practice will continue to be followed, but at least 1999 has seen some progress towards proper implementation of property laws to permit return.

Diagnosis: Bosniac authorities are sensitive to suggestions that their actions to prevent return make them morally equivalent to Croat and Serb authorities. This moral lever has been exploited by the international community, in alliance with Beriz Belkic, the partly Heroic prime minister of Sarajevo canton, to begin a process of evictions and reinstatement which, if continued, could make Sarajevo an example for Bosnia as a whole, the objective established in the Sarajevo Declaration.

Mostar – town versus country?

Serb and Bosniac communities are returning to settlements along the Neretva in territory under either Bosniac or Croat control. Some Serbs have returned to East Mostar town. But the Croat authorities of West Mostar are determined to keep the city purely Croat. They do this not only by opposing the return of Bosniacs and Serbs, through failing to implement court decisions establishing minority returnees' title to their property. They even prevent the departure of Croats living as displaced people in West Mostar (so as not to free up space for incoming minorities) by threatening to withdraw their rights to pension, education and social services. Since prospective Croat returnees cannot guarantee to find these rights respected by their new host authorities, they are faced with a strong disincentive to move from a place where they usually already fall into the Beneficiary category.

Diagnosis: Part of the HDZ agenda is based on simple Racism, the wish to keep Croat areas pure. But this racism itself is composed of several parts, firstly reluctance to give up the fruits of conquest, secondly fear of the superior numbers of Bosniacs in the Federation against a background of continuing Croat emigration from BiH, and third continuing belief in the Tudjman agenda which has already lost much of its power in neighbouring Croatia. Staying in power is important too, though this does not suffice as a reason why the HDZ are so hostile to any returns. HDZ rhetoric would lead one to conclude that their policy is in fact based on Reciprocity, but this is easily shown to be only an excuse by disencouragement given to Croats who might leave Mostar, and the fact that, when returns do start to occur as in central Bosnia, the HDZ does all it can to stop them. Experience elsewhere (Drvar, Stolac) suggests that only a combination of determined returnees and maximum international pressure can make progress against such pure opposition – but this is the very heartland of HDZBiH territory, and constant pressure since 1994 has had almost no effect. The prospects remain bad.

Banja Luka – black mayor

Banja Luka is an urban problem. It is not surrounded by empty villages to which populations can return quietly, but the city itself contains thousands of flats whose rightful occupants are expelled Bosniacs and Croats; many of these places are now inhabited by Serbs displaced from Federation territory and Croatia. The host authorities are therefore immediately presented with the problem of Protecting a temporary Serb population.

But this Protection sits alongside a hardly-concealed Racism. The 'Black Mayor' (crni gradonacelnik) of Banja Luka, Djordje Umicevic, has never concealed his distaste for returns, and the continued plight of several hundred Bosniacs who never left the city after their eviction but continue to live in garages and friends' spare rooms shows that the local authorities can be heartless towards non-Serb citizens. The Serb population are indifferent to this disgrace in their midst, and are suspicious and hostile towards the few Bosniacs still living among them.

Diagnosis: Umicevic's small party does not control the whole administration, but his prominence helps to keep the population firm against return. Here is surely a case where unrepentant Racism is using the Protector attitude as a convenient disguise, so that even if initiatives to return displaced Serbs to Croatia were successful this would not open up Banja Luka to Bosniacs and Croats. Some elements in the local authority have a less stark attitude, and some evictions have taken place following court decisions to allow displaced Bosniacs and Croats to return to their homes, but the prospect of systematic return is still distant.

Drvar – Ignore them and maybe they'll go away

Although the pre-war Serb population has elected its own mayor and town council, these function in name only as figureheads of the returning Serb community. The town and district is run by HDZ party structures, and HDZ members are in charge of all local utilities and services. The Serbs live in farming villages some distance from the town, generally without tapwater or electricity. To these villages families continue to return at a moderate pace, including some from FRY after the NATO bombing there. There are no jobs for them. The HDZ authorities, as far as possible, pay no attention to them (for example, the village roads are not cleared of snow in the winter). A few Serbs who never left the town still live there, mostly old people. Returnees report that relations with the Croat populace are sometimes touchy but not bad. This populace itself consists entirely of displaced people, mostly from Kakanj and Vares. A recent local head-count suggests that the Serb population now actually outnumbers the Croats by 3802 to 2500, excluding Croat soldiers.¹⁷

