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BOSNIA-HERZEGOVINA

The International Community's Responsibility to Ensure Human Rights

June 1996

SUMMARY

AI INDEX: EUR 63/14/96

DISTR: SC/CC/CO/IGO

On 13 and 14 June 1996, all states, international organizations and agencies involved in the implementation of the Dayton Agreement will meet in Florence to review the first seven months of the implementation process. In advance of this critical meeting, Amnesty International has issued a comprehensive document expressing deep concern about the uncertain start to the international community's implementation of the human rights provisions of the 1995 peace agreement in Bosnia and Herzegovina - as well as the weaknesses of the human rights implementation mechanisms in the agreement. Amnesty International has also issued a 10-Point Program for the International Community to Implement Human Rights in Bosnia and Herzegovina. Several parties to the peace agreement - and all of the states participating in IFOR (the multinational Implementation Force for Bosnia-Herzegovina) - have violated their obligations under international law to search for those responsible for grave breaches of the Geneva Conventions.

KEYWORDS: PEACE KEEPING1 / INVESTIGATION OF ABUSES1 / UN1 / INTERNATIONAL TRIBUNALS1 / WAR CRIMES1 / MSP1 / REFUGEES1 / DISPLACED PEOPLE1 / DISAPPEARANCES1 / HUMAN RIGHTS EDUCATION / EXHUMATION / UNHCR / OSCE / EU / COUNCIL OF EUROPE / CONSTITUTIONAL CHANGE / ELECTIONS / INTERNATIONAL MEETINGS / IMF / WORLD BANK / AMNESTIES / IMPUNITY / HOUSE DESTRUCTION / COMPENSATION / JOURNALISTS / PRISONERS OF CONSCIENCE / DETENTION WITHOUT TRIAL / FORCED EVACUATION / FORCED EVICTION / ATTACKS / COMMUNAL VIOLENCE / MISSIONS / CROATIA / FEDERAL REPUBLIC OF YUGOSLAVIA /

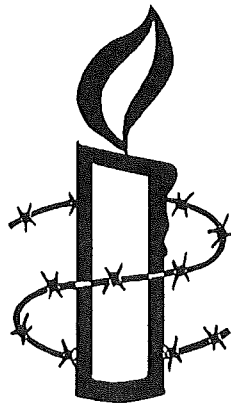
This report summarizes a 109-page document (47,372 words),: BOSNIA-HERZEGOVINA The International Community's Responsibility to Ensure Human Rights (AI Index: EUR 63/14/96) issued by Amnesty International in June 1996. Anyone wishing further details or to take action on this issue should consult the full document.

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BOSNIA-HERZEGOVINA

The international community's responsibility to ensure human rights



“The foundation for a lasting peace in Bosnia and Herzegovina will not lie in an infrastructure of factories and bridges and other economic needs - the country had this five years ago, but it did nothing to prevent the outbreak of war. The foundation for a lasting peace will lie in the demonstrated respect for human rights by all the parties to the conflict.”

**Elisabeth Rehn, United Nations Special Rapporteur on the former Yugoslavia,
Report to the United Nations Commission on Human Rights on 14 March 1996**

June 1996
AI Index: EUR 63/14/96
Distr: SC/CC/CO/IGO

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM

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I. INTRODUCTION

“The history of the conflict in Bosnia - as well as in all of former Yugoslavia - is the history of the most flagrant violations of human rights we have seen in recent European history. And the setting up of institutions and mechanisms to safeguard human rights in the future is one of the most crucial elements of the peace process that we are now embarking on.”

Opening Remarks by Mr Carl Bildt, the High Representative, at the first meeting of the Human Rights Task Force, Brussels, 29 January 1996

Amnesty International is deeply concerned about the uncertain start to the international community's implementation of the human rights provisions of the 1995 peace agreement in Bosnia and Herzegovina, as well as the weaknesses of the implementation mechanisms in the agreement. The problems include reluctance by the parties to the peace agreement in the former Yugoslavia to implement it, the lack of frequent, comprehensive and public reporting; the lack of political will of the international community to allocate adequate resources; slow deployment of inexperienced and untrained staff; extremely tight and probably unrealistic deadlines; the absence of clearly defined programs of action; and the delay in the establishment of effective coordination among the many intergovernmental organizations charged with implementing these provisions. Partly as a result of these problems, the international community has not developed effective responses to continuing human rights violations and abuses or methods to prevent them in the future. Recent human rights violations such as forcible expulsions of Muslims from Teslić and attacks on refugees and internally displaced persons crossing internal boundaries in Bosnia and Herzegovina dramatically illustrate the weaknesses in human rights implementation.

International attention has focussed in recent months on the reluctance of the parties in the former Yugoslavia to the peace agreement to fulfill their obligations to implement it. Of course, the primary responsibility for the implementation of the peace agreement rests with the parties in the former Yugoslavia. When they fail, however, the international community must ensure that the human rights provisions of the peace agreement are implemented. In this paper, Amnesty International focuses on the responsibilities of the international community. The organization is calling upon the international community to take effective steps to protect and promote human rights in Bosnia and Herzegovina as a matter of the utmost priority. These steps, as explained in more detail in this paper, include the **10-Point Program for the International Community to Implement Human Rights in Bosnia and Herzegovina** set forth below. They draw upon the extensive recommendations Amnesty International has made concerning implementation of human rights guarantees in peace-keeping operations which it has made over the years, and particularly the recommendations which Amnesty International made on 18 October 1995 to the negotiators of the peace agreement more than a month before it was initialled in Dayton.¹

¹ Amnesty International, *Peace-keeping and human rights* (AI Index: IOR 40/01/94); *The challenge for the OSCE in Bosnia and Herzegovina*, Oral statement by Amnesty International, 18 October 1995, OSCE Human Dimension Implementation Meeting, Warsaw, 2 to 19 October 1995.

10-POINT PROGRAM FOR THE INTERNATIONAL COMMUNITY TO IMPLEMENT HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA

- 1. The High Representative, working with the intergovernmental and non-governmental organizations involved, should develop a comprehensive and effective human rights action program.**
- 2. The High Representative should ensure that all international bodies concerned provide frequent, comprehensive public reports on human rights implementation.**
- 3. The international community should provide adequate, secure long-term funding for human rights implementation.**
- 4. States should ensure that there are sufficient numbers of experienced and well-trained human rights monitors to cover the entire country.**
- 5. All states should search for, arrest and transfer to the International Criminal Tribunal for the former Yugoslavia persons suspected of genocide, other crimes against humanity and serious violations of humanitarian law.**
- 6. All states which have not yet done so should enact the necessary legislation permitting cooperation with the International Criminal Tribunal for the former Yugoslavia and should cooperate fully with the Tribunal.**
- 7. The international community must resolve cases of "disappeared" and "missing" persons as a matter of urgency to bring those responsible to justice and determine the fate of those persons.**
- 8. All states must cooperate to ensure that refugees and displaced persons are fully informed about the human rights situation and are not returned until it is safe.**
- 9. The parties to the peace agreement should ensure that refugees and internally displaced persons receive full and adequate compensation for houses which were deliberately destroyed.**
- 10. The international community should ensure the establishment of effective and lasting national institutions which will protect and promote human rights.**

The following section describes the strengths and weaknesses of the main human rights provisions in the peace agreement, as supplemented by subsequent government meetings. It also describes the mandates and powers of the complex web of intergovernmental organizations and bodies charged with implementing these provisions and Security Council resolutions (see Annex II to this paper). Subsequent sections analyze how these human rights provisions and mandates have been implemented in the six months from the date the peace agreement was initialled in Dayton until the beginning of June 1996 and make recommendations to the international community on how human rights protection and promotion could be strengthened. The analysis of the implementation of these provisions and mandates so far has been hampered by the limited information made public by some of the bodies involved. Amnesty International sent a mission to Bosnia and Herzegovina on 2 June 1996 to gain further information on the international role in implementing the peace agreement's human rights guarantees, particularly concerning the effectiveness of human rights monitoring.

Although the international civilian implementation of the human rights provisions of the peace agreement has had to contend with structural flaws in the peace agreement, many of these problems - and the restrictive interpretation of IFOR's law enforcement role - can and must be solved by revising the ways the international community has been implementing the human rights provisions of the peace agreement. As Amnesty International has recommended in the context of United Nations (UN) peace-keeping operations:

“The UN should exercise flexibility in the implementation of the human rights components of peace-keeping plans and keep them under constant review. If initial verification and protection measures are shown to be inadequate or failing, the UN should be prepared to push for the strengthening of its implementation plan.”²

This recommendation has equal force to international implementation of human rights provisions of the peace agreement and Amnesty International is calling upon the international community as a matter of priority to strengthen its implementation of human rights in Bosnia and Herzegovina. It hopes that the recommendations in this paper will assist in that urgent task.

² Amnesty International, *Peace-keeping and human rights*, *supra*, note 1, at 23.

II. THE HUMAN RIGHTS PROVISIONS OF THE PEACE AGREEMENT

“Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms.”

Article II (1) of the Constitution of Bosnia and Herzegovina

A. Dayton and Paris

After more than four years of conflict in the former Yugoslavia and some of the gravest human rights violations in Europe since the end of the Second World War, the three states and the other two parties to the conflict initialled a peace agreement in Dayton, Ohio in the United States on 21 November 1995. The peace agreement (peace agreement) is a 149-page complex package of documents, only some of which mention human rights, including a short General Framework Agreement for Peace in Bosnia and Herzegovina (General Framework Agreement), 11 Annexes, an agreement on initialling the General Framework Agreement, an agreement on side letters and Concluding Statement.³ The General Framework Agreement and some of these supplementary documents were initialled by the three states which were parties to the conflict (the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro)), as well as by the Federation of Bosnia and Herzegovina (Federation) (an alliance of Bosnian Croats and Bosnian Muslims) and the Republika Srpska (Bosnian Serb authorities). Each of these parties later signed the peace agreement in Paris on 14 December 1995.⁴ The General Framework Agreement was initialled and later signed by the European Union and the Contact Group countries: France, Germany, the Russian Federation, the United Kingdom and the United States of America. The peace agreement has been supplemented by various Security Council resolutions (discussed in this section) and by subsequent agreements in governmental conferences (see Section II.B below). A separate agreement

³ The text of the General Framework Agreement and related documents as initialled in Dayton has been published as a United Nations document: UN Doc. A/50/790-S/1995/999. This version is also available on the Tribunal Watch computer conference. To subscribe, send an e-mail message: “SUB TWATCH-L [name of subscriber]” to listserv@ubvm.cc.buffalo.edu. It is also available on the Internet: <http://dosfan/lib.uic.edu/bosagree.html>. The text, with minor corrections, which was signed in Paris is reproduced in 35 Int'l Leg. Mat. 89 (1996). This paper is based on the version initialled at Dayton.

⁴ The history of the evolution of the human rights guarantees in various peace agreements proposed during the conflict culminating in the document signed in Paris is set forth in: Paul C. Szasz, “Protecting Human Rights and Minority Rights in Bosnia: A Documentary Survey of International Proposals”, 25 Cal. W. Int'l L. J. 237 (1995). The complex relationship of human rights provisions in the peace agreement is analyzed in Paul C. Szasz, “The Protection of Human Rights Through the Dayton/Paris Peace Agreement on Bosnia”, 90 Am. J. Int'l L. 301-316 (1996).

on the establishment of the Federation was reached during the negotiations shortly before the peace agreement was initialled.⁵

1. Basic undertakings of the parties

The parties agree to conduct their relations in accordance with the principles of the UN Charter, the Helsinki Final Act and other documents of the Organization for Security and Cooperation in Europe (OSCE).⁶ They “welcome and endorse” the arrangements concerning the national human rights bodies established to implement the peace agreement,⁷ recognize that the observance of human rights and the protection of refugees and displaced persons “are of vital importance in achieving a lasting peace” and agree that they will “comply fully” with the human rights provisions in Annex 6 and those concerning refugees and displaced persons in Annex 7.⁸ The parties also “welcome and endorse” the arrangements which have been made concerning implementation of the peace agreement, particularly the civilian implementation operation in Annex 10 and the international police task force in Annex 11, and agree that they will “fully respect and promote fulfilment” of these commitments.⁹ The parties also agree to cooperate “in the investigation and prosecution of war crimes and other violations of international humanitarian law”.¹⁰

2. Human rights implementation by the military under the peace agreement

Annex 1-A invites the UN Security Council to adopt a resolution authorizing the establishment of a **multinational military Implementation Force (IFOR)** composed of units from the North Atlantic Treaty Organization (NATO) and other states to implement the military aspects of the Annex, including monitoring the cessation of hostilities and arms control provisions.¹¹ The Security Council authorized the establishment of IFOR under a unified command and control on 15 December 1995 in Resolution 1031 and IFOR completed the replacement of the United Nations Protection Force (UNPROFOR) on 20

⁵ Dayton agreement on implementing the Federation of Bosnia and Herzegovina of 10 November 1995, UN Doc. A/50/810-S/1995/1021. This paper does not address how the Federation has implemented this agreement.

⁶ General Framework Agreement, Art. I. See Section II.A. 5 below for a discussion of human rights guarantees in the Constitution.

⁷ *Id.*, Art. VI.

⁸ *Id.*, Art. VII.

⁹ *Id.*, Art. VIII.

¹⁰ *Id.*, Art. IX.

¹¹ *Id.*, Annex 1-A, Art. I (1) (a).

December 1995.¹² IFOR was originally expected to stay until December 1996, approximately one year after its deployment, but recent information suggests that IFOR, or some other multinational military force performing some of the same functions, might remain after that date.

IFOR is authorized under the peace agreement “to take such actions as required, including the use of necessary force” to ensure compliance with the annex¹³ and the Security Council has authorized states participating in IFOR “to take all necessary measures to effect the implementation of and to ensure compliance with Annex 1-A”.¹⁴ In Annex 1-A, the parties agree to “provide a safe and secure environment for all persons in their respective jurisdictions, by maintaining civilian law enforcement agencies operating in accordance with internationally recognized standards and with respect for internationally recognized human rights and fundamental freedoms” and to “disarm and disband all armed civilian groups, except for authorized police forces”.¹⁵ The parties also agree to cooperate fully with international personnel, including investigators, advisors, monitors and observers.¹⁶ Annex 1-A requires the parties to release and transfer all combatants and civilians held in relation to the conflict “without delay”, to “cooperate fully” with the International Committee of the Red Cross (ICRC) in this regard, including giving the ICRC unimpeded access to places of detention and to prisoners, and to comply with any orders of the International Criminal Tribunal for the former Yugoslavia (Tribunal) to arrest, detain, surrender or grant access to such prisoners.¹⁷

If at any time the IFOR Commander reports to the Security Council that either the Federal Republic of Yugoslavia (Serbia and Montenegro) or the Bosnian Serb authorities “are failing significantly to meet their obligations under the Peace Agreement” with respect to a matter within IFOR’s mandate, the suspension of sanctions against these two parties will end automatically five days later, unless the Security Council decides otherwise.¹⁸

¹² SC Res. 1031 (1995), para. 14; UN Doc. S/1995/1050. UNPROFOR was the UN peacekeeping force which was established in Croatia in early 1992. SC Res. 743 (1992). In June 1992 it was mandated to protect humanitarian aid deliveries in Bosnia and Herzegovina, SC Res. 761 (1992), and monitor a ban on military flights, SC Res. 781 (1992). It was later mandated to protect the so-called “safe areas” (Goradže, Sarajevo, Srebrenica, Tuzla and Žepa) which were established in 1993. SC Res. 819 (1993).

¹³ *Id.*, Annex 1-A, Art. I (2) (b).

¹⁴ SC Res. 1031 (1995).

¹⁵ General Framework Agreement, Annex 1-A, Art. II (3).

¹⁶ *Id.*, Annex 1-A, Art. II (4).

¹⁷ *Id.*, Annex 1-A, Art. IX (1).

¹⁸ SC Res. 1022 (1995), para. 3. On 22 November 1995, the Security Council decided to suspend the arms embargo against Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) in a series of stages over six months, SC Res. 1021 (1995), and other sanctions against

Thus, the IFOR Commander could reimpose sanctions if these two parties fail to implement some of their undertakings concerning human rights, such as free access and movement of human rights monitors or investigators of the International Criminal Tribunal for the former Yugoslavia (Tribunal) and surrender of suspects or accused to the Tribunal.¹⁹ The IFOR Commander lacks similar powers with respect to the other parties to the agreement.

Although the IFOR Commander has important powers, there are a number of problems with the mandate of IFOR. The one-year mandate does not appear to leave sufficient time to ensure that effective civilian institutions can be put into place to assume the security and other functions it performs, and uncertainty about whether it or some other multinational military force would remain after December 1996 has contributed to problems with civilian implementation.

Annex 1-A does not expressly assign IFOR any human rights reporting responsibilities or impose any duties to intervene with local authorities to seek action to protect individuals, although IFOR's predecessor, UNPROFOR, had Standard Operating Procedures (SOPs) developed by UN Civilian Affairs Officers who had been human rights monitors in other UN operations, requiring its forces to report human rights violations by filling out standard reports. On 18 October 1995, Amnesty International urged that the peace agreement provide that military personnel in the proposed multinational implementation force be instructed to cooperate with human rights monitors and "pass information to them in the same way as UN personnel are currently required to pass information to the UN Special Rapporteur on former Yugoslavia" and that the force "should have the power to intervene with the authorities to seek action to protect individuals".²⁰ IFOR should formalize any existing reporting of human rights violations in a manner similar to the procedures developed by UNPROFOR, ensure that reports are forwarded without delay to the High Representative's Human Rights Coordination Centre, the Special Rapporteur on former Yugoslavia and other relevant bodies and intervene with local authorities to seek action to prevent human rights violations. In the context of UN peace-

the Federal Republic of Yugoslavia (Serbia and Montenegro). SC Res. 1022 (1995). Apparently, the sanctions against the Republika Srpska were suspended sometime after a letter by the NATO Secretary-General to the President of the Security Council on 6 February 1996 stating that it was the IFOR Commander's assessment that Bosnian Serb forces had withdrawn from those areas to be transferred under the peace agreement. UN Doc. S/1996/79.

¹⁹ The Security Council has noted that "compliance with the requests and orders of the International Tribunal for the former Yugoslavia constitutes an essential aspect of implementing the Peace Agreement". SC Res 1022 (1995), eighth preambular paragraph.

²⁰ *The challenge for the OSCE in Bosnia and Herzegovina*, *supra*, note 1, at 3. The UN General Assembly urged all UN bodies concerned with the situation in the former Yugoslavia "to coordinate closely with the United Nations High Commissioner for Human Rights, the Special Rapporteur and the Tribunal, and to provide to the Special Rapporteur on a continuing basis all relevant and accurate information in their possession on the situation of human rights in Bosnia and Herzegovina". GA Res. 50/193, para. 24.

keeping, Amnesty International has recommended that there be no international "silent witnesses":

"All international field personnel, including those engaged in military, civilian and humanitarian operations, should report through explicit and proper channels any human rights violations they may witness or serious allegations they receive. The UN should take appropriate steps, including preventive measures, to address any violations reported."²¹

These recommendations are equally applicable to personnel in regional intergovernmental organization peace-keeping operations.

Moreover, the peace agreement does not expressly state that IFOR must be trained in and comply with human rights and humanitarian law or the OSCE Code of Conduct on Politico-Military Aspects of Security (OSCE Code of Conduct) adopted at the Budapest Summit in December 1994, which requires states to ensure that their forces respect human rights and humanitarian law.²² All but four of the 32 states contributing personnel to IFOR are members of the OSCE. In the context of UN peace-keeping operations, Amnesty International has recommended that the UN should comply with international humanitarian

²¹ Amnesty International's 15-Point Program for Implementing Human Rights in International Peace-keeping Operations, Point 2, in *Peace-keeping and human rights, supra*, note 1. The 15-Point Program is annexed to this paper as Annex I. In his report of 26 January 1993, the UN Secretary-General explained the mandate of the UN Mission for the Referendum in Western Sahara (MINURSO) as follows:

"It is pertinent to recall that while MINURSO's current military mandate is strictly limited to the monitoring and verification of the cease-fire, MINURSO, as a United Nations mission, could not be a silent witness to conduct that might infringe the human rights of the civilian population."

UN Doc. S/25170, para. 25.

²² Under the OSCE Code of Conduct, participating states confirm the continuing validity of their comprehensive concept of security, as spelled out in the Helsinki Final Act, "which relates the maintenance of peace to the respect for human rights and fundamental freedoms" (Art. 2). Each participating state "will instruct its armed forces personnel in international humanitarian law, rules, conventions and commitments governing armed conflict and will ensure that such personnel are aware that they are individually accountable under national and international law for their actions" (Art. 30), "will ensure that armed forces personnel vested with command authority exercise it in accordance with relevant national as well as international law and are made aware that they can be held individually accountable under those laws for the unlawful exercise of such authority and that orders contrary to national and international law must not be given" (Art. 31) and "will ensure that its armed forces are, in peace and in war, commanded, manned, trained and equipped in ways that are consistent with the provisions of international law and its respective obligations and commitments related to the use of armed forces in armed conflict, including as applicable the Hague Conventions of 1907 and 1954, the Geneva Conventions of 1949 and the 1977 Protocols Additional thereto, as well as the 1980 Convention on the Use of Certain Conventional Weapons" (Art. 34).

law and human rights and criminal justice standards, including in relation to the detention of prisoners and the use of force, and that it

“should ensure all troops participating in international peace-keeping operations are fully trained in those standards and understand their obligation to adhere to them. There should be specific mechanisms at the international level for monitoring, investigating and reporting on any violations of international norms by peace-keeping personnel and to ensure that personnel responsible for serious violations are brought to justice in accordance with international standards.”²³

As explained in more detail in Section VI below, the same principles apply with equal force to IFOR. The peace agreement also does not provide for any mechanisms at the international level for monitoring, investigating or reporting human rights violations by IFOR personnel or for bringing them to justice for such violations.

On 18 October 1995, Amnesty International urged that the International Criminal Tribunal for the former Yugoslavia (Tribunal) “should be able to request the multinational force, when that force is carrying out law enforcement responsibilities, to execute search or arrest warrants, to safeguard evidence such as grave sites and to protect witnesses”.²⁴ The peace agreement, however, does not expressly assign IFOR law enforcement responsibilities or powers of arrest. Nevertheless, the official summary issued by the United States State Department on 22 November 1995 indicates that the drafters of the peace agreement envisaged that IFOR would have a law enforcement role, albeit a relatively passive one: “IFOR has the authority to arrest any indicted war criminals it encounters or who interfere with its mission, but it will not try to track them down.”²⁵ As explained below in Section VI, this interpretation of IFOR’s responsibilities is inconsistent with international law.