Diagnosis: The Croat authorities in Drvar are not primarily Racist, or have become less so. Drvar had a quiet war; the only fighting was during the Oluja campaign in 1995 when the Serb forces and population retreated before the resurgent Croatian and Bihac forces. So the two populations have no personal reason to hate each other. But the displaced Croats will only leave if they are confident they can resettle in central Bosnia. The HDZ wants to retain control over the area for reasons of conquest, and know that in this they are doing what both Zagreb and Mostar want. On the other hand, faced with determined return by Serbs in 1996/7, they found that violence backfired and, against the massive disapproval of the international community, eventually had to abandon the policy of intimidation. More recently they have become Venal, accepting the return of rural populations in return for a good working relationship with the local OHR and NGOs. Drvar is a long way from Mostar (it is a long way from anywhere) but there are periodic indications that HDZ headquarters regards its Drvar branch as too tolerant. The day when a democratically-elected town council will be allowed to take control from the HDZ is still far off. Return can continue as long as the HDZ does not feel its hold on power slipping.

¹⁷ "Srbi u svom Drvaru kao Podstanari", *Nezavisne Novine*, 26 May 1999, pp 25-27.

Stolac – triumph of persistence?

The case of Stolac looks similar to Drvar except that it is much nearer to the centre of Croat policy-making. Despite constant harassment from Croat authorities and populace, a substantial community of Bosniacs has returned both to Stolac town and the villages around Stolac. Many of them commute from East Mostar and so remain Double Occupants with a place to escape to if things get bad, but nonetheless farming communities have been re-established. Paradoxically, it may be the hardline attitude of local authorities here which has itself led to the success of return, since international attention became focused on Stolac at an early stage and has never left it. The mayor, Pero Raguz, was removed by order of the High Representative in March 1998 (though he is still an important player locally), and the entire police force was placed on probation by the UN between February and May 1999.¹⁸ As noted elsewhere, international pressure can achieve a lot when it is applied in concentration at one key point. Still, harassment of Bosniacs continues, though at least some of it appears to be by gangs of undirected youths, against whom the police have been prepared to act.

Diagnosis: The Stolac authorities were pursuing a Racist and Majoritarian policy but they overplayed their hand and attracted too much international attention. Returning Bosniacs showed great determination, often reinforced by orders from the SDA, and believed that the mayor of East Mostar (whence most of them came), Safet Orucevic, would not abandon them if they got into difficulties. The authorities are prepared to be Venal, but only because they realise they cannot now expel the Bosniac population. Reconstruction of Bosniac houses in the villages around Stolac is continuing, and the prospects for continuing return, building on the critical mass already established, are fair. But the official atmosphere is still unfriendly, and Stolac remains a potential flashpoint. If the UN strategy to improve the police force is successful it could decisively weaken the hand of the elected officials – but this is such a large and political task that the odds must be against them.

V. LINES OF CONTROL, RULE OF LAW

“Say what you like, Minister, I’m mayor here.”¹⁹

Bosnia and Herzegovina today is a country where central government is weak, while local authorities are strong. The Banja Luka and Sarajevo governments are in a similar position to the OHR: when they concentrate determined effort on one issue they can overcome local resistance, but they cannot be everywhere always and at the same time.

A crucial point is the loyalty of the police. In everyday terms the local police force is loyal to the local authority. In a crisis between the central government and the local authority, the central government could probably in most cases assert its authority over any police force (it has behind it, after all, the threat of using the army, where central control is not in dispute). But links of friendship and patronage exist between police and party at the local, not national, level, and in any issue which is long, complicated and drawn-out, the local authority is likely to have its way. There is

¹⁸ See the excellent UNMIBH report *Building Civilian Law Enforcement in Stolac and throughout the Herzegovina-Neretva Canton* (HRO 2/99 External) of 8 June 1999 for a detailed account of this episode and an examination of how the police are failing to serve the citizen.

¹⁹ Overheard telephone conversation reported to ICG by Helsinki Citizens’ Assembly.

naturally no question that SDA ministers in Sarajevo could ever assert any authority over Croat police forces or vice versa: this fact has bedevilled the creation of so-called multiethnic forces, which generally function as two parallel structures acting separately, seldom communicating and reporting to different heads.