3. The international civilian human rights monitoring and implementation bodies.

²³ Amnesty International’s 15-Point Program for Implementing Human Rights in International Peace-keeping Operations, Point 13. On 18 October 1995, Amnesty International specifically urged that any multinational military force which was established “should comply with UN law enforcement standards, in particular the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials, and be properly trained in such standards before they are deployed”. *The challenge for the OSCE in Bosnia and Herzegovina, supra*, note 1, at 3.

²⁴ *The challenge for the OSCE in Bosnia and Herzegovina, supra*, note 1, at 3.

²⁵ As of the middle of April 1996, all non-NATO states contributing personnel to IFOR except the Russian Federation had subscribed to a NATO memorandum of understanding which clarifies technical and legal aspects of detaining persons indicted by the Tribunal and transferring persons to the Tribunal, such as access to lawyers, conditions of detention, notification of relatives, but neither NATO nor the Tribunal have made this memorandum of understanding public, so it is not possible to determine whether it is consistent with international standards.

In contrast to the civilian human rights monitoring and implementation operations in Cambodia, Mozambique and El Salvador, where the UN established unified civilian human rights operations with experienced and trained personnel, or the joint UN-Organization of American States (OAS) civilian operation in Haiti, the peace agreement established a fragmented and complex civilian operation (see Annex II to this paper with a simplified diagram of these institutions), with unclear and overlapping mandates, which limits the UN's operational responsibilities. The peace agreement invited the UN Commission on Human Rights, the UN High Commissioner for Human Rights, the OSCE and other intergovernmental or regional bodies "to monitor closely the human rights situation in Bosnia and Herzegovina, including through the establishment of local offices and the assignment of observers, rapporteurs, or other relevant persons on a permanent or mission-by-mission basis".²⁶ The peace agreement did not specify which organization would take the leading role and left the coordination of all these bodies to a High Representative. This fragmentation and complexity has led to many of the problems in the implementation of the human rights provisions of the peace agreement.

The High Representative. A **High Representative**, Carl Bildt, the former Swedish Prime Minister, Co-Chairman of the International Conference on the Former Yugoslavia and European Union (EU) Special Negotiator in the former Yugoslavia, whose designation by the Lancaster House conference (see Section I.B below) was approved by the Security Council on 15 December 1995, has responsibility for coordinating the civilian aspects of the peace agreement.²⁷ He also chairs the **Steering Committee of the Peace Implementation Council**, the key political body responsible for ensuring effective implementation of the peace agreement. The responsibilities of the High Representative include: monitoring implementation of the peace agreement, coordinating the activities of the civilian organizations implementing the peace agreement, facilitating the resolution of difficulties in implementation, participating in meetings of donors, reporting periodically to the UN, European Union, the Russian Federation and other interested governments, parties and organizations, and providing guidance to and receiving reports from the Commissioner of the International Police Task Force (IPTF).²⁸ The High Representative is the final authority regarding interpretation of the peace agreement with respect to civilian implementation.²⁹ Like the IFOR Commander, he has strong powers to reimpose the sanctions on the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Republika Srpska if the parties

²⁶ General Framework Agreement, Annex 6, Art. XIII (2).

²⁷ SC Res. 1031 (1995), para. 26. This resolution states that the High Representative is to "monitor the implementation of the Peace Agreement and mobilize and, as appropriate, give guidance to, and coordinate the activities of, the civilian organizations and agencies involved". See also General Framework Agreement, Annex 10, Art. I (2).

²⁸ General Framework Agreement, Annex 10, Art. II (1).

²⁹ *Id.*, Annex 10, Art. V; SC Res. 1031 (1995), para. 27.

fail to implement the peace agreement.³⁰ The High Representative also is expected to remain in close contact with the IFOR Commander on a regular basis, directly, as part of a **Joint Consultative Committee**³¹ or by participating in meetings of the **Joint Military Commission**.³²

The peace agreement does not call for the establishment of a single, unified and comprehensive international civilian human rights monitoring or implementation operation reporting directly to the High Representative or any other official, with personnel who are experienced and properly trained in human rights monitoring, either administered by the UN or involving the UN. This is in marked contrast to the Security Council authorization of a unified command and control of IFOR. The civilian implementation functions are split under the peace agreement among several organizations and agencies at the international, regional and national level. In implementing his mandate, the High Representative convenes and chairs a **Joint Civilian Commission**, which includes political representatives of the parties, the IFOR commander and representatives of civilian organizations he deems necessary.³³ The functions of the Joint Civilian Commission are not spelled out in the peace agreement. In addition to this body, the High Representative chairs the **Joint Interim Commission**, which has a mandate "to discuss practical questions related to the implementation of the Constitution of Bosnia and Herzegovina and of the General Framework Agreement and its Annexes, and to make recommendations and proposals" pending establishment of the Constitutional Court after elections.³⁴

³⁰ If any any time the High Representative reports to the Security Council that either the Federal Republic of Yugoslavia (Serbia and Montenegro) or the Bosnian Serb authorities "are significantly failing to meet their obligations under the Peace Agreement" with respect to civilian implementation, the suspension of sanctions against these two parties will end automatically five days later, unless the Security Council decides otherwise. SC Res. 1022 (1995), para. 3.

³¹ General Framework Agreement, Annex 10, Art. II (4). The mandate of this body is not spelled out in the peace agreement. It is to meet from time to time as agreed by the High Representative and IFOR commander.

³² *Id.*, Annex 10, Art. (7). The mandate of the Joint Military Commission is spelled out in Annex 1-A, Art. VIII.

³³ *Id.*, Annex 10, Art. II (2). The High Representative may convene this body when the parties fail to cooperate fully with the International Police Task Force (IPTF). *Id.*, Annex 11, Art. V (2). He has stated that it meets regularly in his office in Sarajevo and has addressed a wide variety of issues. It brings together representatives of the parties and the most important implementation agencies. Report of the High Representative, UN Doc. S/1996/190, para. 20.

³⁴ General Framework Agreement, Annex 4, Constitution of Bosnia and Herzegovina, Annex II, Art. 1 (a). The Joint Interim Commission is composed of four persons from the Federation, three persons from the Republika Srpska and one representative from Bosnia and Herzegovina. *Id.*, Annex 4, Constitution of Bosnia and Herzegovina, Annex II, Art. 1 (b).

The failure to establish a single, unified civilian human rights monitoring and implementation operation is one of the most significant weaknesses of the peace agreement. Amnesty International has recommended that every international peace-keeping operation include an effective and independent human rights verification component:

“A specialized international civilian human rights monitoring component should be part of all peace-keeping operations. These components should have adequate resources and staff with human rights expertise. Their mandates should include human rights verification, institution-building, legislative reform, education and training. Monitors should be trained and should operate under consistent guidelines and in conformity with international standards.”³⁵

The UN High Commissioner for Human Rights and the role of the UN. One of the most striking and disappointing aspects of the peace agreement is the limited role envisaged for the UN, despite the extensive experience of the UN Department of Peace-keeping and the UN Centre for Human Rights in monitoring and implementing human rights provisions of peace settlements.³⁶ Although the peace agreement invites the **UN High Commissioner for Human Rights (High Commissioner)** and the **UN Commission on Human Rights**, together with other organizations, to monitor the human rights situation through the establishment of local offices, assignment of observers and rapporteurs or other persons on a temporary or permanent basis, it fails to provide the UN with a clear role in implementing the civilian aspects of the peace agreement.³⁷ As shown below in Section V.B, the subsequent failure to call for the establishment of a single, unified and comprehensive human rights monitoring operation in the peace agreement or to set up such

³⁵ Amnesty International's 15-Point Program for Implementing Human Rights in International Peace-keeping Operations, Principle 4.

³⁶ Amnesty International has recommended that the “[p]arties to a peace settlement should authorize the UN to play a key role in the supervision of the human rights aspects of agreements, investigate alleged human rights violations and take appropriate corrective action.” *Peace-keeping and human rights*, at 24.

³⁷ General Framework Agreement, Annex 6, Art. XIII (2). The UN Commission on Human Rights has established a number of important thematic and country-specific mechanisms which report to it, such as the UN Rapporteur on extrajudicial, summary or arbitrary executions, the UN Rapporteur on torture, the UN Rapporteur on the independence and impartiality of judges and lawyers, the UN Special Rapporteur on violence against women, its causes and consequences, the UN Special Rapporteur on internally displaced persons, the UN Working Group on Arbitrary Detention, the UN Working Group on Enforced or Involuntary Disappearances and its special process on missing persons in the territory of the former Yugoslavia and the UN Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia. None of these bodies is specifically mentioned in the peace agreement. The only other UN roles in the civilian monitoring and implementation of human rights envisaged for UN agencies or bodies are the roles of the UN High Commissioner for Refugees (UNHCR), assisted by the United Nations Development Programme (UNDP), in ensuring the safe return of refugees and displaced persons, the IPTF and the International Criminal Tribunal for the former Yugoslavia (Tribunal). No role is mentioned for the UN Crime Prevention and Criminal Justice Division.

an operation later, has led to a number of serious problems in implementing the human rights provisions of the agreement.

Nevertheless, the High Commissioner has been able to deploy a small, experienced staff of human rights monitors recruited through the UN Centre for Human Rights in Geneva operating in field offices servicing the Special Rapporteur on the former Yugoslavia and the Expert on missing persons (see below), to establish extensive training programs for human rights monitors and trainers of monitors and to offer to supply human rights advisers, two of whom have already been deployed (see Section V.B below).

The UN Special Rapporteur on the situation of human rights in the former Yugoslavia (Special Rapporteur on the former Yugoslavia). A **Special Rapporteur on the former Yugoslavia** was established by a resolution of the UN High Commission for Human Rights special session in August 1992.³⁸ The first person to hold this post, Tadeusz Mazowiecki, resigned in 1995 in protest at the failure of the international community to prevent the massacres at Žepa and Srebrenica in 1995; the current Special Rapporteur is Elisabeth Rehn. The Special Rapporteur has submitted at least 19 reports to the General Assembly and Commission on Human Rights. As a country mechanism of the UN Commission on Human Rights, the Special Rapporteur is one of the bodies invited under the peace agreement to monitor human rights, "including through the establishment of local offices and the assignment of observers, rapporteurs, or other relevant persons on a permanent or mission-by-mission basis", with promises by the parties of "full and effective facilitation, assistance and access".³⁹ The field offices of the High Commissioner staffed by the UN Centre for Human Rights have been invaluable in gathering information for the Rapporteur's reports and supporting human rights coordination efforts between the different international organizations which are present in the field. As of the beginning of June 1996 there were field offices established in three locations within Bosnia and Herzegovina (Banja Luka, Mostar and Sarajevo), with one chief of operations and eight staff. Proposals to open offices in Zenica and Tuzla have not been implemented.

The International Police Task Force (IPTF) and the UN Mission in Bosnia and Herzegovina (UNMIBH). The only UN human rights civilian monitoring and implementation body expressly established under the peace agreement is the **IPTF**, part of the UNMIBH (described in Section V.B below). The IPTF is composed of unarmed civilian police (usually called CIVPOLs, but sometimes called monitors) seconded by governments. Annex 11, Art. II (2), calls for the UN to establish by Security Council resolution a UN CIVPOL operation to carry out a program of assistance. The Security Council established

³⁸ UN Commission on Human Rights Res. 1992/S-1/1.

³⁹ General Framework Agreement, Annex 6, Art. XIII (2).

the IPTF on 21 December 1995.⁴⁰ The IPTF mandate includes monitoring, observing and inspecting local law enforcement activities, including associated judicial institutions; advising and training law enforcement officials; facilitating the parties' law enforcement activities; assessing threats to public order and the capabilities of law enforcement agencies to respond; and accompanying law enforcement officials when they carry out their duties.⁴¹ The parties must provide a safe and secure environment "by maintaining civilian law enforcement agencies operating in accordance with internationally recognized standards and with respect for the internationally recognized human rights and fundamental freedoms referred to in Article II [of the Constitution]".⁴² The IPTF has no express powers of arrest.

The IPTF Commissioner is to report periodically to the High Representative, who is supposed to provide him with guidance, and to the Secretary-General. He is also to provide information to the IFOR Commander and, as deemed appropriate, to other institutions, but there is no requirement of frequent and comprehensive public reporting.⁴³ When IPTF personnel learn of credible information concerning violations of internationally recognized human rights or the role of law enforcement officials in such violations, they shall provide such information to the new national Human Rights Commission, the Tribunal or other appropriate organizations.⁴⁴ There is no obligation on IPTF, however, to take an active role in seeking out information about possible violations. Amnesty International has recommended that CIVPOLs play a more active role by "working with the human rights component in the investigation of violations".⁴⁵ In practice, as discussed below in Section V.B, the IPTF has been working with a very limited number of UN Civil Affairs officers, some of whom are human rights experts, employed by the UNMIBH.

The peace agreement calls for the IPTF Commissioner to be appointed by the Secretary-General in consultation with the Security Council.⁴⁶ On 1 February 1996, the Secretary-General appointed Peter Fitzgerald, Assistant Commissioner of the An Garda Síochána (Irish police) who has served in UN peace-keeping operations in Namibia, El Salvador and Cambodia, as IPTF Commissioner. IPTF personnel "shall consist of persons of high moral standing who have experience in law enforcement", but there is no requirement that they be trained in human rights standards and UN law enforcement standards or that priority should be given in recruitment to persons with experience in UN

⁴⁰ SC Res. 1035 (1995).

⁴¹ General Framework Agreement, Annex 11, Art. III (1).

⁴² *Id.*, Annex IV, Constitution of Bosnia and Herzegovina, Art. III (2) (c).

⁴³ *Id.*, Annex 11, Art. II (3), (4); Annex 10, Art. II (1) (g).

⁴⁴ *Id.*, Annex 11, Art. VI (1).

⁴⁵ *Peace-keeping and human rights, supra*, note 1, at 26.

⁴⁶ *Id.*, Annex 11, Art. II (2).

CIVPOL operations, although they are expected to act in accordance with international standards.

The parties are expected to “cooperate fully with the IPTF”.⁴⁷ The IPTF Commander is to notify the High Representative and inform the IFOR Commander of any failures to cooperate with the IPTF, and may request that the High Representative “take appropriate steps”, such as “calling such failures to the attention of the Parties, convening the Joint Civilian Commission, and consulting with the United Nations, relevant states, and international organizations on further responses”.⁴⁸ The slow deployment of the IPTF and some of the problems it has encountered in its first few months of operation are discussed in Section V.B below.

The UN High Commissioner for Refugees (UNHCR). The General Framework Agreement provides that “the observance of human rights and the protection of refugees and displaced persons are of vital importance in achieving a lasting peace” and that the parties will comply fully with the provisions concerning the human rights of refugees and displaced persons as set forth in Annex 7.⁴⁹ Although Annex 7 of the peace agreement contains a number of important human rights guarantees, there is a contradiction in that annex between the goals of early return of all refugees and displaced persons on the one hand, and their safe and voluntary return, on the other, which is proving difficult to resolve in practice:

“All refugees and displaced persons have the right freely to return to their homes of origin. . . . The early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina.”⁵⁰

To ensure the goal of early return, the peace agreement calls upon the UNHCR “to develop in close consultation with asylum countries and the Parties a repatriation plan that will allow for an early peaceful, orderly and phased return of refugees and displaced persons, which may include priorities for certain areas and certain categories of returnees”.⁵¹ However, the peace agreement does not call for consultation between the UNHCR and non-governmental organizations in developing the repatriation plan. The parties agree to implement the repatriation plan and “call upon States that have accepted refugees to promote the early return of refugees consistent with international law”.⁵² The repatriation plan and

⁴⁷ *Id.*, Annex 11, Art. IV (1).

⁴⁸ *Id.*, Annex 11, Art. V ((2)).

⁴⁹ *Id.*, Art. VII.

⁵⁰ *Id.*, Annex 7, Art. I (1).

⁵¹ *Id.*, Annex 7, Art. I (5).

⁵² *Id.*

the problems encountered so far are described below in Section VII on ensuring the safe return of refugees.

Safety of return in any repatriation plan is a recognized international standard and is discussed below in Section VII. The peace agreement guarantees all refugees and displaced persons the right to return freely to their homes. In addition, the parties agree to “take all necessary steps to prevent activities in their territories which would hinder or impede the safe and voluntary return of refugees and displaced persons”.⁵³ The parties also agree that they shall not “interfere with the returnee’s choice of destination, . . . compel them to remain in or move to situations of serious danger or insecurity, or to areas lacking in the basic infrastructure necessary to resume a normal life”.⁵⁴ In addition, they commit themselves to create “the political, economic, and social conditions conducive to the voluntary return” of refugees and displaced persons and “to facilitate their voluntary return in a peaceful, orderly and phased manner, in accordance with the UNHCR repatriation plan”.⁵⁵

Any regime of temporary protection should not be lifted until the situation in the areas of prospective return, including prospective return to the Federal Republic of Yugoslavia (Serbia and Montenegro) and Croatia, meet a standard of safety of a substantial and durable nature. As documented in Section VII, it is not reasonable to assume that conditions in the foreseeable future will allow for the cessation of temporary protection. With respect to the safety of refugees and displaced persons, the parties agree to:

“Ensure that refugees and displaced persons are permitted to return in safety, without risk of harassment, intimidation, persecution, or discrimination, particularly on account of their ethnic origin, religious belief, or political opinion.”⁵⁶

To achieve this objective, the parties agree to undertake a number of confidence building measures as a demonstration of their commitment to human rights, including: the repeal of discriminatory legislation, prevention of incitement to religious or ethnic hostility, the dissemination through the media of warnings against acts of retribution, protection of ethnic and minority populations and guarantees of access to them by international humanitarian organizations and monitors and prosecution, dismissal or transfer of officials “responsible for serious violations of the basic rights of persons belonging to ethnic or minority groups”.⁵⁷ They agree that they will permit the return of such persons, including

⁵³ *Id.*, Annex 7, Art. I (3).

⁵⁴ *Id.*, Annex 7, Art. I (4).

⁵⁵ *Id.*, Annex 7, Art. II (1).

⁵⁶ *Id.*, Annex 7, Art. I (2).

⁵⁷ *Id.*, Annex 7, Art. I (3).

those afforded temporary protection in third countries, in safety and take effective measures to ensure their safe and voluntary return.⁵⁸ They also agree not to discriminate against returning refugees and displaced persons with respect to conscription.⁵⁹

Unfortunately, the peace agreement does not establish a mechanism specifically to monitor the implementation of all the guarantees of safe return. It notes that the UNHCR has been entrusted by the UN Secretary-General with “the role of coordinating among all agencies assisting with the repatriation and relief of refugees and displaced persons”.⁶⁰ It also states that the parties must give full and unrestricted access to the UNHCR, the ICRC and other organizations with a view to facilitating their activities, including “traditional protection functions and the monitoring of basic human rights and humanitarian conditions, as well as the implementation of the provisions of this Chapter [concerning refugees and displaced persons]”.⁶¹ This provision is not a satisfactory substitute for a single mechanism to monitor implementation of guarantees of safe return. Each of the organizations has a different mandate and these mandates sometimes are different from those of a human rights monitoring operation. In addition, these organizations do not necessarily have sufficient staff with adequate experience and training to act as human rights monitors.

The peace agreement guarantees the right of refugees and displaced persons “to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them”.⁶² The scope of the remedies provided under the peace agreement to refugees and displaced persons by the Commission for Displaced Persons and Refugees (now the Commission for the Real Property Claims of Displaced Persons and Refugees) for involuntary deprivation of property is discussed below in Section II.A.5 on national institutions and the way this right is being implemented in practice is discussed below in Section IX.B on the right of refugees to compensation for deliberate destruction of their houses.

The International Criminal Tribunal for the former Yugoslavia (Tribunal). The peace agreement requires the parties to cooperate with the **Tribunal**. The General Framework Agreement states that the parties “shall cooperate fully with all entities involved in implementation of this peace settlement . . . pursuant to the obligation of all Parties to cooperate in the investigation and prosecution of war crimes and other violations of

⁵⁸ *Id.*, Annex 7, Art. I (1 - 4).

⁵⁹ *Id.*, Annex 7, Art. II (2).

⁶⁰ *Id.*, Annex 7, Art. III (1).

⁶¹ *Id.*, Annex 7, Art. III (2).

⁶² *Id.*, Annex 7, Art. I (1).

international law.”⁶³ The obligation is also expressly included in the Constitution of Bosnia and Herzegovina. Article II provides that all competent authorities “shall cooperate with and provide unrestricted access to: . . . the International Tribunal for the Former Yugoslavia (and in particular shall comply with orders issued pursuant to Article 29 of the Statute of the Tribunal [concerning arrest warrants and other orders])”.⁶⁴ The Security Council has noted that compliance with the requests and orders of the Tribunal “constitutes an essential aspect of implementing the Peace Agreement”.⁶⁵ The limited cooperation of many states with the Tribunal is discussed in Section VI below.

The UN Expert on the special process dealing with missing persons in the territory of the former Yugoslavia (Expert on missing persons). Unfortunately, the peace agreement does not assign a specific role to an intergovernmental organization or national institution to resolve cases of “disappeared” or “missing” persons or make resolution of these cases a priority. The peace agreement requires all parties to “provide information through the tracing mechanisms of the ICRC on all persons unaccounted for”.⁶⁶ They also agree to “cooperate fully with the ICRC in its efforts to determine the identities, whereabouts and fate of the unaccounted for”.⁶⁷ The ICRC is a non-governmental organization and its mandate is limited to helping families to trace relatives based on information in its files. It does not have a mandate to search for the “disappeared” or “missing” persons or to determine who was responsible for their fate. The peace agreement does not impose an obligation to search for the “disappeared” or “missing” or establish a role for the UN Working Group on Enforced or Involuntary Disappearances (WGEID) or its **Expert on missing persons**, Manfred Nowak.

The UN Commission on Human Rights established the special process dealing with missing persons on the territory of the former Yugoslavia (Special Process) in Resolutions 1994/39 and 1994/72 as a joint mandate of the Expert on missing persons in his capacity as a member of WGEID, and the Special Rapporteur on the former Yugoslavia. The Special Process was mandated in these resolutions to gather information about and seek to resolve

⁶³ *Id.*, Art. IX. See also *id.*, Annex 1-A, Art. II (4).

⁶⁴ *Id.*, Annex 4, Constitution of Bosnia and Herzegovina, Art. II (8). See also *id.*, Annex 1-A, Arts II (4) and IX (1) (g); Annex 6, Art. XIII (4). The entities are required to cooperate with the Government of Bosnia and Herzegovina to enable it to honor its international obligations. The institutions of Bosnia and Herzegovina are responsible under the Constitution for “[i]nternational and inter-Entity criminal law enforcement, including relations with Interpol.” *Id.*, Annex 4, Constitution of Bosnia and Herzegovina, Art. III (1) (g).

⁶⁵ SC Res. 1022 (1995), eighth preambular paragraph. The Security Council reiterated this position on 8 May 1996, UN Doc. S/PRST/1996/23, and on 28 May 1996. See “UN Security Council ‘deplores’ Belgrade’s lack of cooperation”, AFP 290017, 28 May 1996.

⁶⁶ *Id.*, Annex 7, Art. V.

⁶⁷ *Id.*

individual cases of “disappearances” or “missing” persons from the former Yugoslavia. In Resolution 1995/35, the UN Commission on Human Rights entrusted the entire mandate to the Expert on missing persons. The WGEID does not have a field presence in the former Yugoslavia, but the Expert on missing persons has the cooperation of the field offices of the High Commissioner for Human Rights and other agencies when he carries out his activities in the field. As discussed in Section VIII below, the Expert on missing persons has proposed that failure of the peace agreement to provide for a mechanism to resolve cases of “disappearance” and “missing” persons be addressed by the establishment of a multilateral commission on missing persons, but the international community has failed to endorse this proposal or to provide essential funding to make it possible to resolve these cases.

4. The regional civilian human rights monitoring bodies

The Organization for Security and Cooperation in Europe (OSCE). In addition to giving the OSCE a major role in confidence building measures, including disarmament and arms reduction, the peace agreement also specifies that the OSCE shall supervise elections (see Section II.A.5 below), states that it shall appoint an Ombudsman (see Section II.A.5 below) and invites it and other intergovernmental organizations to monitor human rights (see Section V.B below).⁶⁸

The European Union (EU) and the European Community Monitoring Mission (ECMM). The peace agreement is largely silent on the role of these bodies, although the High Representative is obliged to report on progress in implementation of the peace agreement to the EU. The EU and the ECMM are included in the general invitation to regional organizations to monitor human rights and to establish local offices.⁶⁹ As described below in Section V.B, the ECMM is playing an significant role in monitoring the human rights provisions of the peace agreement. The ECMM mandate is based on various memoranda of understanding with authorities. Its monitors (60 are authorized) are currently involved in a range of issues including humanitarian and human rights issues. The ECMM issues regular public reports on its activities, the findings of its teams and the situation in the areas it which it operates. In addition to these activities, the EU administers the city of Mostar (see Section II.A.5 below).

The Council of Europe. The peace agreement includes a limited number of express references to the Council of Europe. It provides that the rights recognized in the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and its Protocols apply directly in Bosnia and Herzegovina

⁶⁸ *Id.*, Annex 1-B (confidence building measures); Annex 3 (elections); Annex VI (human rights monitoring).

⁶⁹ *Id.*, Annex 10, Art. II (1) (f); *id.*, Annex 6, Art. XIII (2)..

(see Section I.A.5 below).⁷⁰ The **Committee of Ministers** has appointed eight of the 14 members of the Human Rights Chamber⁷¹ and the **European Court of Human Rights** will appoint, after consultation with its President, three members of the Constitutional Court of Bosnia and Herzegovina after elections⁷² and three members and the Chair of the Commission for Displaced Persons and Refugees (see Section II.A.5 below).⁷³ Despite the limited human rights role envisaged for the Council of Europe in the peace agreement, its Human Rights Directorate has been developing and carrying out training programs, in cooperation with the UN Centre for Human Rights, for human rights monitors and the IPTF and in providing other human rights assistance (see Section IX below).

5. National human rights institutions

The peace agreement establishes a number of national institutions, such as a Constitutional Court, Provisional Election Commission, Human Rights Commission and Commission for Displaced Persons and Refugees, which will have international components in the early stages of their existence. This paper focuses on the international role in ensuring that these national institutions are effective, rather than on how they are being implemented by the national authorities. This paper also does not address how the Federation is implementing the agreement at Dayton on its establishment. An Amnesty International mission left for Bosnia and Herzegovina on 2 June 1996 to examine some of these issues.

The Constitution and human rights guarantees. Annex 4 of the peace agreement is the Constitution of Bosnia and Herzegovina, a continuation of the Republic of Bosnia and Herzegovina, which consists of two entities, the Federation of Bosnia and Herzegovina (Federation) (roughly contiguous with the territory controlled by the Croatian and Bosnian alliance at the time of the peace agreement) and the Republika Srpska (roughly contiguous with the territory controlled by Bosnian Serbs at that time). The Preamble states that the state is “[b]ased on respect for human dignity, liberty, and equality”, “[d]edicated to peace, justice, tolerance, and reconciliation”, “[g]uided by the Purposes and Principles of the Charter of the United Nations” and “[i]nspired by the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, as well as other human rights instruments”.

⁷⁰ Bosnia and Herzegovina cannot, however, become a party to the European Convention on Human Rights unless it is admitted to the Council of Europe. Article 66 (1) of that treaty limits states parties to members of the Council of Europe. Bosnia and Herzegovina applied for membership on 10 April 1995.

⁷¹ *Id.*, Annex 6, Art. VII (2).

⁷² *Id.*, Annex 4, Constitution of Bosnia and Herzegovina, Art. VI (1) (a).

⁷³ *Id.*, Annex 7, Art. IX (1).

Human rights guarantees are spelled out in Article II (1) of the Constitution and repeated for the most part in Chapter One of Annex 6. The extent of the human rights guarantees included in the Constitution (primarily by incorporating human rights treaty guarantees by reference) is far more comprehensive than those in other peace agreements. Article II (1) requires the state and both entities to “ensure the highest level of internationally recognized human rights and fundamental freedoms” and establishes a Human Rights Commission to do this (discussed below). Article II (2) provides that “the rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina” and “shall have priority over all other law”. Article II (7) provides that Bosnia and Herzegovina shall remain or become a party to a number of other international treaties listed in an annex.⁷⁴ In order to “ensure the highest level of internationally recognized standards of human rights and fundamental freedoms”, the parties should also commit themselves to implementing the wide range of other international and regional standards concerning human rights, criminal justice and law enforcement.⁷⁵ Article X (2) of the Constitution prohibits any amendments which would eliminate or diminish any of the rights and freedoms referred to in Article II.

The agreement that all Protocols to the European Convention on Human Rights shall apply directly means that Bosnia and Herzegovina has abolished the death penalty - at least for peacetime offences - as required by the Sixth Protocol to that treaty. It is not clear whether it has agreed to abolish the death penalty in all cases and a number of people have

⁷⁴ These include: the four Geneva Conventions of 1949 and their Additional Protocols, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Covenant on Civil and Political Rights, the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁷⁵ In order to “ensure the highest level of internationally recognized standards of human rights and fundamental freedoms”, as agreed in Annex 4, Art. II (1), the parties should also commit themselves to implementing a wide range of other international and regional standards, such as the UN Minimum Standards for the Treatment of Prisoners (and the European Prison Rules), the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the UN Code of Conduct for Law Enforcement Officials, the UN Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the UN Basic Principles on the Independence of the Judiciary, the UN Guidelines on the Role of Lawyers, the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, the UN Declaration on the Protection of All Persons from Enforced Disappearances, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the UN Declaration on the Elimination of Violence against Women.

been sentenced to death in recent years in Federation areas and who remain on death row.⁷⁶ In March 1996, Republika Srpska authorities sentenced Bosnian Croats to death, but reportedly released them in April in a prisoner exchange. Bosnia and Herzegovina should institute immediately a moratorium on all executions pending complete abolition of this cruel, inhuman and degrading punishment which violates the right to life. Since mid-1995, the Council of Europe has required all new member states which have not yet abolished the death penalty to institute a moratorium on all executions on accession to the Statute of the Council of Europe.

Article VI provides for a **Constitutional Court of Bosnia and Herzegovina (Constitutional Court)** of nine members, which is to be established after national elections. Four are to be selected by the Federation, two by the Republika Srpska and three by the President of the European Court of Human Rights.⁷⁷ The Constitutional Court will have significant powers to resolve disputes arising under the Constitution between the entities or between the entities and Bosnia and Herzegovina, to determine whether any links between an entity and a neighbouring state is constitutional and whether any provision of an entity's constitution or law is consistent with the Constitution.⁷⁸ The Constitutional Court will also have appellate jurisdiction over constitutional issues arising in any case and over

“issues referred by any court in Bosnia and Herzegovina concerning whether a law, on whose validity its decision depends, is compatible with this Constitution, with the European Convention [on the Protection of] Human Rights and Fundamental Freedoms and its Protocols, or with the laws of Bosnia and Herzegovina; or concerning the scope of a general rule of public international law pertinent to the court's decision.”⁷⁹

The decisions of the Constitutional Court will be “final and binding”.⁸⁰

⁷⁶ Article II (3) (a) of the Constitution guarantees the right to life, but refers to the preceding paragraph, which speaks of the rights and freedoms set forth in the European Convention on Human Rights. Article 2 of that treaty expressly permits the use of the death penalty in certain circumstances. Nevertheless, the parties have also agreed to a broader guarantee of the right to life in Article I of Annex 6. In that provision, the parties agree to “secure to all persons within their jurisdiction the highest level of internationally recognized human rights and fundamental freedoms, including the rights and freedoms provided in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols and the other international agreements listed in the Appendix to this Annex”, including the right to life.

⁷⁷ General Framework Agreement, Annex 4, Constitution of Bosnia and Herzegovina, Art. IV (1) (a). None of the persons appointed may be nationals of Bosnia and Herzegovina or neighbouring states. *Id.*

⁷⁸ *Id.*, Annex 4, Constitution of Bosnia and Herzegovina, Art. VI (3) (a).

⁷⁹ *Id.*, Annex 4, Constitution of Bosnia and Herzegovina, Art. VI (3) (b), (c).

⁸⁰ *Id.*, Annex 4, Constitution of Bosnia and Herzegovina, Art. VI (4).

Chapter Three of Annex 6 requires the parties to “promote and encourage the activities of non-governmental and international organizations for the protection and promotion of human rights”, to cooperate with such organizations and to provide them with unrestricted access.⁸¹

The Provisional Election Commission. The OSCE is asked to establish a **Provisional Election Commission** to supervise all aspects of elections, which “shall take place on a date (‘Election Day’) six months after entry into force of this Agreement or, if the OSCE determines a delay necessary, no later than nine months after entry into force”.⁸² There is a conflict, however, between this mandate to supervise the elections no later than September 1996 and the directive “to certify whether elections can be effective under current social conditions” in all parts of Bosnia and Herzegovina.⁸³ According to the peace agreement, the conditions for the organization of free and fair elections include “a politically neutral environment” and respect for certain human rights, including “the right to vote in secret without fear or intimidation”, “freedom of expression and the press”, “freedom of association” and “freedom of movement”.⁸⁴ The OSCE will have to develop clear criteria to determine whether the human rights conditions have been satisfied and to ensure that it has a sufficient number of experienced, well-trained monitors able to apply these criteria. The mandate of the Provisional Election Commission includes “supervising all aspects of the electoral process to ensure that the structures and institutional framework for free and fair elections are in place”, “ensuring that action is taken to remedy any violation” of its rules and “ensuring that the Parties grant accredited observers unimpeded access and movement”.⁸⁵ The impact of the OSCE Mission role in supervising the elections has had on the roles of its human rights monitors and the ECMM monitors is discussed below in Section V.B. According to widespread reports, certain governments have been putting political pressure on the Provisional Election Commission to certify that “elections can be effective under current social conditions” no later than September 1996.⁸⁶ This certification

⁸¹ *Id.*, Annex 6, Art. XIII (1), (3) and (4).

⁸² *Id.*, Annex 3, Art. II (1-4). The Provisional Election Commission consists of the Head of the OSCE Mission, the High Representative or his designee, representatives of the parties and such other persons as the Head of the Mission, in consultation with the parties, may decide. *Id.*, Annex 3, Art. III (3).

⁸³ *Id.*, Annex 3, Art. I (2).

⁸⁴ *Id.*, Annex 3, Art. I (1).

⁸⁵ *Id.*, Annex 3, Art. III (2) (a), (d) and (e).

⁸⁶ According to a number of sources, an internal report by OSCE Mission staff has concluded that conditions do not exist in the country which would permit free and fair elections to take place before November 1996. The OSCE Mission’s election unit concluded in early May 1996: “At this moment most people agree, that the possibility for holding elections are not very bright. Especially freedom of movement isn’t guaranteed now; moreover, free access to the media and freedom of association isn’t complete either. . . . Furthermore, the continuing presence of indicted war criminals who - in open contradiction to the Dayton agreements - are still active in political life in the R.S reduce the credibility of the elections too.” *Weekly report of the Office of Co-*

is likely to take place formally on or about 13 June 1996, the date the High Representative is scheduled to present a report to the Florence Mid-Term Review Conference (see Section I.B below). In effect, however, this decision appears to have already been made. At the 2 June 1996 meeting in Geneva of the Presidents of the three states which are party to the peace agreement and delegations from the two entities, they stated that after consulting the OSCE Chairman-in-Office and the OSCE Mission Head, that a date should be set for the elections even though all conditions had not yet been met: "In their view, establishment of a specific date will provide a focus for the work remaining to achieve the full standards established by the OSCE. Achievement of these standards is essential for the holding of free and fair elections."⁸⁷ United States Secretary of State Warren Christopher stated at a press briefing after this meeting: "The elections will go forward on schedule".⁸⁸

Certification by the Provisional Election Commission that social conditions exist for effective elections could be taken by the international community to mean that it is safe for refugees to return to take part in the elections. Elections should be a yardstick to measure whether it is safe to return, both in relation to their conduct and their outcome. If refugees and displaced persons are to participate effectively in these elections, the Provisional Election Commission needs to register these persons to vote by absentee ballot at an early stage, as provided for in Annex 3, Article IV. The Council of Europe is to assist in registration of voters in Europe so that they can vote by absentee ballot. Amnesty International believes that there must be no pressure on refugees or displaced persons to return prior to elections merely to facilitate the elections or to facilitate the repatriation policy of a particular government. Refugees cannot return in safety and dignity until the conditions in areas of prospective return so permit. See discussion in Section VII below.

The two-part national Human Rights Commission. Annex 6 of the peace agreement provides for the establishment of a **Human Rights Commission**, consisting of two parts, the **Office of the Ombudsperson** and the **Human Rights Chamber**. The Human Rights Commission is mandated to consider violations of human rights guaranteed by the European Convention on Human Rights and its Protocols and discrimination in the

ordinator for the International Monitoring of the elections in Bosnia Herzegovina, No. 1, 8 May 1996, at 1. It repeated this assesment two weeks later. *Id.*, 18 May 1996, at 2. Several non-governmental organizations have concluded that such conditions do not exist in all or much of the country. European Action Council for Peace in the Balkans, *EAC Information Note - Elections in Bosnia and Herzegovina* (no date) (issued in May 1996); International Helsinki Federation for Human Rights, *Conditions Do Not Exist for Free and Fair Elections in Bosnia and Herzegovina* (no date) (issued in May 1996); Letter dated 15 May, 1996 to the High Representative from Holly Cartner, Executive Director, Human Rights Watch/Helsinki.

⁸⁷ United States Mission, Office of Public Affairs, Agreed Statement, Geneva, 2 June 1996.

⁸⁸ Owen Bennett Jones and Julian Borger, "US insists that Bosnia election must go ahead", *The Guardian*, 3 June 1996, at 2.

enjoyment of rights recognized in a range of international agreements.⁸⁹ The resources for the Commission are to be borne by Bosnia and Herzegovina and are to be "adequate to fully implement the Commission's mandate".⁹⁰ The Commission may receive assistance from international governmental or non-governmental bodies.⁹¹

The Office of the Ombudsperson

The peace agreement provides for the appointment by the OSCE, after consultation with the parties, of an Ombudsman for a non-renewable five-year term.⁹² On 21 December 1995, the OSCE appointed Gret Haller, former Swiss Permanent Representative to the Council of Europe and former member of its Parliamentary Assembly, to this post (now generally called Ombudsperson). She arrived in Sarajevo in February 1996, but under provisions of the peace agreement she was only able to take up this post formally on 27 March 1996. The Ombudsperson is mandated to investigate alleged or apparent violations of the international agreements mentioned above.⁹³ The investigations can be started either at the Ombudsperson's initiative or "in response to an allegation by any Party or person, non-governmental organization or group of individuals claiming to be the victim of a violation by any Party or acting on behalf of alleged victims who are deceased or missing, alleged or apparent violations of human rights within the scope of paragraph 2 of Article II [of Annex 6]".⁹⁴ The Ombudsperson is to decide on her own priorities for the carrying out of investigations, giving priority to "especially severe or systematic violations" and allegations

⁸⁹ General Framework Agreement, Annex 6, Art. II (2). These other instruments include: The Convention on the Prevention and Punishment of the Crime of Genocide, the four Geneva Conventions of August 12, 1949 and their two Additional Protocols, the International Covenant on Civil and Political Rights and its two Optional Protocols, the International Covenant on Economic, Social and Cultural Rights, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child. Among the human rights treaties which are omitted are the Convention relating to the Status of Refugees and its 1967 Protocol. The omission of these two treaties, to which Bosnia and Herzegovina is a party, appears to be an oversight since they are included in an annex to the Constitution.

⁹⁰ General Framework Agreement, Annex 6, Art. III (2).

⁹¹ *Id.*, Annex 6, Art. III (5).

⁹² *Id.*, Annex 6, Art. IV (2).

⁹³ *Id.*, Annex 6, Art. V (2). Allegations of human rights violations received by the Human Rights Commission "shall generally be directed to the Office of the Ombudsman, except where an applicant specifies the Chamber". *Id.*, Annex 6, Art. V (1).

⁹⁴ *Id.*, Annex 6, Art. V (2). It remains to be seen whether the Ombudsperson will permit a non-governmental organization not itself representing victims to submit cases for investigation. Permitting non-governmental organizations to do so will ensure that the Ombudsperson can act when victims or their families are unable or afraid to submit complaints themselves.

founded on discrimination on prohibited grounds.⁹⁵ There are no time limits on the cases which may be submitted. Therefore, all past violations may in theory be addressed to the Ombudsperson. The Ombudsperson is guaranteed access to official and judicial documents, including classified material, may require anyone to cooperate by providing relevant information, documents or files, attend administrative hearings and inspect any places where people are detained.⁹⁶

The party identified as being responsible for violations in an Ombudsperson's report is required to specify how it "will comply with the conclusions" within time limits specified by the Ombudsperson.⁹⁷ When a party fails to comply with the Ombudsperson's conclusions or recommendations, a report will be sent to the High Representative.⁹⁸ She may also initiate proceedings before the Human Rights Chamber.⁹⁹

The Ombudsperson is to maintain an office in the Republika Srpska as well as the main office in Sarajevo. Members of the Office of the Ombudsperson "must be of recognized high moral standing and have competence in the field of international human rights".¹⁰⁰ The peace agreement is silent on how the jurisdictions of the existing Ombudspersons within the Federation will relate to the new Ombudsperson's office, although they have been working together since the peace agreement. The problems of limited staff, equipment and funding of the office are described in Section IXA. below.

The Human Rights Chamber

The Human Rights Chamber has 14 members, all of whom must be jurists, appointed by the two Entities (four by the Federation and two by the Republika Srpska) and, during the initial five-year period, eight members (not citizens of Bosnia and Herzegovina) appointed by the Committee of Ministers of the Council of Europe, one of whom it will designate as President of the Chamber.¹⁰¹ These officials have been appointed and the Human Rights Chamber had its inaugural session on 27 March 1996. The Human Rights Chamber may consider the same types of complaints of abuses as the Ombudsperson or by individuals or organizations, but it has stricter criteria concerning the admissibility of complaints (such as a requirement

⁹⁵ *Id.*, Annex 6, Art. V (3).

⁹⁶ *Id.*, Annex 6, Art. VI (1).

⁹⁷ *Id.*, Annex 6, Art. V (4).

⁹⁸ *Id.*, Annex 6, Art. V (7).

⁹⁹ *Id.*, Annex 6, Art. V (5).

¹⁰⁰ *Id.*, Annex 6, Art. IV (3).

¹⁰¹ *Id.*, Annex 6, Art. VII (1 - 3).

for the exhaustion of other remedies) than does the Ombudsperson.¹⁰² The Ombudsperson may refer a case to the Chamber at any stage of the investigation if the case is within the Chamber's jurisdiction.¹⁰³ In this respect, the Ombudsperson and the Human Rights Chamber perform functions roughly analogous to those of the European Commission of Human Rights and the European Court of Human Rights (individuals cannot, however, bring cases directly to the European Court of Human Rights). At the conclusion of the proceedings, the Human Rights Chamber must promptly issue a decision indicating whether the facts indicate a breach by the party concerned of its obligations under the peace agreement and, if so, what steps it must take to remedy the breach, and the Chamber may issue orders to cease and desist, monetary relief and provisional measures.¹⁰⁴

The parties are required to implement "fully" the decisions of the Chamber, but no sanctions for non-compliance are mentioned.¹⁰⁵ Presumably, the High Representative could issue a report which would lead to the reimposition of sanctions if either the Federal Republic of Yugoslavia (Serbia and Montenegro) or the Republika Srpska failed to comply, but if Federation or national authorities failed to comply it is not clear how decisions of the Chamber would be enforced. The failure of the Federation authorities to implement many of the recommendations of the Federation Ombudsmen is a matter of concern (see Section IX.A below).

The Commission for the Real Property Claims of Displaced Persons and Refugees (Property Commission). Its mandate as defined in the peace agreement is limited to determining issues related to the return of real property or compensation for such property rather than right to return and safety issues.¹⁰⁶ Its mandate is inadequate to ensure that persons whose homes have been destroyed as punishment for their ethnicity, nationality, religion or political opinion will receive the relief to which they are entitled. The limited choice of remedies may discourage refugees and displaced persons from exercising their right to return. Questions as to the speed and enforceability of its decisions remain to be resolved.

¹⁰² *Id.*, Annex 6, Art. VIII.

¹⁰³ *Id.*, Annex 6, Art. V (5).

¹⁰⁴ *Id.*, Annex 6, Art. XI (1).