The Republika Srpska government knows that minority return is not a popular policy in RS, and that to make an issue of it would arouse opposition at local level. Prime Minister Milorad Dodik has the advantage that he knows he has the support of the international community for other reasons, so he has been able to adopt a generally Weak stance: he has persuaded his international backers that he cannot press too hard on returns because it will radicalise his electorate and bring to power forces unacceptable to those backers. This leaves the international community to negotiate with local authorities. Occasionally, as in Prijedor, the local authorities have gradually become Venal or even mildly Heroic, and return has begun in rural settlements. More often, as in the whole of eastern RS, Racist authorities are able to block all returns despite all the internationals can do, even with the half-hearted support of the Banja Luka government.

The Sarajevo government at times seems to be overwhelmed by the problems of running its own bureaucracy and handling all the cantons.²⁰ The bureaucracy is institutionally hostile to minority return, probably for all the motives listed above but mainly Racist, Protector and Weak (not counting simple corruption), and the government has not exerted a strong enough influence to change the culture. The government itself has seemed often unsure of its own stance. Its official position is still that it wishes to see reinstated the multi-cultural, multi-ethnic BiH of before 1992. Logic suggests that the easiest way to promote this agenda is to adopt a Heroic policy and encourage everyone who fled Bosniac areas to return with a warm welcome. But that policy is ruled out by the need to look after displaced Bosniacs, so the policy becomes Protective and Reciprocal.²¹ In fact, the actual policy being followed is even less generous than that, since the emphasis appears to be on achieving re-integration by exporting Bosniacs (Stolac, Prijedor) while still maintaining an unwelcoming atmosphere for returning Croats and Serbs. The strongest motive driving the SDA is probably a variety of Majoritarianism, a hope that the majority Bosniac vote can be spread around the country to weaken the power of the Croat and Serb nationalist parties, and re-unite Bosnia under a benevolent SDA. The fact that this must be a very long-term agenda need not make it less attractive to the Sarajevo government.

The area under the control of the HDZ presents a different face. Despite divisions within the HDZ on most matters, there is general agreement that returns are to be prevented if possible. Despite Drvar and Stolac, where minor defeats have been suffered because of concentrated international attention combined with the determination of the displaced to return, the HDZ has been successful in preventing return to most of western Herzegovina. In central Bosnia the situation is harder to control, as everyday trade and contact have produced a more tolerant atmosphere (the road between Travnik and Vitez is one of the busiest in the country). But occasional security incidents there are exploited to the full by the party and the Croat media to try to keep tension up. The background to the HDZ policy is Racist-Majoritarian, based on fear that the Croats now form too small a population in relation to the Bosniacs in the Federation. Croat purity is an antidote to religious and cultural

²⁰ See, for example, criticism of the Sarajevo Cantonal authorities by Mirza Hajric, special adviser to Alija Izetbegovic, *Dnevni Avaz*, 13 April 1999.

²¹ See *Dnevni Avaz* of 6 May 1999 for the clearest on-the-record statement by Alija Izetbegovic of his own position, in the series *Public asks – Izetbegovic answers*.

domination. This thinking owes a lot to President Tudjman and the Croatian HDZ but has been eagerly adopted by the Bosnian HDZ. It is only strengthened by the practical and financial advantages enjoyed by HDZ politicians as a result of holding power for so long.

VI. SO WHAT WORKS? - ACTUAL AND POSSIBLE POLICIES FOR THE INTERNATIONAL COMMUNITY

A. **Negotiated consensual return – the RRTF strategy: third year of failure?**

The RRTF strategy represents the current favoured policy of the international community in promoting returns. It does not represent a consensus on policy, for no such consensus exists, but it does assert the leadership of the High Representative in co-ordinating the Return process, with the authority of the Peace Implementation Council behind him.

The 1999 plan puts forward a three-pronged strategy: space, security, sustainability. Space for return is to be created by reconstruction, by stronger regulations against illegal and double occupancy and so on, continuing the existing strategy that Bosnian authorities are to be pressured to conform to rules they have themselves accepted. Security is to be ensured by employing minorities in local police forces and by exploiting an increased (if vague) commitment by SFOR to support returns. Sustainability consists of creating a welcoming environment in which returnees have not just a home but a life (The Hesitant, above).