¹⁰⁵ *Id.*, Annex 6, Art. XI (6).

¹⁰⁶ The original name in the peace agreement, Commission for Displaced Persons and Refugees, General Framework Agreement, Annex 7, Art. VII, has been changed to avoid confusion about its limited mandate.

Under the peace agreement refugees and displaced persons "shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them".¹⁰⁷

The Property Commission, which was inaugurated on 20 March 1996, has nine members. The Federation has appointed four members (two for four years, two for three years), the Republika Srpska two members (one for four years, one for three years) and the President of the European Court of Human Rights three, including the chair, for five years, after which their successors will be appointed by the state.¹⁰⁸ The Property Commission may "receive and decide any claims for real property in Bosnia and Herzegovina, where the property has not voluntarily been sold or otherwise transferred since April 1, 1992, and where the claimant does not now enjoy possession of that property".¹⁰⁹ In determining ownership of property, the Property Commission will "not recognize as valid any illegal property transaction, including any transfer that was made under duress, in exchange for exit permission or documents, or that was otherwise in connection with ethnic cleansing".¹¹⁰ Refugees and displaced persons may claim "for return of the property *or* for just compensation in lieu of return".¹¹¹ The Property Commission may award two types of relief: return of the property or compensation (in money or compensation bonds giving priority to rebuilt housing).¹¹² The Property Commission is to have appropriate facilities and professionally competent staff,¹¹³ funded by the parties and by voluntary contributions or through purchase, sale or mortgage of the property at issue.¹¹⁴ It has access to all property and property records throughout the country.¹¹⁵ Its decisions are final and binding and all parties are obliged to cooperate with it and "shall respect and implement its decisions expeditiously and in good faith".¹¹⁶

There are a number of serious problems with these provisions. They do not expressly guarantee that refugees and displaced persons will be able to return *and* be compensated for their houses where they were deliberately destroyed as punishment,

¹⁰⁷ General Framework Agreement, Annex 7, Art. I (1).

¹⁰⁸ *Id.*, Annex 7, Art. IX (1), (4).

¹⁰⁹ *Id.*, Annex 7, Art. XI.

¹¹⁰ *Id.*, Annex 7, Art. XII (3).

¹¹¹ *Id.*, Annex 7, Art. XI (emphasis supplied).

¹¹² *Id.*, Annex 7, Art. XII (1-6).

¹¹³ *Id.*, Annex 7, Art. X (1).

¹¹⁴ *Id.*, Annex 7, Arts X (2), XIV..

¹¹⁵ *Id.*, Annex 7, Art. XII (1).

¹¹⁶ *Id.*, Annex 7, Art. XII (7), Art. VIII.

apparently leaving them with an unpalatable choice between returning to their ruined houses without any compensation for the damage or not returning, but obtaining compensation. The Property Commission does not have express power to provide alternative housing to those in possession - often themselves victims of house destruction - in their own localities, but it should work with those agencies rebuilding houses to help solve this difficult problem. The Property Commission has no express power to order the return of the contents of houses, such as furniture, or to grant compensation for such destroyed property.

The Property Commission should read the obligation to compensate refugees and displaced persons "for any property which cannot be restored to them" to include compensation for the cost of restoring damaged property so that it can be restored to them in its previous state or this provision should be amended. This provision does not state what the measure of compensation should be, but in cases of complaints by states for damages caused by the wrongful action of another state, international law requires restitution of the property or full compensation to the extent that restitution is not possible.¹¹⁷ Thus, to receive complete relief, refugees and displaced persons should be able to have both their land and houses restored to them *and* to receive compensation for the damage to the land and houses returned to them. The same standard should apply here to individual remedies for the wrongful destruction of houses by state agents or parties to a conflict. This will ensure that the parties responsible for these crimes are not able to purchase immunity.

As discussed below in Section IX.B, it remains to be seen whether the Property Commission will have the necessary funding, facilities, staff and powers of enforcement to restore property to dispossessed refugees or displaced persons. With an estimated two

¹¹⁷ See, e.g., *Case Concerning the Factory at Chorzow* (Merits), P.C.I.J. Ser. A, No. 17, at 41 (1928):

"The essential principle contained in the actual notion of an illegal act - a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals - is that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it - such are the principles which should serve to determine the amount of compensation due for an act contrary to international law."

This approach is consistent with the Proposed Basic Principles and Guidelines of the Special Rapporteur on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, Theo Van Boven, in his final report. He recommended that "*Restitution* shall be provided to re-establish, to the extent possible, the situation that existed for the victim prior to the violations of human rights. Restitution requires, *inter alia*, restoration of . . . property." UN Doc. E/CN.4/Sub.2/1993/8, para. 137 (Principle 8). He also recommended that "[n]o one may be coerced to waive claims for reparations." *Id.* (Principle 16).

million refugees or displaced persons projected to return and many homes destroyed or occupied by others, it is unclear whether the Property Commission will have the capacity to adjudicate on such a population of dispossessed. To the extent that national or local property laws are inadequate, these laws will have to be reformed. A related question is the enforceability of decisions of the Property Commission where local authorities are unwilling or unable to abide by its adjudications. Reimposition of sanctions is a crude weapon which has yet to be used and the arbitration provisions in Annex 4 could also be lengthy and apply only to disputes between entities. As of the beginning of June 1996, there was insufficient vacant property which could temporarily house returnees, pending the determination as to ownership.¹¹⁸

The EU Administration of Mostar. The role of the EU in administering the city of Mostar is not expressly mentioned in the peace agreement, although it is presumably included in the invitation to regional intergovernmental organizations to monitor human rights and to establish local offices. The EU Administration of Mostar was set up in 1994 with the responsibility of supervising the reunification of the Croat and Muslim administrations in the town. It will be replaced by municipal authorities at some point after elections, originally scheduled for 31 May 1996, but now postponed because of the human rights problems in that city until June. Attached to it are the Western European Union (WEU) police which have the task of training, reorganizing and reunifying the two police forces in the two sectors of the town.

B. Lancaster House and other governmental meetings

There have been many important government conferences on implementation since Dayton, most of which have been devoted to one particular theme. In some cases, these conferences have led to declarations or side agreements which have supplemented the peace agreement or to commitments to action, such as pledging donations of funds for implementation. Human rights non-governmental organizations have not been invited to participate in many of these conferences. This section briefly identifies some of the most important government conferences which have had - or are likely to have - a significant impact on implementation of the human rights provisions of the peace agreement.

Lancaster House (8 to 9 December 1995). A Peace Implementation Conference involving the parties to the peace agreement, governments and some organizations was held at Lancaster House, London "to mobilize the international community behind a new start for the people of Bosnia and Herzegovina".¹¹⁹ The primary focus of the conference was on economic reconstruction. Although the participants agreed "on the vital importance, for

¹¹⁸ General Framework Agreement, Annex 7, Art. XIII.

¹¹⁹ Conclusions of the Peace Implementation Conference held at Lancaster House, London, on 8 and 9 December 1995, para. 3, UN Doc. S/1995/1029 (Lancaster House agreement).

achieving lasting peace, of the creation of the necessary institutions for the protection of human rights, including judicial institutions and civilian law enforcement agencies operating in accordance with internationally recognized standards and respect for human rights”,¹²⁰ no human rights non-governmental organizations were invited to participate. Indeed, according to reports, it was only after high-level pressure that the OSCE, which has an important role to play in the implementation of the human rights provisions of the peace agreement, was invited to attend.

The conference decided that a Peace Implementation Council, composed of all the states, international organizations and agencies attending the conference, would replace the International Conference on the Former Yugoslavia, with France to play “a specifically strong coordinating role”.¹²¹ Existing working groups would continue to work as long as necessary and a Steering Board, composed of the representatives of Canada, France, Germany, Italy, Japan, the Russian Federation, the United Kingdom and the United States, the Presidency of the EU and the European Commission and the Organization of the Islamic Conference would be established with the High Representative as chair.¹²² Representatives of the UN and the OSCE would be invited to attend, as deemed necessary.¹²³ Members of the future Steering Board, the body which makes the key political decisions concerning implementation of the peace agreement, concluded at the Lancaster House conference that “[f]requent aid donors meetings will be needed to achieve and enhance coordination between programmes and budgets” and that the first such meeting would take place in Brussels on 20 and 21 December 1995.¹²⁴

The conference designated Carl Bildt as High Representative, subject to Security Council approval, and agreed that he should “chair a human rights task force in Sarajevo, bringing together the organizations and agencies involved in the implementation of the Peace Agreement”.¹²⁵

Brussels (20 to 21 December 1995). The EU and World Bank sponsored the first donors meeting on financing of the most urgent needs facing Bosnia and Herzegovina in the first quarter of 1996. High-level officials from 50 countries and 27 organizations attended. Human rights non-governmental organizations were not invited to attend (see discussion below in Section IV on the budget for human rights implementation).

¹²⁰ *Id.*, para. 29.

¹²¹ *Id.*, para. 21 (a).

¹²² *Id.*, para. 21 (c).

¹²³ *Id.*, para. 21 (c).

¹²⁴ *Id.*, para. 21 (d).

¹²⁵ *Id.*, para. 33.

Geneva (16 January 1996). The UNHCR convened a Humanitarian Issues Working Group Meeting at which it introduced its Repatriation Plan as provided for in Annex 7 of the peace agreement. UNHCR outlined three benchmarks present in the peace agreement which, once fulfilled by the parties, would allow for the cessation of temporary protection for refugees in host states outside former Yugoslavia (see Section VII.A below).

Rome (17 to 18 February 1996). As a result of continuing problems in the implementation of the peace agreement by the parties, a summit meeting took place in Rome. Four final documents were issued. In the **Rome Statement on Sarajevo** all parties agreed that Sarajevo would be a unified city with equal treatment for all. In the **Agreed Measures**, the presidents of Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia agreed to resume all civilian and military contacts, to nominate representatives to national institutions, to implement the military aspects of the peace agreement, including freedom of movement, to resume transfers of territory, to release prisoners cooperate with the Tribunal and adopt amnesty laws. The **Agreement on Mostar** provided for unlimited freedom of movement between the Muslim and Croatian held parts of the city and an extension of the EU Administration of Mostar mandate for six months. The **Joint Statement on the Federation** pledged to implement the Dayton Federation Agreement, to dissolve political structures competing with the Federation (meaning the Bosnian Croat Herzeg-Bosnia), to ensure freedom of movement (calling upon IFOR and the IPTF to help in this respect) and to conduct regular meetings. The Rome Summit is typical of a series of high-level meetings of the parties to address their failure to implement the peace agreement, at which they renewed their pledges to implement it.

Vienna (4 to 5 March 1996). The Austrian Government convened an International Round Table on the civilian implementation of the peace agreement. Almost all intergovernmental organizations (apart from the IPTF) and bodies participating in the civilian implementation of the peace agreement, as well as governments and non-governmental organizations participated. The papers of this meeting, including a summary and conclusions of the plenary session and useful conclusions and recommendations of the two working parties has now been published.¹²⁶

Oslo (8 March 1996). The UNHCR convened the first of three High-Level Working Meetings to follow up the Geneva Meeting in January. This meeting reaffirmed that repatriation must be voluntary up until the fulfilment of three benchmarks which UNHCR outlined in January, at which time temporary protection for refugees could cease; that the building of absorption capacity in Bosnia and Herzegovina, security both from a human rights, standard of living and de-mining perspective were necessary for return; that factors beyond UNHCR's competence were necessary for return; that focus was necessary on

¹²⁶ Austrian Federal Ministry for Foreign Affairs, Österreichische aussenpolitische Dokumentation, Special Issue, *International Round Table on Human Rights in Bosnia and Herzegovina*, Vienna, 4 and 5 March 1996.

returnees to Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) in the spirit of the principles of the peace agreement; that financial support was crucial to all plans and that all plans should proceed in a multilateral and coordinated manner. Subsequent meetings were planned before summer.

Moscow (23 March 1996). The Contact Group (France, Germany, Russian Federation, United Kingdom and United States of America) ministers met with the foreign ministers of the three states which are parties to the peace agreement to review problems concerning implementation. The Contact Group ministers warned that the pledging conference scheduled to take place in Brussels from 12 to 13 April 1996 would be delayed if all parties did not release prisoners taken during the armed conflict, stated that “strong support, including financial” was essential for civilian implementation of the peace agreement to be successful and declared that “[e]nsuring respect for human rights and fundamental freedoms in Bosnia and Herzegovina was indispensable to a lasting peace”.¹²⁷

Brussels (12 to 13 April 1996). After the parties released all prisoners detained as part of the armed conflict, except those suspected of crimes within the jurisdiction of the Tribunal, the Second Donors Conference for Reconstruction of Bosnia and Herzegovina went ahead, but the Republika Srpska refused to send a representative. High-level officials from the EU, EU member states, the USA, Japan, Canada, Islamic and other countries, the World Bank, EBRD, Islamic Development Fund and other organizations attended. Governments and intergovernmental organizations pledged to contribute US\$ 1,282,800,000 in 1996 for reconstruction. It is not known what was pledged for human rights.

Geneva (13 May 1996). The UNHCR convened the second Humanitarian Issues Working Group Meeting to follow up the earlier meetings in Geneva and Oslo. This meeting confirmed that estimates of returns in 1996 made last January were too optimistic and noted that UNHCR’s three benchmarks to the lifting of temporary protection had not been satisfied to date.

Geneva (2 June 1996). At a meeting of the Presidents and signatories of the peace agreement, the Presidents of Bosnia and Herzegovina, Croatia and Serbia, delegations of the two entities, the OSCE Chairman-in-Office, OSCE Mission Head, IFOR Commander, representatives of Contact Group countries and international organizations involved in implementation of the peace agreement, it was agreed to set a date for elections, even if conditions had not yet been satisfied, to “provide a focus for the work remaining to achieve the full standards established by the OSCE” and the parties to the peace agreement reiterated that “establishment of a lasting peace in Bosnia and Herzegovina requires full

¹²⁷ Final Document of the Contact Group Ministerial Meeting, dated 23 March 1996, reproduced in UN Doc. A/50/899- S/1996/220.

implementation of all provisions of the Agreement, in addition to those concerning elections”¹²⁸.

Florence (13 to 14 June 1996). The Peace Implementation Council is to hold a Peace Implementation Review Conference (Florence Mid-Term Review Conference), originally scheduled to take place in Rome, to review the first six months of implementation. Non-governmental human rights organizations have not been invited to attend.

III. THE NEED FOR FREQUENT, COMPREHENSIVE PUBLIC REPORTING

“To guarantee the effectiveness, security and credibility of international human rights personnel there must be frequent comprehensive public reports of their activities and findings which should be broadly disseminated nationally as well as internationally.”

Amnesty International's 15-Point Program for Implementing Human Rights in International Peace-keeping Operations, Point 7

One of the most serious problems so far in the civilian implementation of the peace agreement has been the absence of frequent, comprehensive and public reports during the first six months by the High Representative and most of the members of the Human Rights Task Force, except by the ECMM, UNHCR and by IFOR. The absence of such public reports has meant that it has been difficult for the international community and the general public in Bosnia and Herzegovina to find out what steps have been taken to protect and promote human rights. Until the beginning of May 1996, apart from a few press releases, mostly concerning appointments of officials, and short fact sheets concerning their mandates and proposed activities, there was almost no public reporting by the High Representative and by some of the other members of the Human Rights Task Force. Although there have been weekly (now monthly) meetings in Sarajevo between members of the Human Rights Task Force and non-governmental organizations with field offices, such meetings are not an adequate substitute for frequent, comprehensive public reports. The situation has started to improve somewhat, with weekly bulletins issued by the Office of the High Representative, but these bulletins do not contain comprehensive information about human rights implementation.

On 18 October 1995, Amnesty International urged that “civilian monitoring operations and any multinational military force with responsibility for enforcing the peace agreement should report regularly and frequently to the UN Security Council and OSCE Chairman in Office and Permanent Council concerning their activities. Such reporting

¹²⁸ United States Mission, Office of Public Affairs, Agreed Statement, Geneva, 2 June 1996, at 2-3.

should be public to ensure maximum impact.”¹²⁹ Amnesty International has consistently recommended that peace-keeping operations make frequent and comprehensive public reports:

“To guarantee the effectiveness, security and credibility of international human rights personnel there must be frequent comprehensive public reports of their activities and findings which should be broadly disseminated nationally as well as internationally.”¹³⁰

As Amnesty International has stated in the context of UN peace-keeping operations, national dissemination of such reports is essential because it will have a deterrent and educational effect:

“First, the parties will be made more aware of the international implications of respect for human rights; second, victims and witnesses will be informed of the importance of making complaints and should be better protected by publicity; third, specific cases not resolved at the national level can be followed up at the international level; fourth, confusion and misunderstandings concerning the role and limitations of the UN operation can be diffused.”¹³¹

Similar considerations apply in the context of implementation of the peace agreement. Moreover, since there are numerous intergovernmental organizations and non-governmental organizations in Bosnia and Herzegovina with overlapping mandates, public reporting about what they are doing will help prevent unnecessary duplication.

On 4 March 1996, the High Representative had stated at the Vienna International Round Table that the first periodic assessment he intended to publish concerning “the human rights picture and the level of compliance with the provisions of Annex 6” would be presented to the Peace Implementation Review Conference on 13 June 1996, more than six months after the Security Council approved his designation.¹³² However, after criticism by non-governmental organizations about the lack of public information about the civilian operation, he presented his first activity report on 13 March 1996 to the UN Secretary-

¹²⁹ *The challenge for the OSCE in Bosnia and Herzegovina, supra, note 1, at 2.*

¹³⁰ Amnesty International’s 15-Point Program for Implementing Human Rights in International Peace-keeping Operations, Point 7.

¹³¹ *Peace-keeping and human rights, supra, note 1, at 26.*

¹³² Introductory Remarks by the High Representative Mr Carl Bildt, *International Round Table on Human Rights in Bosnia and Herzegovina*, Vienna, March 4 and 5, 1996, *supra, note 126, at 20.*

General and stated that he intended to report to the Secretary-General at regular intervals.¹³³ Peggy Hicks, the Director of the Human Rights Coordination Centre in the Sarajevo office of the High Representative, which opened officially on 14 March 1996, indicated that she hoped to issue reports every week or two concerning the activities of the civilian organizations involved in implementation, but until early March 1996 the office had only one computer, one telephone and one fax machine and no link to the Internet. Since then, the situation has improved, and the office now appears to have sufficient computer equipment.

The Office of the High Representative has issued three different types of reports with information concerning human rights implementation since it was established. First, the Human Rights Coordination Centre has distributed minutes of the weekly Human Rights Task Force meetings, the first of which was issued on 8 March 1996 (apparently no further minutes have been issued since then, apart from the minutes of an earlier meeting in Brussels on 22 February). Second, at the beginning of May 1996, the Office of the High Representative started to issue weekly bulletins, the *OHR Bulletin*, concerning the activities of the High Representative, but, unfortunately, did not send them to all non-governmental organizations which had participated in Human Rights Task Force meetings, which diminished their effectiveness. These four-page bulletins give a useful overview of civilian implementation of the peace agreement, including activities of the High Representative, elections, freedom of movement, mine clearance, economic reconstruction, refugee and humanitarian affairs, human rights, media and the EU Administration of Mostar. They provide only limited information about human rights, however, and are not a substitute for frequent, comprehensive public reporting about human rights protection and promotion.¹³⁴

Third, the Office of High Representative has circulated internal reports based on the reports of the various intergovernmental organization reports of their activities, including human rights activities, to some governments and intergovernmental organizations. However, the Human Rights Coordination Centre has not yet issued these reports publicly, apparently because it has not been able to obtain permission from the relevant organizations to make public information which they supplied. Copies of some of these internal reports have been obtained by the Amnesty International mission to Bosnia and Herzegovina in June 1996 and, although they give more information concerning human rights implementation than the *OHR Bulletin*, it has not been possible to review them thoroughly before the date this paper was published.

¹³³ Report of the High Representative for the implementation of the Bosnian peace agreement to the Secretary-General of the United Nations, Brussels, 13 March 1996, UN Doc. S/1996/190 (Report of the High Representative). As of 1 June 1996, no further report had been issued.

¹³⁴ See *OHR Bulletin*, No. 1, 6 May 1996; No. 2, 13 May 1996; No. 3, 20 May 1996; No. 4, 27 May 1996; No. 5, 4 June 1996. These reports are now temporarily available on Internet at: <http://www.ontonet.be/ohr>.

The OSCE Mission has published weekly one-page reports in English, entitled *OSCE at a glance this week*, each with two or three sentences on its human rights activities. It has also recently begun to distribute to governments and intergovernmental organizations five- to six-page reports in English (at first weekly and then every two weeks) on its activities. These OSCE Mission reports were not made available to the press, public and non-governmental organizations until the beginning of June 1996 when the Amnesty International mission went to Bosnia and Herzegovina. Consequently, it has not been possible to evaluate their comprehensiveness and adequacy at the time this paper was published. The ECMM has been issuing bi-weekly reports in English to intergovernmental organizations, non-governmental organizations and embassies, entitled the *ECMM Humanitarian Activity Bi-Weekly Report*, which are widely distributed (see Section V.B below for a discussion of these reports). The UNHCR has issued *Repatriation Information Reports* in February, March and April 1996 on 26 out of 112 municipalities (see Section VII.A below). However, it is unclear how often each municipality report will be updated.¹³⁵ These reports are available in English, German and Serbo-Croat. The UNMIBH, however, has not published any periodic reports concerning the activities of the IPTF or the Civil Affairs Officers.

In addition to these written reports, the Office of the High Representative spokesperson leads the daily IFOR press briefings twice a week. An IPTF spokesperson participates in each daily IFOR press briefing. These press briefings and press releases are accessible on the Internet within a day or two.¹³⁶

Recommendations:

The High Representative should issue comprehensive reports on at least a weekly basis. These reports should be made available in the languages spoken in Bosnia and Herzegovina. They should be made available by electronic means such as the Internet and fax to ensure that they are made widely available, both inside and outside the country. The High Representative should ensure that assessments of the human rights situation are presented regularly in IFOR or other press briefings.

Each civilian body involved in implementing the peace agreement should issue frequent, comprehensive public reports concerning human rights protection and promotion in the same manner.

¹³⁵ These reports are available on the Internet under the address: <http://www2.unicc.org/>.

¹³⁶ The Internet site for NATO is <http://www.nato.int>.

IV. INCREASING THE BUDGET FOR HUMAN RIGHTS IMPLEMENTATION

“It is of great importance that funding be addressed by the international community as soon as possible. The different civilian implementation efforts this year will be very much cheaper than the military implementation efforts and they are key to the success of the overall implementation of which the military are just a part. The Governments that generously have funded the military implementation efforts must ensure that the investment is not lost at the end of the year by a failure to fund the less costly economic, political and humanitarian efforts.”

Report of the High Representative for the the implementation of the Bosnian peace agreement to the Secretary General of the United Nations, 13 March 1996

The peace agreement is largely silent on the question of how the civilian human rights implementation activities are to be funded. It does provide that certain activities are to be paid for by the parties, such as the Office of Ombudsperson and the Human Rights Chamber of the Human Rights Commission and the Property Commission. The parties, however, after four years of conflict and widespread devastation, are not likely to be in a position to pay more than a fraction of this amount. On 18 October 1995, Amnesty International urged that the peace agreement provide for adequate resources to implement the human rights guarantees.¹³⁷ The failure to spell out in the peace agreement how the costs of human rights implementation will be met has led to confusion about how these costs will be allocated and delays in funding. Moreover, the High Representative, who chairs the Steering Board of the Peace Implementation Council, the key political body, has not made public statements spelling out the amount needed or proposed a human rights implementation budget. These factors in turn have contributed to delays in deployment of personnel and difficulties in locating qualified personnel. What little information there is available about funding of international human rights activities suggests that the amounts available are tiny in comparison to the funding allocated to military implementation and to economic reconstruction and slower to be provided.

Some of the human rights monitoring and implementation bodies are funded indirectly, through the use of seconded government personnel whose salaries continue to be paid by the governments. Although this has kept the direct costs of the operations down, it has led to other problems discussed in the following section. Moreover, some governments have not yet made the necessary arrangements to transfer promised seconded personnel.

¹³⁷ *The challenge for the OSCE in Bosnia and Herzegovina, supra, note 1, at 1-4.*

As of the beginning of June 1996, nearly six months after the peace agreement was initialled in Dayton, there was still no clear, publicly available budget - or even budget proposal - covering all civilian human rights operations. It is extremely difficult to obtain a coherent picture of the total amount of money requested for human rights implementation activities, the amount authorized or the amount actually received by each body. Many states and independent observers are concerned that the huge needs for physical reconstruction appear to be overshadowing the equally pressing need to provide effective human rights protection, both in the short- and long-term.

Problems in obtaining funds for human rights implementation have been compounded because each of the intergovernmental organizations involved (UN, OSCE, Council of Europe, EU, etc.) has a different membership and because of the complexity of the civilian implementation operations (see Annex II to this paper), it is difficult for donor states and organizations to determine how best to allocate their donations. None of the government meetings so far concerning budgets have adequately addressed human rights funding. The report of the first donors' meeting in Brussels from 20 to 21 December 1996 did not contain a reconstruction program budget or indicate what portion would involve funding for human rights protection or promotion.¹³⁸ A priority reconstruction program was drawn up following a joint mission by international financial institutions, including the World Bank, European Commission, International Monetary Fund (IMF), European Bank for Reconstruction and Development (EBRD) and USAID, which amounted to \$5.1 billion. Approximately \$600 million was pledged for part of 1996. It was agreed that further aid donors' meetings would be needed to address a four-year reconstruction program (1996-1999). The Second Donors Conference on Reconstruction of Bosnia and Herzegovina from 12 to 13 April in Brussels resulted in pledges of \$1,282,000,000 for 1996. Apparently, only a small portion of this will go to human rights implementation, but exact figures are not known. In addition, a UN revised consolidated appeal was launched on 1 March 1996 to raise \$823.2 million to cover the financial requirements of all UN institutions in former Yugoslavia, but it is not known how much of this applies to human rights implementation of the peace agreement. Although there is no single budget covering all civilian human rights implementation, the following is known.

Funding for the High Representative. The High Representative's own funding has been problematic. On 14 March 1996, he stated:

“The practical problems associated with the setting up an organization from scratch have been considerable. I was able to benefit from the resources of the International Conference on the Former Yugoslavia during the first few weeks, without which the task would not have been possible. . . . In spite of the commitment at the Peace

¹³⁸ Chairman's Conclusions, First Meeting of Donors on the Reconstruction of Bosnia-Herzegovina, Brussels, 20-21 December 1995 (21 December 1995).

Implementation Conference held in London, the Governments represented on my Steering Board have not yet been able to agree on a funding key for the expenses of the High Representative. I have been able to initiate operations thanks only to support from the European Union, which was later supplemented by a grant from the Government of Japan. I hope that the members of the Steering Board will agree urgently on a funding key as well as endorsing my estimates for operations. Unless this happens very soon I shall not be able to fulfil the tasks assigned to me.”¹³⁹

Attempts by Amnesty International to obtain a copy of the High Representative's own budget from the Brussels office have been unsuccessful and it is not known if these problems have been satisfactorily resolved.

Funding for human rights monitors. The total budget for human rights monitors is not known, but given the limited numbers of such monitors, it appears to be wholly inadequate. The total budget for the UN Centre for Human Rights in Bosnia and Herzegovina for one year is \$6,475,000. The limited information available to Amnesty International suggests that approximately \$760,000 covers training for IPTF and \$5,712,000 covers advisers to the High Representative and observers. The total budget was based on a projected 52 people in the field: 25 professionals and the rest UN Volunteers. The money for training has come from the reserve of the High Commissioner's Voluntary Fund for Technical Cooperation, which means that this part of the operation is fully funded for the moment. The funding of advisers and observers is entirely dependent on donations. As of the beginning of June 1996, enough had been contributed to keep the field offices at their current level of approximately 10 Human Rights Officers until August, but funding after that date is not assured. The cost of the 1721 CIVPOLs authorized for the IPTF is not known, but since most of the personnel are seconded by governments, the direct outlay by the UN Department of Peace-keeping Operations may be limited. The General Assembly approved interim funding for the UNMIBH from 1 January to 31 May 1996 of \$14 million gross (\$13,780,300 net), but the amounts allocated to IPTF and to the Civil Affairs Officers are not known.

The budgets of the EU Administration of Mostar (32,000,000 ECU, which is approximately \$39,595,320), only a small proportion of which involves human rights implementation, and the ECMM are part of the regular EU budget. It has not been possible, however, to obtain the current budget for the ECMM. There is no publicly available breakdown of the budget of the OSCE Mission in Bosnia and Herzegovina, but its budget for all activities (arms control and confidence building measures, election preparations and human rights monitoring) in 1996 is \$24.5 million. The OSCE Mission has not provided a breakdown of how much of the budget will be allocated to human rights, but, as indicated below in Section V.B, much of the work of the human rights monitors will focus on election

¹³⁹ Report of the High Representative, UN Doc. S/1996/190, paras 7-8.

related issues. At the end of May 1996, the OSCE Mission informed Amnesty International that the budget for conducting the election was now increased to \$47,000,000, but it was not clear if this was in addition to the regular budget.

In contrast, the United States contribution for 1996 to IFOR is about \$2 billion.¹⁴⁰ The High Commissioner has stated that "the peace force now in the former Yugoslavia has a price of \$5 billion, while the United Nations' human rights offices in the region are struggling to find \$6 million for a single year".¹⁴¹

Funding for national institutions. More is known about the budget for national institutions which will play an important role in human rights implementation, but this budget appears to be wholly inadequate to meet the challenge. Moreover, the peace agreement provides that some of the national institutions are to be funded by Bosnia and Herzegovina or by the parties, but national authorities may not have sufficient funds to do this properly.¹⁴² As of mid-April 1996, the Council of Europe had estimated the annual cost of the establishment and functioning of the Human Rights Commission is 6.9 million DM (approximately \$10.5 million), of which 3.6 million DM (approximately \$5.5) is for the Human Rights Chamber. As of May 1996, the Ombudsperson appointed by the OSCE had not estimated the cost to establish and run her office, so it is not clear whether funds received so far will be adequate. As of 19 March 1996, Switzerland and Denmark had each contributed \$1 million to the Human Rights Commission. As of the beginning of June 1996, the Property Commission reported had been allocated \$1 million from a variety of sources for six months, but it was not clear whether this money had been received by the beginning of June and it appears to be wholly insufficient for its tasks (see Section IX.B below). The Council of Europe has estimated that the cost of other programs to in the fields of human rights, legal reform and democratic institution building would amount to approximately \$5 million, but it is not clear whether this is limited to 1996.¹⁴³ To cover these needs, the Chairman of the Committee of Ministers of the Council of Europe, the Chairman-in-Office of the OSCE and the High Representative signed a joint appeal on 30 January 1996 asking

¹⁴⁰ BASIC Paper 15, Implementing Dayton: Arms control and intelligence in former Yugoslavia, 11 March 1996, at 1.

¹⁴¹ Address by José Ayala-Lasso, United Nations High Commissioner for Human Rights to the Commencement Class of 1996 of the Columbia School of International and Public Affairs, 14 May 1996 - New York City, at 6.

¹⁴² Salaries and expenses of the Human Rights Commission are to "be determined jointly by the Parties and shall be borne by Bosnia and Herzegovina. The salaries shall be fully adequate to implement the Commission's mandate. General Framework Agreement, Annex 6, Art. III (2). In contrast, the salaries and expenses of the Property Commission and its staff are to "be determined jointly by the Parties and shall be borne equally by the Parties". *Id.*, Annex 7, Art. X (2). The peace agreement is silent on the funding of the Provisional Election Commission.

¹⁴³ This account of the budget is based on the Note by Mr Bloetzer on the visit to Sarajevo, Mostar, Banja Luka and Belgrade (8-11 April 1996), Council of Europe, Parl. Ass. Doc. 7509 Addendum, Annexes 1-3.

for voluntary contributions of approximately \$24.5 million to be transferred to the OSCE Voluntary Fund. On 25 April 1996, the Parliamentary Assembly urged member states to contribute to the fund, but it is not known how much has been received. As of the beginning of June 1996, no estimates were available of the costs of the establishment and functioning of the Constitutional Court of Bosnia and Herzegovina to be established after the elections or the Federation's Human Rights Court. As indicated above, \$47 million is to be allocated to the Provisional Election Commission to conduct the election, but it is not clear to what extent this overlaps with the regular OSCE Mission budget, which includes human rights monitoring.

Funding for the Tribunal. The Tribunal has been plagued since its inception by inadequate and short-term funding. The UN General Assembly on 11 April 1996 in Resolution 50/212B approved a three-month interim funding from 1 April to 30 June 1996 of \$8.6 million gross (\$7.6 million net) for the Tribunal, slightly more than was requested, but, the amount approved only represented an interim short-term solution. The UN Controller, Yukio Takasu, has said that it was significantly short of what would be needed to maintain the Tribunal. The Secretary-General stated in his report on financing the Tribunal that it would need \$40.8 million for 1996 (including the funding for the first three months of 1996).¹⁴⁴ The Advisory Committee on Administrative and Budgetary Questions (ACABQ) recommended that the General Assembly appropriate \$32.9 million net, in addition to the \$7.6 net interim funding already approved, for 1996 or slightly less than the Secretary-General had recommended. On 3 June 1996, the Fifth Committee of the General Assembly approved a draft resolution for adoption by the General Assembly appropriating \$31,070,572 gross (\$27,793,122 net) for the period from April to December 1996, or significantly less than recommended by the ACABQ.¹⁴⁵

Funding for exhumations. The cost of exhuming all grave sites where the "disappeared" and "missing" persons may be buried will be considerable. The cost of the initial program to set up a self-sufficient exhumation and identification program has been estimated by the Expert on missing persons to be \$6,120,000, covering start-up costs, compiling *ante-mortem* data on 8,000 persons, exhuming 1,000 bodies, re-burial and security, excluding a wide variety of expenses met by donations from various organizations (see Section VIII below). This initial project, however, will address only a tiny fraction of the total number of cases. Once established, it can cost more than \$1,000 to exhume a body, excluding the costs of re-burial and some other costs. Apart from funding for a limited number of Tribunal exhumations necessary to prepare indictments and to prosecute cases, however, the international community had not allocated any funds for this essential task as

¹⁴⁴ UN. Doc. A/C.5/50/41.

¹⁴⁵ "Fifth Committee recommends appropriation of \$63.6 million for criminal tribunals, \$1.4 billion for peace-keeping", 3 June 1996, UN Doc. GA/AB/3081; Draft resolution submitted by the Chairman following informal consultations, 29 May 1996, UN Doc. A/C.5/50/L.62.

of 1 June 1996. Instead, the UN Commission on Human Rights has left it to the Expert on missing persons to lobby states to contribute to a voluntary fund administered by the High Commissioner (see discussion in Section VIII below).

Human rights protection and promotion are essential components of reconstruction of Bosnia and Herzegovina. Without an effective system of human rights protection and promotion in place to help end the cycle of human rights violations, it is unlikely that economic reconstruction - no matter how well funded - can succeed. The costs of such human rights programs are small in comparison to the total costs of reconstruction, but they must be adequately funded. None of the civilian human rights activities can function effectively without adequately trained, experienced staff, logistical facilities enabling rapid travel throughout the country, modern equipment and long-term stable funding permitting proper planning.

Recommendations:

The High Representative, as chair of the Steering Board of the Peace Implementation Council, should develop a comprehensive budget which is adequate for the tasks covering all civilian human rights activities as a matter of priority, in consultation with non-governmental organizations and in conjunction with the development of a coordinated plan of action for such activities.

The High Representative should press governments, both through the Peace Implementation Council and publicly, to pledge and contribute the necessary funds without delay.

Governments should pledge and contribute the necessary funds without delay.

V. INCREASING THE NUMBER AND EFFECTIVENESS OF HUMAN RIGHTS MONITORS

“Effective implementation of the human rights aspects of the peace agreement depends on the active participation of a broad range of organisations, some of which will work exclusively in the human rights field and others which have roles that directly involve human rights issues. For many of the important aspects of the agreement, such as return of refugees and holding of elections, establishment of effective mechanisms to monitor human rights and redress human rights violations is essential.”

Statement by the Office of the High Representative, 4 March 1996

The parties to the peace agreement failed to provide for the establishment of a single, unified, well-trained and experienced civilian human rights monitoring operation with a clear mandate and budget and sufficient staff to monitor, report and act effectively on human rights violations.¹⁴⁶ In addition, the international community has failed to provide the funding, staff and equipment needed to meet the immense challenges ahead. These failures have left the High Representative with the unenviable task of trying to coordinate a fragmented series of largely *ad hoc* human rights monitoring operations with wholly inadequate resources and empty promises of support by states. In the light of these constraints in the peace agreement, the priorities for strengthening human rights monitoring are:

- developing an action program and budget, in consultation with non-governmental organizations;
- improving the coordination of monitoring operations by all the various organizations involved; and
- ensuring that a much larger number of monitors are deployed and that they are experienced in human rights monitoring, properly trained and rapidly deployed.

¹⁴⁶ The High Commissioner had proposed a monitoring operation to be run by the UN Centre for Human Rights in October 1995 before the peace agreement was initialled. Others suggested that human rights monitors should be part of an operation administered by the UN Department of Peace-keeping Operations. On 18 October 1995, after it had become clear that the OSCE would play a major role in human rights monitoring, Amnesty International stated, “it will be essential for the OSCE to develop a joint operation with the UN, perhaps under the supervision of the UN High Commissioner for Human Rights, and other intergovernmental organizations, with a clear division of responsibilities.” *The challenge for the OSCE in Bosnia and Herzegovina, supra*, note 1, at 2.

This will require strong political leadership by the High Representative, as chair of the Steering Board of the Peace Implementation Council, of the civilian implementation operations and aggressive public advocacy to obtain the necessary international support for human rights monitoring, reporting and action. As of the beginning of June 1996, no clear action program and budget had been developed which included all human rights monitors. Observers expressed concern about problems in coordination of the limited number of human rights monitors, the uneven levels of experience, inadequate training programs for some of the monitors and the slow deployment of monitors. Moreover, as described in the previous section, the High Representative had only received half-hearted or empty promises from the international community of funding for civilian implementation, including unspecified amounts for human rights monitoring.

A. The human rights situation

The conflict in Bosnia and Herzegovina has seen the most serious abuses of human rights perpetrated in Europe since the Second World War. Deliberate and arbitrary killings, deliberate targeting of civilians by artillery, mortar and sniper fire, abduction and detention of civilians without charge or trial, rape and other torture and ill-treatment, "disappearances" and "missing" and the forcible expulsion of civilian populations have been perpetrated by all sides, although the majority of abuses have been perpetrated by Bosnian Serb forces and those working alongside them. The abuses were frequently perpetrated in systematic patterns associated with policies aimed at eliminating or significantly reducing minority populations in the targeted areas. The year 1995 saw some of the worst abuses of the conflict as Bosnian Serb forces overran the Srebrenica enclave leaving some 8,000 Muslim civilians "missing", most of whom are feared to have been deliberately and arbitrarily killed. At least 20,000 Muslims and Croats fled or were forcibly expelled from Bosnian Serb-controlled areas of northwest Bosnia as new waves of abuses were perpetrated there. Bosnian Muslim and Croat forces also took control of large areas of territory in western Bosnia. Access to international observers was restricted but there was some evidence that abuses were committed against Serbs in these areas.

Continuing human rights violations since the cease-fire. There has been a marked change in the situation since the introduction of an effective comprehensive cease-fire in October 1995 and the signing of the peace agreement in Dayton. However, human rights abuses have not ceased completely nor have the conditions in which further serious abuses could be perpetrated. Although the peace agreement required the release of all combatants and civilians detained in connection with the conflict, not all those believed to be in detention at the time of the signing of the agreement have been released. Furthermore, a number of prisoners have been detained without charge or trial since the agreement. For example, Hidajet Delić, a Bosnian Muslim photojournalist, was detained without charge or trial by Bosnian Serb authorities from 8 February to 25 March 1996, when he was exchanged for a Bosnian Serb journalist. Although he was accused of espionage, Amnesty

International considered him to be a prisoner of conscience, detained solely on account of his nationality.¹⁴⁷ Others who have been detained since the peace agreement remained in detention as of the beginning of June 1996.

Although the peace agreement focuses on the conflict between the Bosnian Serbs forces on one side and the forces of the Bosnian- (Muslim-) Croat Federation on the other, considerable tension exists between the Croat and Muslim authorities in many parts of the Federation. Recent abuses in this context include the detention without charge or trial of three men of Arab or mixed Bosnian Muslim-Arab background by Bosnian Croat forces in Kiseljak in February. The men were still in detention as of the end of May. Separate agreements reached at governmental meetings aimed at solving the problems in implementing the agreement establishing the Federation signed at Dayton and the peace agreement have had only limited effect in reducing tensions.

Recent reports of violence are also not restricted to confrontations between members of different nationalities. The new political situation also give rise to confrontations between political rivals. In March 1996 members of the opposition Socialist Party of the Republika Srpska alleged that they have been subject to physical attacks in which the Bosnian Serb police were involved.

There are also reports of other incidents throughout Bosnia and Herzegovina in which individuals have been exposed to violence or the threat of it. In many cases, it is difficult to establish whether the perpetrators were civilians, police or soldiers. However, as has frequently been the case in the past in Bosnia and Herzegovina, the circumstances in many instances point to the various authorities at least condoning the acts, for example where police have been seen to stand by while violent or provocative acts have been perpetrated. For example, in one incident in April 1996, Federal police stood by as a hostile crowd in Sarajevo surrounded a Belgrade-registered car containing the defence lawyer for a Bosnian Serb army officer detained by the Bosnian Government. The occupants were reportedly protected from violence only by the chance presence of IFOR soldiers.

In April and May 1996, a series of incidents was reported in the Teslić area in the Republika Srpska in which Muslims remaining in the area were subjected to severe harassment and were effectively forcibly expelled in a manner similar to that practiced in Bosnian Serb-controlled northwest Bosnia between spring 1992 and summer 1995. There were cases of armed men breaking into houses and threatening the occupants. In one case the persons involved attempted to rape a woman; in another, an elderly woman was reportedly beaten and kicked and left unconscious. Grenades were let off outside houses in other cases. Although the persons involved were dressed in civilian clothes, when the

¹⁴⁷ Amnesty International, *Bosnia-Herzegovina: Hidajet Delić: Prisoner of Conscience* (AI Index: EUR 63/07/96).

victims dared to report the incidents to the police, no action was taken to protect them or investigate the incidents. The incidents were accompanied by threats to leave the area and similar calls for Muslims to leave which were broadcast on the radio. As a result of the incidents or the fear of similar incidents, up to 600 Muslims are reported to have sought to leave and cross into Federation territory. They were made to pay 10 DM (approximately \$15) to obtain permission to do so. IPTF officers in the area reportedly did not accurately assess the extent of the problems at the time.

Attacks on returning refugees and displaced persons. Although the removal of restrictions on the freedom of movement is one of the central principles of the peace agreement, reports of violence have frequently surrounded attempts by displaced persons to visit or return to their homes in areas controlled by another nationality. Many visits or attempts to return, mainly those in which small groups of Muslims into Bosnian Serb-controlled areas, have taken place peacefully. However, some people travelling in small groups have been exposed to abuses. For example, on 29 March 1996 a Croatian Catholic priest was allegedly beaten up by Bosnian Serb police near Gradačac after trying to gain access to a church to prepare for Easter.

Larger scale attempts to cross both entity boundaries have on several occasions resulted in violent confrontations with the local population. In some cases, political leaders on the different sides appeared to have encouraged civilians to seek confrontation. For example, on 22 April 1996, a group of Muslim displaced persons (reportedly including plainclothes police among the leaders) attempted to reach their homes in the Bosnian Serb-controlled Doboje area. Counter-demonstrations, reportedly led by Bosnian Serb police met the group and IFOR soldiers fired into the air to separate them and prevent confrontation. On 24 April 1996, a group of displaced Bosnian Serbs, who wished to visit their homes in Glamoč (apparently without any involvement of the Bosnian Serb authorities), had to give up their attempt after the Bosnian Croat authorities controlling the town refused to guarantee their security. On 28 April 1996, a crowd of approximately 60 Bosnian Serbs waving cudgels, metal bars, axes and a flag blocked about 150 Bosnian Muslims in three buses escorted by the IPTF who were trying to visit their homes on the road to Teslić in northern Bosnia. An IFOR unit with at least 14 armoured personnel carriers refused IPTF's request to help in escorting the visit, which had been approved by Bosnian Serb officials in Teslić, despite IFOR's obligations under the peace agreement to "prevent interference with the movement of civilian populations, refugees, and displaced persons, and to respond appropriately to deliberate violence to life and person".¹⁴⁸ This incident was one of a series

¹⁴⁸ General Framework Agreement, Annex 1-A, Art. VI (3) (d). The account of the incident near Teslić is based in part on articles by Emma Daly, "Refugee mobs shake the pillars of Dayton peace deal", *The Independent*, 29 April 1996, at 11, and by Stacy Sullivan, "Armed Serb mob bars the way to Muslim visitors", *The Times*, 29 April 1996, at 9.

of incidents where IFOR refused to help or actually fired shots to prevent refugees from returning to their homes in the Republika Srpska.