The strategy is based upon supporting and amplifying existing movements of population back to their homes, concentrating on 'axes of return', since populations in many cases did not become dispersed but moved as a mass to a new location (Kakanj Croats to Drvar and Capljina, Sarajevo Serbs to Srebrenica, Brcko etc, Bosniac-Serb exchanges between Teslic and Tesanj).

The 1999 plan is comprehensive and well thought out. However, despite an on-paper commitment to greater co-ordination of the international effort, and increased staff resources for RRTF to ensure a prompt political response to local problems in as many places as possible, it offers no new strategy for breaking down the resistance of host authorities to return. The strategy consists of more effort in support of an agreed plan, and the authors of the plan are realistic about the difficulties they face in implementation.

The odds were against the success of the plan from the start, but NATO action in FRY after 24 March, just as the Return season was set to start, derailed it completely. For many weeks international organisations were unable to work in Republika Srpska at all, and a sustained campaign to promote return was impossible. Between January and April only 543 Bosniacs and Croats returned to their homes in RS:²² very few will have returned since then. Within the Federation figures were better, as usual (2959, mostly to Sarajevo and Drvar-Grahovo), but working relations between the HDZ and SDA at national level were uncooperative, and there was no sign of an atmosphere friendly to return, despite the false dawn of the 'Izetbegovic initiative'.

²² UNHCR statistics package, 1 June 1999.

It seems unlikely that the 1999 RRTF plan will achieve the objective it set itself of 'a critical mass and sustainable flow' of minority returns. Will there be a 2000 RRTF plan along the same lines, against a background of dwindling resources? The 1999 plan itself suggests there will not.²³ But what other policies are available?

B. Force – an Armed Guard in Every Home

There have always been advocates of forcible return. A new campaign was launched most recently by BiH co-Prime Minister Haris Silajdzic, who pointed out an alleged inconsistency between Western policy in Kosovo, where ethnic cleansing had been met with air strikes, and Bosnia (meaning Republika Srpska) where it was allowed to continue unremedied.

Leaving aside the unlikely prospect of NATO air-strikes on Banja Luka, forcible return must mean movement under SFOR escort, forcible eviction of squatters as rightful occupiers are reinstated, and a subsequent round-the-clock guard on the returnees, or at least frequent patrols to ensure their safety. As a remedy for official obstruction, the advocates of force offer the neutralisation of those authorities and deliberate action against their wishes.

This would be a fundamental change in international policy towards Bosnia. It would mark a decisive transition from the 'helping hand' model of participation prescribed at Dayton to a 'protectorate' model where local democracy (however imperfect) ceased to exist. It would necessitate a basic reinterpretation or redefinition of the role of SFOR. This new role would be most unwelcome to SFOR commanders, who would complain that they were being asked to undertake police actions. Nonetheless, such a new policy is at least in theory open to the international community.

It is hard to imagine such a policy achieving sustainable return in Bosnia. Forcible escorted return would instantly create a climate of hostility everywhere it was tried, both among local authorities and populations, towards both the international community and the returnees. Violence would be the result, and a permanent ongoing commitment to devote heavy SFOR resources to maintaining public order. Furthermore, even force has its limits. Can employers be forced to give jobs to minorities? Can pension officials be forced to pay up, and utility companies forced to supply? Even if the answer to all these questions is yes, at a cost of huge concentration of resources, such a policy would make reconciliation between reintegrated communities inconceivable. The 'reintegration' achieved in such circumstances would be polarised and self-defeating. The policy cannot be consistently advocated.

To answer Silajdzic, the difference between Bosnia and Kosovo disappears on closer examination. Forcible returns are not taking place in Kosovo: returns are taking place freely following a period of concentrated activity which played in Kosovo the part played in BiH by air strikes and the military success of the Croatian and Bosnian allies in the autumn of 1995. At the moment, if force is necessary in Kosovo, it is to protect the rights of the remaining Serbs rather than the returning Albanians – and the limited success of KFOR in doing this so far suggests, as stated above, that force is not a durable solution.

²³ 'This choice exists only for 1999: people will not put their lives on hold for ever in the hope of return...', 1999 RRTF plan section 2.