Despite the imposition by IFOR of restrictions on movements in some areas to prevent further confrontations, a group of Muslims went to the Bosnian Serb-controlled village of Sjenina near Doboj on 29 April to visit Muslim graves on the occasion of a Muslim festival. An attack by Bosnian Serbs followed in the village in which two Muslim men were shot dead by armed Serbs and other Muslims injured when they fled into a minefield. Also on 29 April 1996, several hundred Bosnian Muslims attempting to visit the graves of relatives in the now predominantly Serbian town of Trnovo, about 30 kilometers south of Sarajevo were turned back when elderly Bosnian Serbs stoned their buses and then beat the passengers with shovels and sticks, despite reported attempts to restrain the attackers by Bosnian Serb police. Fifteen people were reportedly hurt and one died in Koševo hospital in Sarajevo that day. A French unit of IFOR stood by and refused to protect them.¹⁴⁹ On 2 June 1996, local Bosnian Serbs stoned two buses carrying Muslims who were attempting to visit their homes in Potočani in the Republika Srpska. UNHCR reported that on 3 June 1996, Bosnian Serbs were reported to have stoned buses and blocked Bosnian Croat refugees attempting to return to homes in Teslić and Bosnian Muslim refugees attempting to return to nearby villages.¹⁵⁰

In addition, the return of displaced persons and refugees will also inevitably result in confrontations over the occupation of individual properties as original owners and tenants try to reclaim their accommodation which may have been taken over by other displaced persons or those who have moved in after leaving their own damaged or inferior accommodation. Members of minorities will be most at risk of being attacked. In cases of illegal evictions, such as some cases of Muslims and Serbs evicted from property in the part of Mostar controlled by Bosnian Croats, the evictions may amount in effect to forcible expulsions as the members of the minorities are likely not to be able to get support in obtaining new accommodation and physical security in the immediate area and may have to cross to a predominantly Muslim or Serb area.

It is likely that tension will rise throughout Bosnia and Herzegovina in the summer if elections take place in September. Some commentators have suggested that the attacks which occurred during confrontations between Muslim displaced persons and Serbs in April were in part due to encouragement by the Muslim Party of Democratic Action (SDA) for its own political purposes.

¹⁴⁹ The account of this incident is based partly on an article by Stacey Sullivan, "Serb Mobs kill three Muslims", *The Independent*, 30 April 1996, at 10.

¹⁵⁰ Owen Bennett Jones and Julian Borger, "US insists that Bosnia election must go ahead", *The Guardian*, 3 June 1996, at 2 (based on Reuters report).

Amnesty International believes that the international personnel in Bosnia and Herzegovina must take immediate steps to ensure that attacks in such situations do not take place again. IFOR has clear obligations under the peace agreement regarding the protection of civilians and it is clearly inappropriate for IFOR personnel to do nothing to intervene in situations where their intervention could prevent these violent attacks. Of course, the duty to maintain law and order falls primarily on the various domestic law enforcement bodies in Bosnia and Herzegovina, working in close cooperation with the IPTF. However, in some of the attacks described above, police from these bodies were either unable or unwilling to protect those threatened with or subjected to violence.

Spontaneous attempts to return home, in the absence of assurances concerning safety and without the endorsement of the appropriate international bodies, create particular difficulties. On the one hand, those attempting to return are only trying to exercise a fundamental right - a right reaffirmed and guaranteed in the peace agreement. On the other hand, when it is clear that the local authorities in the area to which they wish to return cannot or will not guarantee their safety and security, it may indeed be appropriate for IFOR and other international bodies to advise against return pending the development of an effective plan to ensure their return with guarantees for their continued safety. The international community should, as a matter of priority, develop such plans, in close consultation with local authorities and local and international non-governmental organizations so that the plans can be implemented effectively and ensure safety.

Amnesty International believes that IFOR, the IPTF and other relevant parties should as a matter of priority agree clear guidelines that assign responsibility for the prevention of such violent attacks.¹⁵¹ Until the domestic law enforcement bodies are in a position to be both able and willing effectively to perform the required law enforcement functions, international personnel must do so.¹⁵² Moreover, insofar as the attacks are linked to authorities not fulfilling their obligations under the peace agreement to allow refugees and displaced persons to return home with adequate assurances concerning their safety, much more pressure must be brought to bear on the parties to respect and ensure the right to return.

¹⁵¹ IFOR has recently reported that it has defused tensions in cross border visits by acting jointly with civilian agencies and that it, the Office of the High Representative, UNHCR and the IPTF "agreed on a common policy to reduce the risk of civil disturbances resulting from visits across the Inter-Entity Boundary Line, which threaten peace and public order". Letter dated 22 May 1996 from the Secretary-General of the North Atlantic Treaty Organization addressed to the Secretary-General, UN Doc. S/1996/375, para. 5. No details about the common policy were given, although the role of the local police was identified as essential, and the policy does not appear to address the question of providing security for the permanent return of refugees and displaced persons.

¹⁵² When military forces carry out law enforcement functions they must act in strict conformity with international standards, such as the UN Code of Conduct for Law Enforcement Officials (Art. 1) and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Note).

B. The human rights monitoring operations

The civilian human rights monitoring operations got off to a slow start. Although the Security Council had approved the designation of the High Representative on 15 December 1995, he did not arrive in Sarajevo until early January. He stated that by the time he had arrived IFOR had taken over all buildings, vehicles and equipment previously used by UNPROFOR and that he had not received sufficient funds to rent or purchase other buildings, vehicles or equipment. Staffing of the OSCE and IPTF missions was delayed by the lack of funding and the requirement that staff be selected on the basis of nationality as well as by merit. In the first few months, each organization involved in monitoring had different concepts of what was required, there were no clear guidelines on what rights would be monitored, each used different report formats and reported to different bodies and each responded differently to violations. Most monitors were in Sarajevo, as a result of logistical problems or lack of training which would permit them to be sent to other parts of the country. By the beginning of June 1996, nearly six months after the High Representative had taken up his post, his office had not yet published a budget or plan of action for human rights monitoring throughout the country. This report focuses on the structural problems of the human rights monitoring operation. An Amnesty International mission went to Bosnia and Herzegovina on 2 June 1996, which will examine the effectiveness of human rights monitoring in practice.

The role of the High Representative. As recommended by the Lancaster House conference on 9 December 1995, the High Representative has set up a **Human Rights Task Force**, consisting of the intergovernmental organizations involved in civilian implementation, to coordinate the activities of the various civilian organizations involved in human rights implementation of the peace agreement. At first, the Human Rights Task Force met once a week with non-governmental organizations, usually in the Office of the High Representative in Sarajevo, but occasionally in the Brussels office of the High Representative. It now meets roughly once a month. It published minutes of its meeting on 8 March 1996, but it appears to have published minutes of only one other meeting, which took place in Brussels on 22 February 1996. At its first meeting in Brussels, which opened on 26 January 1996, the Human Rights Task Force recommended that the High Representative set up an evaluation unit "to coordinate daily human rights monitoring activities and to collect comprehensive information concerning human rights" on the situation in Bosnia and Herzegovina.¹⁵³ In early March 1996, the High Representative established a **Human Rights Coordination Centre** (originally this was to be called the Joint Human Rights Implementation Centre) in his Sarajevo office to fulfill this objective. The High Representative anticipates establishing only a few regional offices and will rely on other institutions to gather information on the human rights situation.

¹⁵³ Fact sheet issued by the Office of the High Representative, March 1996.

Nevertheless, despite these positive steps, the High Representative, whose responsibilities under the peace agreement include monitoring its implementation, coordinating the activities of the civilian organizations implementing it, facilitating the resolution of difficulties in implementation, meeting donors, reporting to international organizations and providing guidance to the IPTF, has not formulated a detailed human rights plan of action of effective training, monitoring, reporting and responding to violations, with timetables and clear divisions of responsibilities for the coming year. Such a plan of action would help provide clear guidance to all organizations involved in human rights monitoring, make long-term planning by organizations involved easier, help minimize duplication resulting from overlapping mandates and identify gaps in protection. It could also inspire public confidence that an effective program of human rights monitoring and reporting was in place and make it easier to persuade donors to provide the necessary funding. Amnesty International has repeatedly emphasized that “[h]uman rights monitors should have a clear and specific mandate to engage in ‘active verification’ of human rights violations, which would include a monitoring, investigatory and correctional role.”¹⁵⁴

The High Representative has indicated on a number of occasions that he is not likely to use the crude weapon of ending the current suspension of sanctions against the Republika Srpska or the Federal Republic of Yugoslavia (Serbia and Montenegro) in response to continuing human rights violations and failure to implement fully the peace agreement. For example, his spokesperson, Michael Maclay, has said, “Mr Bildt’s view is that there is a danger that imposing sanctions would be running up the white flag and admitting that partition is inevitable. . . . The alternative is patience and pressure through the sorts of negotiations which are now under way.”¹⁵⁵

The UN High Commissioner has offered to deploy on-site experts to assist the High Representative and Human Rights Task Force to address

“human rights situations which, because of their complexity, require in-depth knowledge and experience (in areas such as monitoring, investigations, good offices and confidence building [and] institution building)”¹⁵⁶

The experts would also develop “in coordination with the OSCE, IPTF, UNHCR and other civilian missions consistent methodologies for effective human rights monitoring” and

¹⁵⁴ *Peace-keeping and human rights, supra*, note 1, at 25-26.

¹⁵⁵ Kurt Schork, “Separatists gaining the upper hand in Bosnia”, Reuter, REU1708 3 OVR 497, 30 April 1996.

¹⁵⁶ UN High Commissioner for Human Rights, *Program of Operation in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia, International Round Table in Vienna*, 4-5 March 1996, *supra*, note 126, at 78.

analyze data collected by monitors.¹⁵⁷ These experts would be available to the High Representative for *ad hoc* assignments requiring special human rights expertise and able to travel in the field to provide advice to human rights monitors.¹⁵⁸ As of the beginning of June 1996, two advisers had been assigned to the Office of the High Representative. The only other body believed to have responded favourably to this offer of assistance is the IPTF. The High Commissioner's training programs for the OSCE and the IPTF are discussed below.

Some observers have voiced concern about the response of the High Representative to human rights violations in his first few months in office, possibly because of the absence of easily accessible public and detailed reports on his activities, apart from the 14 March 1996 report to the UN Secretary-General, his remarks and two short status reports to the Vienna International Round Table on 4 March 1996. Although the High Representative worked hard to prevent the exodus of Bosnian Serbs from the Sarajevo suburbs, he does not appear to have publicly criticized IFOR for facilitating the exodus from Sarajevo when it permitted Serbian armed forces in civilian clothes to bring in army trucks to evacuate civilians. The High Representative has stated that "[t]heir departure from the Sarajevo suburbs is a tragedy, and there is no doubt that it has damaged our efforts to establish a unified, multi-ethnic Bosnia and Herzegovina",¹⁵⁹ but he is not known to have announced a program designed to encourage them to return.

The High Commissioner and training of human rights monitors. In addition to making available human rights experts to the High Representative (see above) and human rights monitors to the Special Rapporteur on the former Yugoslavia (see below), the High Commissioner has established through the Centre for Human Rights two training programs for human rights monitors in Bosnia and Herzegovina, one for the IPTF and the other for OSCE Mission human rights monitors. The training program for the IPTF has two components. The first is the provision of four-hour human rights briefings to all incoming IPTF monitors as part of a four-day induction course organized by the CIVPOL Training Unit in Zagreb before they are deployed to Bosnia and Herzegovina or to Eastern Slavonia in Croatia. The Centre for Human Rights has been providing these briefings since January and now has one person assigned full-time to do this.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ Introductory Remarks by the High Representative Mr. Carl Bildt, Austrian Federal Ministry for Foreign Affairs, *International Round Table on Human Rights in Bosnia and Herzegovina*, Vienna, March 4 and 5 1996, *supra*, note 126 at 18.

The second component of the Centre for Human Rights training program for IPTF monitors (including those being sent to Eastern Slavonia) is the provision of more comprehensive training on human rights and law enforcement and human rights.¹⁶⁰

The Centre conducted a nine-day course in Sarajevo from 13 to 21 May 1996 for 30 IPTF monitors. At the end of the course, approximately 15 IPTF monitors were selected to conduct follow-up training courses for the other IPTF members under the supervision of three trainers supplied by the Centre. The original proposal to the Human Rights Task Force in January 1996 - at first accepted by the IPTF - was to train all 1721 authorized CIVPOLs over a total of six months. As a result of limited resources, however, the IPTF in May requested the Centre to revise its program.

The program will now cover 900 IPTF monitors, selected among key groups such as station commanders, team leaders, operations officers and human rights liaison officers. The follow-up training courses, which began at the end of May, will be one-week long and include about 30 IPTF monitors. They will be conducted at the Regional Headquarters in Sarajevo, Tuzla and Banja Luka, as well as in other locations as specified by IPTF and continue until August. The Centre has offered the IPTF to use the expertise of its trainers to implement the training program in developing IPTF monitoring procedures. It has produced a *Field Guide for IPTF and UNTAES CIVPOL monitors on Human Rights and Law Enforcement*, which has been made available since January 1996 to all participants in the training courses. Amnesty International has not yet seen a copy of the *Field Guide* and, therefore, has not been able to evaluate it.

The High Commissioner and Centre for Human Rights offered in January 1996 to develop and provide a second intensive training program on human rights monitoring to all the OSCE Mission human rights monitors, either before or immediately upon deployment to Bosnia and Herzegovina. As of the beginning of June 1996, the OSCE had not agreed to the High Commissioner's proposal. In February 1996, the OSCE requested the High Commissioner to organize a three-day training session at the OSCE Conflict Prevention Centre in Vienna for a group of newly recruited monitors who were to be deployed to Bosnia and Herzegovina. The High Commissioner agreed that the Centre should conduct a three-day *briefing* session, but it made clear that it did not believe that this was sufficient to

¹⁶⁰ The UN Crime Prevention and Criminal Justice Division, which developed the *United Nations Criminal Justice Standards for Peace-keeping Police* handbook (the Blue Book), which has served as a basic document for several peace-keeping missions, has been consulted in the development of these training programs for CIVPOLs, but it has not been able to play much of a role, apparently, because of its limited staff and funding. The UN Crime Division proposed a training program for the IPTF CIVPOLs which it offered to help implement provided it received funding. See *Contribution of the Crime Prevention and Criminal Justice Division to the Implementation of Security Council Resolutions 1035 (1995) of 21 December 1995 and 1037 (1996) of 15 January 1996, International Round Table on Human Rights in Bosnia and Herzegovina*, Vienna 4 and 5 March 1995, *supra*, note 126, at 75-76.

provide proper *training* and confirmed the Centre's readiness to provide comprehensive training and to adjust it to the specific tasks of the OSCE Mission, once they had been decided. Staff of the Directorate of Human Rights of the Council of Europe also participated in the briefing session. Although the briefing session had been designed for human rights monitors, at the last moment, election monitors and personnel assigned to other functions were included in the session.

At the International Round Table held in Vienna in March 1996, the High Commissioner renewed his offer based on a second proposal, revised in light of additional information on the functions of the OSCE Mission human rights monitors, and indicated that he was prepared to conduct training in March. At the same time, he provided a draft field guide on human rights monitoring to the OSCE Mission for use by its monitors. The Council of Europe Directorate of Human Rights also insisted on the need to provide appropriate training to the OSCE monitors and expressed its willingness to contribute to any training program organized by the Centre for Human Rights.

The OSCE Mission rejected the proposal to conduct a course in March and has since suggested successive dates for the implementation of a training program by the Centre, but in each case has then asked for postponements on the ground that there were not a sufficient number of monitors in place. In each case, the OSCE Mission suggested training periods of only three days. The OSCE Mission conducted its own training session for its human rights monitors in Sarajevo from 15 to 17 March 1996. The syllabus of this three-day training session suggests that although it covered the various mandates of the international organizations involved in implementing the peace agreement and an overview of the political situation, it did not provide the type of in-depth practical training, including role-playing, in reporting on human rights violations and responding to them that human rights monitors need to be effective in a situation with continuing grave human rights violations and complex political issues.

Recently, the OSCE Mission has reportedly contacted the UN Centre for Human Rights, indicating that it would like the Centre to conduct a four-day workshop on human rights monitoring. Discussions are reported to be underway between the two bodies and the Centre is reported to be willing to conduct such a workshop. It would not take place until mid-June, however, after certification concerning whether conditions will permit elections to take place. If, as widely expected, the OSCE certifies that elections may take place, it is probable that the primary responsibilities of the OSCE Mission human rights monitors would be related to the elections, rather than to other human rights issues. Moreover, it is understood that the OSCE Mission has proposed that only about half of the workshop would involve human rights and only those monitors with no human rights background at all would participate. The other half of the workshop under this proposal would cover the internal political situation and what other components of the civilian implementation operations are doing.

Special Rapporteur on the former Yugoslavia. The High Commissioner has supplied the Special Rapporteur on the former Yugoslavia with nine experienced international human rights monitors through the field offices of the High Commissioner. This limited staff will not be able to monitor, report on and respond to human rights violations in more than a fraction of cases, but it will be able to play an important part in the human rights monitoring operations. The current Special Rapporteur has indicated that her major concerns are focused on the future and she will pay particular attention to vulnerable groups such as children and the elderly. She is considering the possibility of more frequent reports, but as of 1 June 1996 had issued only two reports since the peace agreement was initialled.

OSCE. The OSCE Mission human rights monitoring operation has been hampered by a number of factors. It continues to have a lower priority than the election part of the mandate, financial constraints, limited numbers of well-trained, experienced human rights monitors, slow deployment of human rights monitors and logistical problems. Nevertheless, the OSCE Mission is attempting to cooperate with other human rights monitoring operations and has published one-page weekly reports with some brief information about its activities and it plans to produce topical reports.

William Stuebner, then Senior Deputy for Human Rights of the OSCE Mission explained the priorities of the OSCE human rights monitors:

“Our human rights monitors, at least until the election, will focus on ‘political’ or election-related rights: association/assembly/expression. We will also give priority to freedom of movement, security (ie. overall security situation) and non-discrimination, recognizing that problems in these areas have the potential to poison the environment for elections. Focusing our efforts will increase our effectiveness, and will assist in avoiding needless duplication of other organizations’ activities.

We will, of course, attempt to address other serious human rights issues (ie. other than ‘election-related rights’) as they arise.”¹⁶¹

A high-level member of the OSCE Mission has indicated that it was originally hoped that the mission would deploy up to 500 human rights monitors for Bosnia and Herzegovina, but the number is now likely to be no more than 50 human rights monitors out of an OSCE Mission staff of 200-300. The other 150-250 staff would include staff supervising the elections, arms control experts and administrative staff. As of 20 March 1996, only 21 human rights monitors had arrived, with about 30 more expected to arrive by

¹⁶¹ Letter from William Stuebner, Senior Deputy Human Rights, to Amnesty International, 20 March 1996, at 1-2. He has since resigned.

the end of April, but as of the beginning of June, only 37 in all had arrived and the pace of arrivals declined considerably. To reduce direct costs to the OSCE, it decided to maintain its existing policy of recruiting staff for missions almost exclusively from persons seconded by governments, instead of recruiting most of its monitors from human rights components of international peace-keeping operations and non-governmental organizations with relevant experience, as the UN has done so successfully. As a result, according to some sources, only about half of the human rights monitors who had arrived in Sarajevo at the beginning of March had previous human rights monitoring experience.¹⁶² The situation has since improved somewhat with more monitors having some human rights background, but it is still not clear how many had human rights monitoring experience. Monitors arriving since the middle of March have been sent directly into the field without any human rights monitoring training.

In the light of the lack of sufficient experienced personnel among the OSCE human rights monitors, it is essential for them to be thoroughly and properly trained as a matter of the utmost urgency. Amnesty International has emphasized that “[m]onitors should be trained in international human rights standards as well as in human rights monitoring, investigation and reporting. They should operate under clear and consistent guidelines and procedures.”¹⁶³ Unfortunately, as indicated above, such training by the UN Centre for Human Rights has not yet occurred and it seems increasingly unlikely that it will occur in the near future. It is not clear to what extent negotiations with UNHCR to conduct training in mid-April for newly arrived monitors will adequately address this problem.

Thorough and properly designed training is essential if human rights monitors are to perform their responsibilities effectively. Indeed, inadequately trained monitors could endanger the lives of detainees, victims and their families and witnesses.¹⁶⁴ It is also a

¹⁶² In response to a request by Amnesty International on 13 March 1996 concerning how many of the human rights monitors had previous human rights monitoring experience, the then Senior Deputy Human Rights of the OSCE Mission replied:

“Our Human Rights monitors have strong backgrounds. The general director, Dr. Oskar Lehner, is a law professor with experience with the UN mission in Cambodia and with the UNCHR in Rwanda. About half our monitors have experience in the former Yugoslavia, including ICRC, UNHCR, UNCHR, UN Civil Affairs and various NGOs. Many are lawyers or have legal backgrounds (including 2 judges). We are weighted towards people with extensive field experience, which is necessary for this type of mission.”

Id., at 2. It was not clear, however, how many of these people had human rights monitoring experience.

¹⁶³ *Peace-keeping and human rights*, *supra*, note 1, at 25.

¹⁶⁴ Working Group I at the Vienna International Round Table concluded: “Training of human rights monitors is essential and training courses must be comprehensive. Failure to dedicate the time necessary to training will not only decrease the efficacy of monitoring efforts but could endanger lives[.]” *International Round Table on Human Rights in Bosnia and Herzegovina*, Vienna, 4 and 5 March 1996, *supra*, note 126, at 30.

matter of concern that the other 150-250 OSCE Mission personnel who are to operate throughout the country, such as those who are supervising elections, are not expected to receive any human rights monitoring training. The peace agreement requires the OSCE to certify that social conditions, which are mainly respect for certain human rights, are appropriate for elections to take place. If the certification is to be based solely on the reports of the 37 human rights monitors there at the beginning of June, the numbers are insufficient and neither they nor the other 150-250 personnel have the necessary training and experience. Observers have expressed concern that the OSCE Mission may be making assessments of conditions based on inappropriate methods. For example, the OSCE Mission has brought in politicians from one entity into the other for brief visits to address groups to see if they can do it safely, but these politicians reportedly have usually been guarded and it is not clear how easily they are able to circulate freely during these visits. The national Ombudsperson appointed by the OSCE probably will not have the resources to participate in human rights monitoring or reporting (see discussion in Section IX.A below).

The Human Rights Division of the OSCE Mission has been operational since the end of February 1996. The OSCE Mission headquarters is in Sarajevo and has seven staff with human rights responsibilities, five with overall responsibilities and two with responsibilities for women's issues. The other 28 staff with human rights responsibilities are located in five Regional Centers in Banja Luka, Bihać, Mostar, Sokolac and Tuzla, with the Sarajevo headquarters acting as the Regional Center for Goradže and Sarajevo. Many of these Regional Centres will be shared with the ECMM (see below) and a joint OSCE/ECMM Operations Center for the country is located in the headquarters. Each of the Regional Centers will have responsibility for a number of field delegations composed of OSCE human rights monitors and elections personnel and ECMM representatives. In addition to human rights monitoring, human rights officers have been asked to support and encourage local human rights organizations, especially in Banja Luka and Mostar, and to assist the Ombudsperson. Current priorities for these personnel include implementing a democratization plan, monitoring freedom of movement, association and expression, monitoring discrimination, investigation of and action on reported human rights violations, support for local non-governmental organizations and supporting the election effort. The OSCE Mission has not, however, published a human rights plan of action so it is difficult to determine the exact nature of the activities carried out or the relative importance of each. Support for the elections seems to continue to have priority over human rights monitoring. Moreover, it is a matter of concern that the OSCE Office of Democratic Institutions and Human Rights (ODIHR) in Warsaw, which has the primary responsibility for OSCE human rights activities, appears to have played a very limited role in the development and implementation of the human rights responsibilities of the OSCE Mission. This limited role is unfortunate because ODIHR has substantial experience in developing human rights components of other OSCE missions and has established the three Federation Ombudspersons in Sarajevo.

OSCE Mission Guidelines for weekly reporting by field delegations to the Regional Centers exist, but these do not spell out procedures for monitoring, investigating and reporting on individual cases of human rights violations. They simply list particular rights which should be monitored and state that “[t]he aim of reporting is to present a clear and precise picture of the human rights situation in your area. We understand that your time pressures and do not expect (or want) long reports.” Moreover, the Guidelines do not state how to interview rape victims, how to observe trials, how to visit a place of detention, what to do if someone alleges torture, what to do if a dead body is found and what to do if someone indicates that he or she has been threatened.

The OSCE Mission now publishes very brief, one-page weekly reports on its activities, *OSCE at a glance this week*, only some of which involve human right monitoring, and occasional press releases. These weekly reports do not give many details about human rights violations, however. In addition, the OSCE Mission had planned to publish a report on 15 April concerning eviction from houses and respect for property rights and reports on 30 April and 15 June regarding respect for “political” rights, including freedom of speech, the right to assembly and freedom of the press, but these do not appear to have been published as of the beginning of June 1996. The OSCE Mission has been distributing a report (initially weekly, but now every two weeks) to the OSCE Chairman-in-Office, OSCE Secretariat in Vienna, the High Representative, the ECMM and IFOR. Originally, it was not sent directly to ODHIR in Warsaw (although it may have been transmitted by the Secretariat), to the other civilian components, to the press, public or non-governmental organizations. Non-governmental organizations which are aware of their existence were not able to obtain copies directly from the OSCE Mission until the beginning of June 1996, when they were made available to such organizations. As of the date of this paper, it has not been possible to do a thorough analysis of the comprehensiveness and accuracy of these reports.

ECMM. As of the beginning of June 1996, the ECMM appeared to have the largest number of staff with monitoring experience in the country, but they do not monitor human rights exclusively. According to Ambassador Giorgio Franchetti, the Head of the ECMM, as of 4 March 1996, the ECMM had 20 monitoring teams of two to three monitors throughout the country which had been redeployed from Croatia, in addition to monitors remaining in that country. Teams are designed to have geographic areas of responsibility which include both entities to demonstrate their impartiality. In the past, the monitors were largely military officials and diplomats seconded by their governments. Most of the monitors are trained and experienced in monitoring a wide range of issues in Croatia, but they do not have extensive training in human rights monitoring. The ECMM has not accepted the offer by the UN High Commissioner to have the UN Centre for Human Rights provide human rights training designed for work in Bosnia and Herzegovina.

ECMM monitors report on the economic, political (including issues related to the elections), military, humanitarian and human rights situation (including issues related to refugees and displaced persons), but do not investigate cases.¹⁶⁵ To the extent that they report on human rights violations, they follow OSCE Mission guidelines (see above). Indeed, they recently agreed to a suggestion by the OSCE Mission head to be more involved in election activities.¹⁶⁶ In marked contrast to the OSCE Mission reports, which were internal until recently, the bi-weekly ECMM reports covering both Croatia and Bosnia and Herzegovina, *ECMM Humanitarian Activity Bi-Weekly Report*, are widely distributed to governments, intergovernmental organizations and relevant non-governmental organizations. The reports so far consist of a brief introductory summary and reports from ECMM regional offices. These regional office reports are short (generally a few sentences) factual accounts of statements by others (often without any evaluation) and information collected by monitors. Although these regional office reports rarely contain any in-depth analysis or reports of investigations of reported human rights violations, they sometimes contain remarkably frank assessments of the situations in their areas of responsibility.¹⁶⁷ It is not known exactly what type of action the ECMM monitors have taken in response to human rights violations, but one of their main modes of action is to establish confidence building measures as a neutral party between warring factions in close cooperation with other organizations. Whether this is the best response to human rights violations remains to be seen.

EU Administration of Mostar. There is little public information about the EU Administration of Mostar and how it fits into the other human rights monitoring operations. This is one of the areas to be investigated by Amnesty International's mission to Bosnia and Herzegovina in June 1996.

IPTF and UNMIBH. The UNMIBH, established in February 1996, is headed by Iqbal Riza, the Special Representative of the Secretary-General and the Chief of Mission. It consists of three elements, two of which have human rights responsibilities: the IPTF, the Civil Affairs Office and the Mine Action Centre, with responsibility for assisting in mine clearance. As of the beginning of June 1996, there was only one short public report available on the activities of the UNMIBH. Thus, it is difficult to determine how the IPTF, has been implementing its mandate under the peace agreement to advise, monitor and report on law enforcement officials or its program of action.

¹⁶⁵ The account of the ECMM role is drawn from the remarks by Ambassador Pardo at the International Round Table in Vienna on 4 and 5 March 1996 and the two undated fact sheets distributed at that meeting.

¹⁶⁶ Weekly report of the Office of Co-ordinator for the International Monitoring of the elections in Bosnia Herzegovina, No. 1, 8 May 1996, at 1.

¹⁶⁷ See, for example, *ECMM Humanitarian Activity Bi-Weekly Report*, No. 19/96, 10 -23 May 1996 ("The human rights situation in BANJA LUKA remains unacceptable"; "The administrative discrimination against Serbs is still ongoing in the suburbs of Sarajevo").

Initial deployment of the IPTF has been slow. As of the beginning of March 1996, only about 324 of 1721 CIVPOLs had been deployed; the pace picked up in March to about 200 per week arriving in Sarajevo and as of 9 April, there were about 967 in the country. As 30 May, there were 1398. Most are police on active duty or retired police seconded by governments. It is not known how many have CIVPOL experience, but many of the police seconded in the first months were not even professionally qualified. The Secretary-General stated on 29 March 1996 that

“one of the major problems encountered in the deployment of civilian police officers is the availability and professional suitability of police personnel offered by Member States. . . . Although the minimum qualifications required - eight years' policing experience, ability to communicate in English and driving skills - have been specified to Governments, the number of those who failed to meet the criteria and to pass the required elementary tests upon arrival in theatre has risen to alarming levels. . . . Precious time has been lost when deployment was urgently required, and the search for suitable replacements has caused further delay in the full deployment of the Task Force.”¹⁶⁸

Amnesty International has recommended that

“[i]nternational civilian police monitors must themselves have received adequate preparation and training in international human rights and criminal justice standards, and they must be prepared to exemplify and pass on this training to the national security forces they work with. Police monitors should provide technical advice on creating or improving criminal justice and investigation procedures, and they should evaluate and advise on training programs given to national security forces.”¹⁶⁹

These early recruitment problems have now been addressed by having a recruitment team going to the contributing countries and selecting staff by tests there to avoid the cost of having them come all the way to Bosnia and Herzegovina and then fly home when they fail the test.

As of the beginning of May, the only training that the CIVPOLs had received was a one-week training program in Zagreb with a four-hour introduction to human rights and

¹⁶⁸ Report of the Secretary-General pursuant to Resolution 1035 (1995), 29 March 1996, UN Doc. S/1996/210 (reissued for technical reasons in a significantly different form from the first version on 21 March 1996), para. 8.

¹⁶⁹ *Peace-keeping and human rights, supra*, note 1, at 26. On 18 October 1995, Amnesty International called for “experienced and knowledgeable staff in existing international civilian monitoring operations”, such as the UN CIVPOLs, UNHCR and EU monitors, to “be incorporated into any international civilian monitoring presence in Bosnia and Herzegovina”. *The challenge for the OSCE in Bosnia and Herzegovina, supra*, note 1, at 3.

law enforcement standards, but the UN Centre for Human Rights has conducted intensive training programs in human rights and law enforcement standards for CIVPOLs in the country later in May, who will in turn train others. It is not clear how many of the IPTF will be lawyers with experience in trial observation. The IPTF does not plan to train national police forces, but hopes that the UN Crime Prevention and Criminal Justice Division (Crime Division) based in Vienna will be able to undertake this task (see Section IX.B below).¹⁷⁰ Unfortunately, however, the Crime Division had not received adequate funding or authorization to undertake this task by the beginning of June.

Amnesty International has recommended that CIVPOLs “must be prepared to work in close cooperation with any international human rights monitoring component”.¹⁷¹ It is not known what coordination arrangements the IPTF has worked out with High Commissioner, Special Rapporteur on the former Yugoslavia, OSCE, ECMM and other human rights monitors. As envisaged in March, the Civil Affairs component of UNMIBH “is charged with keeping contact with political representatives of the parties, monitoring and reporting on political, humanitarian and human rights issues and liaising with local authorities in this regard, and providing advice on political, human rights and other matters to the police monitors in their areas of deployment.”¹⁷² There are to be 49 UN Civil Affairs Officers working with the IPTF CIVPOLs, but these Civil Affairs Officers will monitor political and humanitarian issues as well as human rights issues. As of 15 March 1996, 30 of these posts had been filled, but it is not clear how many had been deployed. The Civil Affairs Officers will generally be deployed with the IPTF in three regional headquarters, 13 district offices and up to eight field offices. The human rights work will be coordinated by a human rights officer in the UN Civil Affairs Headquarters. A human rights officer will be assigned to each of the three regional headquarters and a member of the Civil Affairs staff will be a liaison with the Human Rights Coordination Centre. The human rights officers “act as a resource for IPTF in the field, provide support for IPTF human rights monitoring and reporting activities and . . . advise the Head of Civil Affairs and the UN Coordinator on human rights issues”.¹⁷³ In addition, the Civil Affairs Officers in the field are to “report on the human rights situation in their areas and work with local authorities as necessary on human rights issues”.¹⁷⁴ Moreover, the Civil Affairs Officers are to support

¹⁷⁰ The UN Crime Division proposed a training program for the IPTF CIVPOLs which it offered to help implement provided it received funding. See *Contribution of the Crime Prevention and Criminal Justice Division to the Implementation of Security Council Resolutions 1035 (1995) of 21 December 1995 and 1037 (1996) of 15 January 1996, International Round Table on Human Rights in Bosnia and Herzegovina*, Vienna 4 and 5 March 1995, *supra*, note 126, at 75-76.

¹⁷¹ *Peace-keeping and human rights*, *supra*, note 1, at 26.

¹⁷² UNMIBH, *Status report on the UN Mission's Human Rights Activities, International Round Table on Human Rights in Bosnia and Herzegovina*, Vienna, 4 and 5 March 1996, *supra*, note 126, at 89.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

the IPTF and provide their good offices for resolving problems among the parties. They also, in coordination with UNHCR, "monitor population movements and assess their political implications", work in coordination with IFOR civil-military cooperation officers, liaise with other international organizations in the field, monitor political events and trends and prepare assessments for the UNMIBH headquarters, which will be shared with the High Representative.¹⁷⁵ As indicated above, these assessments will be of particular importance to the High Representative since he anticipates establishing only a few field offices. None of these assessments has been made public.

It was originally expected that the IPTF mandate will last only about one year, which would not be likely to be sufficient to carry out a program to rebuild law enforcement forces to act in accordance with UN standards. The Secretary-General has stated that, in his view, the IPTF's mandate "should be co-terminus with IFOR's. It is unrealistic to envisage a civilian police operation continuing its work without the framework of security provided by the presence of a credible international military force".¹⁷⁶ Amnesty International has emphasized that "[e]ffective international human rights monitoring and assistance should be continued for as long as necessary, until it is clear that the government concerned is implementing international human rights guarantees effectively."¹⁷⁷ Until the IPTF publishes a program of action and starts issuing frequent, comprehensive public reports about its activities, it will be difficult to assess how it has been implementing its mandate. Major problems facing any reorganization of the police forces are that many of the police have been involved in human rights violations and many soldiers responsible for grave violations of humanitarian law have joined the police. An effective system of screening the police will have to be devised.

UNHCR. The UNHCR does not have an express human rights monitoring function, but its Repatriation Protection Officers will be monitoring and reporting on the personal security of refugees and displaced persons who return, including those who are detained, freedom of movement, return of property and other human rights of refugees and displaced persons. The UNHCR does not, however, see these reports as a substitute for human rights monitoring by others. The limitations of UNHCR monitoring and reporting on human rights violations are discussed below in Section VII.A.

IFOR. Although the peace agreement is silent about the duty of IFOR to report human rights violations it observes or learns about, one of the representatives of IFOR at the International Round Table in Vienna in March 1996 stated that IFOR does report human rights violations it sees to the High Representative. He provided no details concerning such

¹⁷⁵ Report of the Secretary-General pursuant to Resolution 1035 (1995), UN Doc. S/1996/210, para. 9.

¹⁷⁶ *Id.*, para. 43.

¹⁷⁷ Amnesty International's 15-Point Program for Implementing Human Rights in International Peace-keeping Operations, Point 15.

reporting and whether IFOR investigated reports of such violations or raised them with the local authorities. There is no evidence that IFOR is conducting training in human rights or humanitarian law reporting (or in observing the OSCE Code of Conduct) so that IFOR personnel who see evidence of such violations will know what to do (see discussion in Section II.A.2 above). IFOR is not known to have established any institution to monitor potential human rights and humanitarian law violations by IFOR personnel.

Recommendations:

The High Representative, in consultation with the High Commissioner and other members of the Human Rights Task Force and other interested organizations, should develop a human rights monitoring, reporting and reaction program which ensures effective coordination and division of responsibility through the Human Rights Coordination Centre of all organizations carrying out these functions.

The High Representative, as chair of the Steering Board of the Peace Implementation Council, and in cooperation with the High Commissioner, should call upon the international community to provide sufficient numbers of experienced human rights monitors to cover the country effectively as soon as possible who will be able to stay until it is clear that the government is able and willing to implement human rights guarantees effectively without human rights monitoring and assistance.

The High Representative and the High Commissioner should press all organizations conducting human rights and law enforcement monitoring to ensure that all their personnel receive adequate training as soon as possible to carry out their duties effectively.

VI. SEARCHING FOR, ARRESTING AND TRANSFERRING SUSPECTS TO THE TRIBUNAL

“ . . . the decisions, orders and requests of the International Tribunal can only be enforced by others, namely national authorities. Unlike domestic criminal courts, the Tribunal has no enforcement agencies at its disposal: without the intermediary of national authorities, it cannot execute arrest warrants; it cannot seize evidentiary material, it cannot compel witnesses to give testimony, it cannot search the scenes where crimes have been allegedly committed. For all these purposes, it must turn to State authorities and request them to take action. Our Tribunal is like a giant who has no arms and no legs. To walk and work, he needs artificial limbs. These artificial limbs are the State authorities; without their help the Tribunal cannot operate.”

Address of Antonio Cassese, President of the International Criminal Tribunal for the former Yugoslavia to the General Assembly of the United Nations, 7 November 1995

Several of the parties to the peace agreement - and all of the states participating in IFOR - have violated their obligations under international law to search for those responsible for grave breaches of the Geneva Conventions and Additional Protocol I. The extent of cooperation with the **International Criminal Tribunal for the former Yugoslavia (Tribunal)** by IFOR, although significantly improved since December 1996, does not appear to be fully adequate. Some of the parties have failed to cooperate fully with the Tribunal, either by failing to enact the necessary legislation, refusing to permit investigators to operate without restrictions in their territory or refusing to enforce warrants of arrest or other orders of the Tribunal. Few other states - and less than half the states contributing personnel to IFOR - have enacted the necessary legislation permitting their police, prosecution and judicial authorities to cooperate with the Tribunal, such as interviewing witnesses, gathering other evidence and transferring suspects and accused to the Tribunal.

A. The responsibility of IFOR and IFOR personnel to comply with humanitarian law

IFOR has an authorized strength of 60,000 and has extensive intelligence gathering capabilities, including monitoring of radio communications and access to satellite and aerial reconnaissance data. It operates at will throughout the country. Under the peace agreement, “IFOR shall have complete and unimpeded freedom of movement by ground, air, and water

throughout Bosnia and Herzegovina".¹⁷⁸ IFOR has virtually plenary authority to do whatever it sees fit to implement the peace agreement anywhere in Bosnia and Herzegovina. The IFOR Commander

“shall have the authority, without interference or permission of any Party, to do all that the Commander judges necessary and proper, including the use of military force, to protect the IFOR and to carry out the responsibilities listed above in paragraphs 2, 3 and 4 [of Article VI of Annex 1-A], and they shall comply in all respects with the IFOR requirements”.¹⁷⁹

In addition, the parties agree that

“the IFOR Commander shall have the unimpeded right to observe, monitor, and inspect any Forces, facility or activity in Bosnia and Herzegovina that the IFOR believes may have military capability. The refusal, interference, or denial by any Party of this right to observe, monitor, and inspect by the IFOR shall constitute a breach of this Annex and the violating Party shall be subject to military action by the IFOR, including the use of necessary force to ensure compliance with this Annex”.¹⁸⁰

Moreover, if these powers were to prove to be insufficient, the parties have agreed that the North Atlantic Council (NATO's political decision-making body) “may establish additional duties and responsibilities for the IFOR in implementing this Annex”.¹⁸¹ IFOR officials have repeatedly stated that IFOR operates “at will” throughout the country and on 22 May 1996, US State Department spokesperson Nicholas Burns stated that IFOR troops are “everywhere” in the country.¹⁸²

Nevertheless, despite these virtually unlimited powers, as of the beginning of June 1996, IFOR was continuing to refuse to search for persons suspected of grave breaches of the Geneva Conventions of 1949. The US Secretary of State, Warren Christopher, declared following the meeting on 2 June 1996 in Geneva that IFOR would expand its patrols in Bosnia and Herzegovina:

¹⁷⁸ General Framework Agreement, Annex 1-A, Art. VI (9) (a). Moreover, the parties have agreed that “IFOR shall have the right to deploy on either side of the Inter-Entity Boundary line and throughout Bosnia and Herzegovina”. *Id.*, Annex 1-A, Art. VI (1).

¹⁷⁹ *Id.*, Annex 1-A, Art. VI (5).

¹⁸⁰ *Id.*, Annex 1-A, Art. VI (6).

¹⁸¹ *Id.*, Annex 1-A, Art. VI (4).

¹⁸² Carol Giacomo, “U.S. not pressing early sanctions on Serbia”, Reuters, Rtw 05/22 1916, 22 May 1996, reprinted by Tribunal Watch.

“IFOR is now in a position to expand its presence throughout all of Bosnia to establish a safe and secure environment for civilian implementation. Our troops will conduct more visible and more proactive patrols throughout the country. This will improve conditions for freedom of movement and put war criminals at greater risk of apprehension.”¹⁸³

It is not clear to what extent IFOR's policy has changed. Lieut. Co. Rick Scott, a US Defense Department spokesperson said on 2 June 1996, “I do not know of any fundamental changes in the mission.”¹⁸⁴ Shortly thereafter, according to the the US State Department, General George Joulwan, the NATO commander, ordered IFOR to carry out more aggressive patrols, including the city of Pale in the Republika Srpska for the first time.¹⁸⁵

The failure of IFOR to carry out the law enforcement duty to search for persons suspected of grave breaches of the four Geneva Conventions is a clear breach by states contributing troops to IFOR of their obligations under the Geneva Conventions¹⁸⁶ and Security Council Resolution 827. It is also inconsistent with the principles of the peace agreement. It sends a clear message to all those responsible for such crimes that to ensure impunity they need only avoid coming into direct contact with IFOR as long as it is in Bosnia and Herzegovina.

In response to an open letter issued by Amnesty International on 1 March 1996,¹⁸⁷ IFOR denied that it was bound by the Geneva Conventions or Additional Protocol I. On 12 March 1996, Max S. Johnson, Jr., the Legal Adviser to the Supreme Allied Command in Europe (SACEUR), wrote to Amnesty International contending that “neither NATO, nor SHAPE [the Supreme Headquarters of the Allied Powers in Europe] nor IFOR, as an entity,

¹⁸³ Press Statement of Secretary of State Warren Christopher, USIS Geneva Daily Bulletin, 3 June 1996, at 4.

¹⁸⁴ Philip Shenon, “From the U.S., Mixed Signals on Bosnia War Crime Issue”, New York Times, 3 June 1996, at A1.

¹⁸⁵ Reuter, “Nato patrols to cover Pale”, The Times, 5 June 1996, at 15.

¹⁸⁶ Grave breaches of the Geneva Conventions include the following acts if committed against a person or property protected by the Conventions: wilful killing; torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health; extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; compelling a prisoner of war to serve in the forces of the hostile power; wilfully depriving a prisoner of war of the rights of a fair trial; taking of hostages; and unlawful deportation or transfer or unlawful confinement. Geneva Convention No. I, Art. 50; Geneva Convention No. II, Art. 51; Geneva Convention No. II, Art. 130; Geneva Convention No. IV, Art. 147. Additional Protocol I contains a more extensive list of grave breaches (Art. 85).