C. Reciprocity – Izetbegovic initiative – sabotaged by events or doomed to fail?

The principle of reciprocity in negotiating returns ought to be unacceptable, since it implies that individual human rights are tradeable. Still, in an atmosphere of mutual suspicion, it appeals to politicians and practical people trying to find some way out of deadlock. Alija Izetbegovic was prepared to advocate in public an initiative based on pure reciprocity, though it subsequently broke down.

A simplistic view of reciprocal return might imagine people moving between, say, Mostar and Sarajevo into each other's apartments. But this cannot happen, because in almost all cases where A is occupying B's home, B is occupying not A's home but C's, and so on in an unending chain. Reciprocity is not just a question of exchanges. If evictions are ruled out, it implies that accommodation is already ready and available for people to return to: the unsurprising but unpleasant conclusion follows that authorities are preventing return simply because they can.

It also follows that, viewed purely as a practical rather than a moral issue, reciprocity might have a role to play in unblocking the logjam. Once x people have returned from Sarajevo to Mostar, then x new homes become available in Sarajevo and it only remains to identify their rightful owners. The chain reaction so set in motion will in time allow massive returns to take place.

This reasoning almost looks tempting until one remembers the totality of motives driving Bosnian authorities. Ill-will is so bad that one can have no faith in negotiated agreements. Double occupants may move into the space vacated, to prevent the chain effect from working. International officials may be lured into trying to promote agreements which neither side intends to honour, and so be diverted from more promising activities. And reciprocal returns will not guarantee the climate of welcome which has been absent in most cases to date. Reciprocity looks a bad bet for the international community, a morally dubious policy which carries no guarantee of success. Still, if the Bosnian parties can demonstrate that they can make reciprocity work among themselves (a big if), the international community should be prepared to give the idea cautious support as a means of getting the return process moving.

D. Bribes – sorry, Aid Conditionality

The idea of persuading local authorities to co-operate in allowing refugees to return by offering them inducements has become a regular feature of the Bosnian landscape. On the face of it this is strange, since it amounts to purchase of human rights by the international community. But the policy arose in an understandable way, as donors responded with flexibility and ingenuity to a problem which looked intractable. Donors were also under political pressure from the PIC and its member governments to make progress with returns.

Unfortunately, as noted above, local authorities became adept at either taking the money and not keeping their own promises (a practice made easier by the scarce resources allotted by implementing agencies to following up their return projects), or at playing off donors and agencies against each other. Donors quite rightly draw the conclusion that they need some kind of guarantee that deals will be honoured.

E. Rewards – Retrospective conditionality

This leads to the thought that aid should only be delivered after co-operation has already started, to reward and reinforce the habit of good behaviour. The policy of 'retrospective conditionality' ought to be a powerful one but it suffers from three flaws. Firstly it requires donors to be alert and flexible in a way that is simply impossible for most of them, tied as they are into complex decision-making processes and the need for budget-holders to spend all of their budget. Secondly it provides a mechanism but not an engine for promoting return, handing the initiative to the Bosnian authorities. Experience suggests that inertia and the lack of political will on the part of the authorities is actually stronger than their wish for money, so that retrospective conditionality can be a recipe for stagnation of the return process. Thirdly, many return programmes are construction-led, depending on the rehabilitation of damaged houses. In these cases return cannot take place without money up front, so the local authorities have no opportunity to show 'good behaviour' in advance, and donors are drawn into the trap of money-for-promises.

F. Softly softly – but in what number?

Some observers have noted that placing returns so high up the agenda makes the issue automatically political and therefore confrontational. This in turn guarantees that even when minority communities are able to re-establish themselves they are unable to integrate into the majority community, even if they want to.

This leads to the thought that the question should be depoliticised and a gentler approach adopted. Reintegration should be based on reconciliation over time, so that returns would happen gradually and uncontroversially. International efforts should be focussed on building up civil society to try to develop the right climate for return. Property rights would be preserved until individuals decided finally to return or sell up.²⁴

This approach assumes that any policy of assisted mass returns will continue to fail. It resolves the problem of obstruction from the Bosnian authorities by simply waiting until the authorities are no longer obstructive, or at most promoting changes which will in time make them more receptive to return. Naturally, by the time this happens, most refugees will have resettled in other places. Returns which do take place will simply be a part of normal population movements within the country.

It is hard to imagine the international community in Bosnia, after three years of high-profile effort, wishing to adopt a strategy which puts the right to return on hold. But as time wears on, if the current strategy continues to fail to produce results commensurate with the resources expended, and donors start to lose interest, the actors in Bosnia may be forced into a stance something like this. It cannot be disguised that this would be a defeat.

²⁴ For a cogent and well-argued presentation of this point of view, see Marcus Cox, 'Strategic Approaches to International Intervention in Bosnia and Herzegovina', Centre for Applied Studies in International Negotiations (CASIN), October 1998.

VI. CONCLUSIONS

It is clear by now that local authorities can prevent returns if they want. It is also clear that without the intervention of the international community the number of spontaneous returns would be very low, and the communities so established would be living in absolute poverty with no hope of receiving help from their host authorities. The strategies evolved to cope with this fact have consisted of bribing, threatening or shaming the local authorities into co-operation. These strategies have worked sometimes, but have never looked like solving the general problem of minority return.

Overriding the host authorities with a programme of forced returns would be something different but would bring only a phantom of the desired result. Putting people back into their homes, hard as it seems to be, is actually easier than reconstructing the communities of which they were once a part. Forced reintegration would raise social tensions and establish parallel unfriendly communities side by side: not a recipe for a stable future.

It would be best to get Bosnian authorities to perceive a genuine interest in promoting inward minority returns. The analysis in this paper shows that this is in fact the reverse of their inclinations, but in the long term it is the only way. The international community just does not have the will and strength to impose its policy upon the Bosnian authorities, and the future of Bosnia must be built upon the consent of Bosnians.

The attempt to do this through aid conditionality has had only limited success because the authority permits returns only as a grudging counterpart to the financial support it wants; it has no reason to do anything to help the returnees, and is likely even to continue to obstruct them if it feels it can get away with it. The donor agencies are not only purchasing the basic human rights of the returnees, they are purchasing permission to do all the work of assisting their return.

A better formula is the argument used by the OHR in Sarajevo which runs: "Your objective is to recreate a multi-ethnic integrated BiH. If this cannot be achieved in Sarajevo it cannot be achieved anywhere. By holding back returns in Sarajevo you are preventing the achievement of your own objective". This argument is effective with liberal politicians, including certain wings of the SDA, and can also be used in other Bosniac-controlled areas. It is not so easy to construct similar arguments for the Croat and Serb authorities, who do not share the objective of reintegrating Bosnia.

A negative interest can be created at entity level by threats: "No aid without return." This is a blunter weapon than aid conditionality attached to projects, because it would tie the whole process of international intervention in BiH to progress with return. At an extreme, the international community could simply threaten to withdraw unless they received better co-operation on return. At one level this threat would appear effective, because the economy of each entity would collapse without aid and the international presence. But the threat would only be credible if the governments driving the international community were united and unambiguous about it. Would they really risk the fragile peace achieved in Bosnia over the last four years, at so much cost and effort, on a single gamble that such a threat would be successful and therefore not have to be implemented?

Simply hanging on and waiting might bring results. A new government in Zagreb after elections at the end of this year might (i) be more amenable to Serb returns to

Croatia, which would provide an opportunity for a new offensive in Banja Luka and the other towns in RS; (ii) be less supportive of the HDZBiH, leading to a gradual weakening of the resistance to return among Bosnian Croats. It is legitimate to hope for such an outcome, but inadequate to suggest it as a policy to wait for it. And it might not even happen. Changes in Belgrade are even more unpredictable, while in Sarajevo the question of who will succeed Izetbegovic is still not clear, nor are Bosniac voting patterns changing fast enough to predict the fall of the SDA via the ballot box.

Some aspects of the existing policy and practice have achieved results. The return of communities to empty, and formerly mono-ethnic, villages is a relatively successful movement in some places which seems to get easier with time. But it is a money-intensive operation which depends on funding to reconstruct housing and utilities and to bribe local authorities with programmes among the host community too. As donors begin to lose interest in Bosnia it may become difficult to sustain even the process of assisted rural returns.

The towns present the toughest policy problem to international officials. The practical issue of what to do with people displaced from elsewhere exacerbates the political problem that no-one really wants minorities to return. Even when they return there are barriers preventing them from reintegrating into society. It is hard to see how any policy based on breaking down the resistance of authorities by political means can produce a different result.

After four years of accumulated experience and intelligent effort, no-one is suddenly going to find a magic solution which will transform the situation. The RRTF mechanism, and formula of assisted return, continues to make progress, but at staggering cost and at a slow pace. The international approach will need to adapt to reflect falling resources and, if possible, to minimise confrontation with Bosnian authorities over return. The remainder of this report offers one alternative approach to policy which would treat return not as an isolated package of issues but as part of a more integrated approach by the international community.

Bosnian authorities do not, as noted, have a direct interest in promoting return. But they do have a direct interest in a westward orientation for the country, and possible future membership of the EU. This gives the international community a lever, though it is too soft, because too long-term, to make a difference in day-to-day affairs. However one area where everyone agrees BiH needs to make progress, before EU membership can even be considered, is that laws need to be implemented transparently and fairly.

Rule of law is being promoted by the international community in BiH in a number of ways, most explicitly by the United Nations' Judicial System Assessment Programme (JSAP) but also by departments of OHR and OSCE. The road towards rule of law is long in a country long used to mechanisms that serve either the State or a colonial power,²⁵ but Bosnia's future as a modern state depends on success in this field as much as on honouring the rights of the displaced to return. Scope might exist to combine these two key policies, in a manner outlined in the next section below. This would involve some reform of the international effort, and new mechanisms of co-ordination between officials involved in rule of law and their counterparts on refugee issues, but the resultant streamlining might lend mutual impetus to both policies.

²⁵ See ICG, *Rule Over Law: Obstacles to the Development of an Independent Judiciary in Bosnia and Herzegovina*, 5 July 1999.

It might seem that subordinating work on return under a general policy of promoting rule of law represents an unacceptable attempt to demote the importance of return. But this need not be so. The resources devoted to return can continue to be as great as funding will allow. But to place the whole issue within a Rule of Law context would deny Bosnian authorities the opportunity to use the Protector and Reciprocity excuses in any individual case – and the international policy would become in effect a concentration on many individual cases. The ombudsman network, which has proved valuable and incorruptible but has so far lacked power, would gain authority as international officials worked with local ombudsmen to identify priority cases to pursue.

Progress would still be slow but it should be sure. By following through the implementation of court decisions, particularly in Mostar and Banja Luka, the international community should be able to ensure a trickle of returns which would in time become self-sustaining.

This is not presented as a panacea. The legal system cannot yet be trusted to deliver justice in all cases. Local and national authorities would continue to obstruct the work of the international community in helping refugees to return home. But at least the internationals would have a basic and unanswerable question: “Do you want rule of law in your country or not?”

VII. RECOMMENDATIONS

- Return is only one aspect of the rights of the citizen. All ethnic authorities in Bosnia are agreed that their future lies in the European Union, and know that the EU will demand respect for human rights before BiH is allowed anywhere near membership. So play the EU card, in a way which will have impact every day, not just at summit meetings;
- Rule of Law is a vital component of a modern democratic state. Even Bosnian authorities have no respectable arguments against this;
- Thus the problem of return should be perceived and presented as an aspect of the rule of law rather than a subject for political negotiation. As such it should be tied in to other rule of law programmes. The UN in BiH, with its Judicial System Assessment Programme, the International Police Task Force and UNHCR, has the tools to do this job, under political guidance from OHR;
- Decisions of the Commission for Real Property Claims (CRPC) should be given the status of court judgements, rendering further hearings unnecessary;
- International emphasis should shift from brokering return with local authorities to following up failure by local authorities to implement decisions validly made by the courts;
- More support should be given to Bosnian NGOs formed to give legal support to individuals without means to fight their own cases;
- OHR/UN should consult the existing Ombudsman network regularly as to which cases should be given priority;
- Return to empty villages should continue as at present, since the expertise acquired by internationals over four years is starting to produce results, and property rights are

not usually at issue. Available funding should be used to give returnees a full if modest rural lifestyle;

- But rural projects should no longer be agreed in exchange for promises over return (no payment for human rights). The UN Open Cities Initiative should be transformed into a 'White List' of municipalities where BOTH obstruction of return is minimal AND the legal system provides a reasonable guarantee of justice to the citizen. Donors should be encouraged via the PIC to pursue projects only in areas already on the White List;
- Private investors should be given incentives to construct new housing in cities. The incentives could include peppercorn rent on real estate and freedom from taxes for a period of ten years.