¹⁸⁷ *Bosnia-Herzegovina - The duty to search for war crimes suspects: An open letter from Amnesty International to IFOR commanders and contributing governments* (AI Index: EUR 63/08/96).

is a party to the 1949 Geneva Conventions or Protocol I thereto". He explained, "IFOR, a multinational force under the operational command and control of NATO, should not be equated to a State in terms of international obligations." He stated that this did "not mean that due regard is not given to international humanitarian law when military forces under NATO command operate", but that IFOR was "not an army of occupation" which was "free to do anything it pleases". IFOR was restricted under the peace agreement to "specific tasks" and had to operate consistently with the sovereignty of Bosnia and Herzegovina. He explained that the role of IFOR concerning detention of suspects had been worked out by the NATO states "after very careful consideration of the political realities in the region. A more aggressive policy might not achieve consensus among the thirty current IFOR participant States and, worse, it could actually compromise IFOR's principal functions". According to some reports,¹⁸⁸ other factors in the decision not to search for persons suspected of grave breaches of the Geneva Conventions are that NATO commanders fear that if they become involved in arresting such suspects that IFOR will not be seen as non-partisan and that their troops will be put at risk.

The contention that IFOR personnel, all of whom are members of armed forces of states which are parties to the Geneva Conventions or successors to states parties, are not bound by those treaties because IFOR is not a party to them is not only wrong as a matter of law, but contrary to the interpretation of these treaties by the International Committee of the Red Cross (ICRC), the collective opinion of states parties and recent practice of the UN in peace-keeping operations. Most of these states are also parties to Additional Protocol I. There are no exceptions to the duties in the Geneva Conventions or Additional Protocol I when "political realities" make implementing humanitarian law inconvenient. Indeed, any other interpretation would lead to absurd results. All any state would have to do to escape from its solemn treaty obligations under the Geneva Conventions and its Additional Protocols would be to participate in a multilateral force and say that the multilateral force was not a party to these treaties.

Peace-keeping forces, including IFOR, must comply with international humanitarian law. The Geneva Conventions are now generally accepted as reflecting customary international law binding upon all states, and, therefore, binding upon intergovernmental organizations, which are established by and composed of states. Moreover, the states parties to the Geneva Conventions have made clear that peace-keeping forces must comply with humanitarian law. The International Conference for the Protection of War Victims (a meeting of states parties to the Geneva Conventions held in September 1993) declared that "peace-keeping forces are bound to act in accordance with international humanitarian law".¹⁸⁹ The ICRC, which is considered as the guardian of humanitarian law, has

¹⁸⁸ Philip Shenon, "From the U.S., Mixed Signals on Bosnia War Crime Issue", *New York Times*, 4 June 1996, at A4 (quoting NATO commanders).

¹⁸⁹ Final Declaration, para. 1.7.

consistently declared that peace-keeping forces must comply with humanitarian law. For example, on 10 November 1961, the ICRC drew the attention of the UN Secretary-General to the need to ensure application of the Geneva Conventions by the forces placed at the UN's disposal.¹⁹⁰ The ICRC "has systematically spoken up for the applicability of international humanitarian law whenever United Nations forces had to resort to force" and it is the position of the ICRC that, as outsiders to an internal armed conflict, forces serving in a UN peace-keeping operation are subject to the rules of international humanitarian law applicable in international armed conflicts.¹⁹¹

Since 1992, the UN has consistently included provisions in its status of forces agreements with host states governing its peace-keeping operations which state:

"Without prejudice to the mandate of [the UN peace-keeping operation] and its international status:

(a) The United Nations shall ensure that [the UN peace-keeping operation] shall conduct its operation in [host country] with full respect for the principles and spirit of the general conventions applicable to the conduct of military personnel. These international conventions include the Four Geneva Conventions of 12 August 1949

¹⁹⁰ Umesh Palwankar, formerly a member of the ICRC's legal division, states:

"Since the UN as such, is not a party to the Conventions, the ICRC considers that each State remains individually responsible for the application of these treaties whenever it provides a contingent for a PKF [peace-keeping force]. In consequence, the State should do what is necessary, especially by issuing appropriate instructions to the troops before they are posted abroad.

The memorandum also stressed that by virtue of Article 1 common to the four Conventions, which also requires the High Contracting Parties to ensure respect for the Conventions, the States providing contingents '*should each, where necessary, use their influence to ensure that the provisions of humanitarian law are applied by all the contingents concerned as well as by the unified command.*'"

Umesh Palwankaar, "Applicability of international humanitarian law to United Nations peace-keeping forces", *International Review of the Red Cross*, No. 294, 227, 230 (May-June 1993). Amnesty International has stated: "All international peace-keeping forces must abide by the highest standards of international humanitarian and human rights law, especially where they have enforcement authority." *Peace-keeping and human rights, supra*, note 1, at 28.

¹⁹¹ Antoine Bouvier, "Convention on the Safety of United Nations and Associated Personnel": Presentation and analysis", *International Review of the Red Cross*, No. 309 at 638, 651-652 (November-December 1995). See, for example, the statements by the ICRC to the Fourth Committee of the UN General Assembly: 13 November 1992; 29 November 1993; 18 November 1994; 16 November 1995 ("The ICRC has always taken the view that all the provisions of humanitarian law are applicable when United Nations contingents resort to force . . .").

and their Additional Protocols of 8 June 1977 and the UNESCO Convention of 14 May 1954 on the Protection of Cultural Property in the event of armed conflict;

(b) . . . [The UN peace-keeping operation] and the Government of [host country] shall therefore ensure that members of their respective military personnel are fully acquainted with the principles and spirit of the above-mentioned international instruments.”

Status of forces agreements with similar clauses have been reached with Angola, Croatia, Haiti, the Former Yugoslav Republic of Macedonia and Rwanda.

B. IFOR and states contributing personnel to IFOR have a duty to search for and arrest those responsible for grave breaches of the Geneva Conventions

As stated in Amnesty International's 1 March 1996 open letter, IFOR and parties to the General Framework Agreement on Peace in Bosnia and Herzegovina (Peace Agreement) have a duty under the Geneva Conventions, Security Council Resolution 827 of 25 May 1993 and the peace agreement to carry out their law enforcement responsibilities to search for, arrest and transfer to the International Criminal Tribunal for the former Yugoslavia (the Tribunal) all persons who have been indicted by the Tribunal.

In that paper, Amnesty International reminded each state contributing personnel to IFOR that it was obliged under the Geneva Conventions “to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts”, the courts of another state or an international criminal court.¹⁹² This obligation applies in all cases, not just when the Tribunal or a national court has indicted an accused or asked for a suspect to be provisionally arrested. Thus, the duty to search for people suspected of having committed or having ordered to be committed such grave breaches is independent of any action taken by the Tribunal or a national court. The Geneva Conventions expressly provide that states parties to the Geneva Conventions may not absolve themselves of any liability which they

¹⁹² Geneva Convention No. I, Art. 49; Geneva Convention No. II, Art. 50; Geneva Convention No. III, Art. 129; Geneva Convention No. IV, Art. 146. The official commentary makes clear that the drafters of the Geneva Conventions envisaged that states could satisfy their duty to bring to justice those responsible for grave breaches by transferring suspects to an international criminal tribunal:

“[T]here is nothing in the paragraph [Geneva Convention No. I, Art. 49, para. 2] to exclude the handing over of the accused to an international penal tribunal, the competence of which is recognized by the Contracting Parties. On this point the Diplomatic Conference declined expressly to take any decision which might hamper future developments of international law.”

ICRC, *I Commentary on the Geneva Conventions of 12 August 1949*, 366 (1952).

or other states parties have incurred in respect of grave breaches.¹⁹³ The official commentary by the International Committee of the Red Cross (ICRC) makes clear that this common provision removes any doubt that the duty to prosecute and punish the authors of grave breaches is "absolute".¹⁹⁴

The open letter also reminded states contributing personnel to IFOR, which has virtually plenary authority to implement Annex 1-A of the peace agreement and has repeatedly stated that it operates at will throughout Bosnia and Herzegovina, that the refusal to search for and arrest persons who had been indicted by the Tribunal violated their legal obligations under Security Council Resolution 827 establishing the Tribunal "to cooperate fully with the International Tribunal" and to "take any measures necessary" to implement the resolution, including compliance with Tribunal orders or requests for assistance. The Security Council in Resolution 1031 of 15 December 1995 and in its Presidential Statements in April and May 1996 reaffirmed that all states must cooperate fully with the Tribunal in accordance with Resolution 827.¹⁹⁵ The members of the Security Council understood when adopting Resolution 1031 that the resolution and the peace agreement gave IFOR the authority to detain and transfer persons indicted by the tribunal.¹⁹⁶

Moreover, as indicated in the open letter, the failure to search for and arrest persons suspected of ordering or committing grave breaches of the Geneva Conventions is inconsistent with the principles of the peace agreement. IFOR is obliged under the peace agreement "to take such actions as required" to ensure compliance with Annex 1-A of the peace agreement.¹⁹⁷ That Annex requires the parties to "provide a safe and secure environment for all persons in their respective jurisdictions, by maintaining civilian law enforcement agencies operating in accordance with internationally recognized standards and with respect for internationally recognized human rights and fundamental freedoms, and by taking such other measures as appropriate".¹⁹⁸ It also requires the parties "to cooperate fully with any international personnel, including investigators" of the Tribunal.¹⁹⁹ As discussed below, the authorities in both the Federation of Bosnia and Herzegovina and the Republika Srpska have failed to cooperate fully with the Tribunal and have failed to surrender persons

¹⁹³ Geneva Convention No. I, Art. 51; Geneva Convention No. II, Art. 52; Geneva Convention No. III, Art. 131; Geneva Convention No. IV, Art. 148.

¹⁹⁴ ICRC, *I Commentary on the Geneva Conventions of 12 August 1949*, 373 (1952).

¹⁹⁵ UN Doc. S/PRST/1996/15; S/PRST/1996/23.

¹⁹⁶ See, e.g., statements of the Ambassadors of the United States, UN Doc. S/PV.3607 at 20, and the United Kingdom, UN Doc. S/PV.3607 at 8.

¹⁹⁷ General Framework Agreement, Annex 1-A, Art. I (2) (a).

¹⁹⁸ *Id.*, Annex 1-A, Art. II (3).

¹⁹⁹ *Id.*, Annex 1-A, Art. II (4).

indicted by the Tribunal, including those indicted for grave breaches of the Geneva Conventions.

C. IFOR should provide adequate security for grave sites to ensure that those responsible for grave crimes brought to justice and families of the "disappeared" and "missing" can learn the fate of their loved ones

The Expert on missing persons has warned that "[w]ith the strong media interest and alleged attempts of disturbance of mass graves, the unrestricted access to these sites may result in tainting evidence and therefore hampering the efforts of the war crimes investigators' efforts as well as the efforts of those searching for missing persons. Consequently, mass graves have to be located, guarded and excavated without delay, in a professional, impartial and well-coordinated way."²⁰⁰ In its open letter on 1 March 1996, Amnesty International called upon IFOR to ensure that grave sites where victims of extrajudicial executions were believed to be buried were protected. IFOR's response to Amnesty International was to state that it did not have adequate resources to provide the necessary security, but it did not say that it would seek additional resources to permit it to do so. In his letter to Amnesty International dated 12 March 1996, the Legal Advisor to SACEUR stated that IFOR did not have the resources to guard all 3,000 grave sites, but would entertain requests to guard particular sites if the local commanders decide that "such support can be given when balanced against other mission requirements".

As Amnesty International stated in its 1 March 1996 paper, IFOR is obliged under the peace agreement to establish a durable cessation of hostilities, which includes ensuring that the parties "cooperate fully with any international personnel including investigators . . . including facilitating free and unimpeded access and movement and by providing such status as is necessary for the effective conduct of their tasks".²⁰¹ On 24 November 1995, Tribunal President Cassese and Prosecutor Goldstone have stated that they "trust the Agreement will be fully and rigorously implemented by all the Parties concerned" and that "NATO forces, as well as the competent authorities, will render appropriate assistance to the Tribunal's officials to enable them to carry out their mission". IFOR is now providing logistical support and security for Tribunal investigators to visit grave sites and other locations, as well as aerial surveillance of grave sites,²⁰² but so far it has not agreed to provide round-the-clock security for all grave sites or even a substantial number of grave

²⁰⁰ Report submitted by Mr. Manfred Nowak, expert member of the Working Group on Enforced or Involuntary Disappearances, responsible for the special process, pursuant to paragraph 4 of Commission resolution 1995/35, 4 March 1996, UN Doc. E/CN.4/1996/36, para. 1 (Report of the Expert on missing persons).

²⁰¹ General Framework Agreement, Annex I-A, Art. II (4).

²⁰² Letter dated 22 May 1996 from the Secretary-General of the North Atlantic Treaty Organization addressed to the Secretary-General, UN Doc. S/1996/375, at para. 9.

sites. It has not announced a policy applicable to all IFOR commanders or proposed alternative plans of action which would provide security for grave sites, for example, by dividing responsibility between IFOR and local police forces, accompanied by members of the International Police Task Force (IPTF), so that the international community could allocate appropriate resources to IFOR and others to ensure adequate security.

Major Daniel Zajac, who commands American soldiers in IFOR providing security for Tribunal investigators, has reportedly stated that the investigators believed that grave sites where civilians killed after the capture of Srebrenica are suspected of being buried have been disturbed. This statement and other reports of partial destruction of similar grave sites indicate that such aerial surveillance and limited ground security for grave sites where investigators are operating will not adequately protect grave sites. Amnesty International stated that it was essential for IFOR and the international community to ensure that there is adequate security for grave sites, other physical evidence and witnesses.

D. It is time for IFOR to fulfil its responsibilities

Amnesty International renews its call upon IFOR commanders and states contributing personnel to IFOR to search for, arrest and transfer persons suspected of committing or ordering grave breaches and other crimes within its jurisdiction to the Tribunal. It is unacceptable to the international community to read that IFOR personnel have encountered persons indicted by the Tribunal, have taken no steps to arrest them and have no plans to search for any of these persons, despite the presence of up to 60,000 personnel and hundreds of intelligence agents monitoring radio communications. Amnesty International also urges that IFOR provide the necessary security for all grave sites in Bosnia and Herzegovina where persons who were victims of grave breaches and other serious crimes under international law may be buried. To the extent that IFOR does not have adequate resources to do so, it should propose alternative plans of action, for example, combined operations involving IFOR, national police, accompanied by IPTF personnel and others which would provide the necessary security to ensure that evidence is preserved. It should work with the High Representative in developing such a plan of action as a matter of priority and jointly seek any additional resources from the international community which may be necessary to ensure that evidence of such crimes is preserved so that those responsible can be brought to justice.

E. The failure of some of the parties to cooperate with the Tribunal

All the parties to the peace agreement are required to cooperate fully with the Tribunal.²⁰³
The Secretary-General has declared

“ . . . I must reiterate that peace cannot be durable unless it is accompanied by justice. Following one of the most bitter wars in Europe since 1945, with unspeakable atrocities against civilians reaching the level of crimes against humanity, those individuals indicted by the International Tribunal for the former Yugoslavia must be brought to trial. Peace with justice is an overriding goal of the international community, and it is the legal and moral duty of all signatories to the Peace Agreement to assist in its attainment.”²⁰⁴

As of the beginning of May 1996, the parties' cooperation has been limited, but slowly increasing in some respects. However, it is a matter of serious concern that, in clear violation of the peace agreement and their obligations under Security Council Resolution 827, the Bosnian Serb authorities, the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Croatian authorities and the Bosnian Croat authorities have all failed to transfer persons who have been indicted to the Tribunal.

Bosnia and Herzegovina has enacted legislation permitting its authorities to cooperate with the Tribunal,²⁰⁵ permitted Tribunal investigators to operate freely, cooperated on exhumations, deferred prosecutions at the request of the Tribunal and provisionally arrested and transferred suspects to the Tribunal. Nevertheless, the Tribunal Prosecutor has encountered difficulties in obtaining information concerning Muslim suspects, including delays in providing information, receiving incomplete information or not receiving requested information. On 2 May 1996, a spokesperson for the Tribunal announced that

²⁰³ In addition to their obligation under Security Council Resolution 827 (1993), there are several provisions in the peace agreement obliging the parties to cooperate with the the Tribunal. General Framework Agreement, Art. IX; Annex 1-A, Arts II (4), IX (1) (g); Annex 4, Constitution of Bosnia and Herzegovina, Art. II (8); Annex 6, Art. XIII (4).

²⁰⁴ Report of the Secretary-General pursuant to resolution 1035 (1995), UN Doc. S/1996/210 (reissued for technical reasons), para.44.

²⁰⁵ The legislation falls short of the guidelines of the Tribunal. For example, the legislation does not contain a provision requiring all authorities to cooperate with the Tribunal, require that suspects or accused persons be informed of their rights at the time of arrest, require notice to the Prosecutor before an arrest, authorize the Prosecutor to be present at the time of arrest, require witnesses to cooperate and does not grant immunity to persons in transit to the Tribunal. Decree with Force of Law on Deferral upon Request by the International Tribunal, 10 april 1995, Official Gazette of the Republic of Bosnia and Herzegovina, No. 12, p. 317; Tentative Guidelines for National Implementing Legislation of United Nations Security Council Resolution 827 of 25 May 1993. It is also unclear whether the deferral procedure is subject to the restrictions of extradition procedures (see Article 11) and some of the problems identified may be addressed by other national legislation (see Article 2).

Bosnia and Herzegovina had arrested two Bosnian Muslims who had been indicted by the Tribunal on 22 March 1996 for crimes allegedly committed against Bosnian Serbs at the Čelebići prison camp at Konjic in central Bosnia in 1992 and that it would surrender the accused shortly. Thus, it became the first party to the peace agreement to have executed an arrest warrant issued by the Tribunal. On 15 May 1996, the Supreme Court of Sarajevo granted permission for the accused to be transferred to the Tribunal and they are expected to be transferred shortly.

Croatia has permitted Tribunal investigators to operate on its territory since 1994 and has enacted necessary legislation in April 1996. A review of that legislation, however, indicates that it does not satisfy Tribunal guidelines in a number of important respects.²⁰⁶ Moreover, despite repeated requests, the Croatian authorities have not yet provided all the information the Tribunal Prosecutor has demanded concerning crimes allegedly committed by Croatians. One Croatian has surrendered himself voluntarily to the Tribunal, but two others who have been indicted have not yet been transferred to the Tribunal. The Tribunal's relations with the Federation authorities are conducted through the Government of Bosnia and Herzegovina, but evidence indicates that Bosnian Croat authorities in the Federation have refused to cooperate with requests for assistance by the Tribunal. The Bosnian Croat authorities are widely regarded as having considerable influence with the Croatian Government.

The Bosnian Serb authorities have recently permitted investigators to operate in territory under their control. The two leaders of the Republika Srpska, the President, Radovan Karadžić, and the commander of Bosnian Serb forces, General Ratko Mladić, both of whom have been indicted by the Tribunal, however, remain in power, despite the peace agreement and the authorities have refused to surrender any of the Bosnian Serbs in the Republika Srpska who have been indicted by the Tribunal.

Draft legislation permitting cooperation by the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro) with the Tribunal has been prepared by the opposition, but Parliament has not enacted it and, in contravention of Tribunal guidelines, it would give national authorities discretion to refuse transfer of accused to the Tribunal. Although it has repeatedly promised to do so, the Federal Republic of Yugoslavia (Serbia and Montenegro) has not yet permitted the Tribunal to open an office or its investigators to operate freely in its territory. On 12 March 1996, it permitted the Tribunal Deputy

²⁰⁶ For example, it does not require accused persons to be informed of their rights, require notice to the Prosecutor prior to an arrest or for the Prosecutor to be present at the arrest, require notice to the Prosecutor of the inability to execute an arrest warrant, provide for cooperation concerning witnesses, expressly provide for *all* forms of judicial assistance or grant immunity to persons in transit through Croatian territory to the Tribunal. See Constitutional Act on the Co-operation of the Republic of Croatia with the International Criminal Tribunal; Tentative Guidelines for National Implementing Legislation of United Nations Security Council Resolution 827 of 25 May 1993.

Prosecutor and investigators to interview two witnesses to the Srebrenica massacre who were in detention and later authorized the transfer of these witnesses to the Tribunal. As of 24 April 1996, however, it had “not executed a single arrest warrant issued to it” and, as a result of its failure to execute arrest warrants against three persons who had been charged with the murder of 260 civilians and unarmed men following the fall of the city of Vukovar in eastern Croatia in November 1991, the President of the Tribunal, Antonio Cassese, brought this non-compliance with the Tribunal by the Federal Republic of Yugoslavia (Serbia and Montenegro) to the attention of the Security Council so that it could “decide upon the appropriate response”.²⁰⁷ On 8 May 1996, the President of the Security Council issued a statement on behalf of the Council declaring that it “deplores the failure to date of the Federal Republic of Yugoslavia to execute the arrest warrants issued by the Tribunal against the three individuals referred to in the letter of 24 April 1996, and calls for the execution of those arrest warrants without delay”.²⁰⁸

The commander of Bosnian Serb forces, General Ratko Mladić, and Bosnian Serb Colonel Veselin Šljivančanin, both of whom have been indicted by the Tribunal, attended a public funeral in Belgrade on 21 May 1996, but were not arrested by the authorities. On 22 May 1996, President Cassese wrote to the President of the Security Council, stating that the fact that General Mladić had “not been arrested by the authorities of the Federal Republic of Yugoslavia is further evidence of the blatant failure of that State to comply with its clear and overriding legal obligation to execute orders of this Tribunal”.²⁰⁹ On 28 May 1996, in a statement to the press, the President of the Security Council said that the Council “deeply deplore[s] the continued failure of the government of the Federal Republic of Yugoslavia (Serbia and Montenegro) to cooperate with the Tribunal”, that “[t]his failure cannot be justified” and that “compliance with the requests of the Tribunal constitutes an essential aspect of implementing the peace agreement”.²¹⁰ The Security Council did not end the suspension of sanctions against that state, however.

²⁰⁷ Letter dated 24 April 1996 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991 addressed to the President of the Security Council, UN Doc. S/1996/319. The above account of cooperation by the parties is based largely on *Quatre mois après Dayton, Rapport du Président du Tribunal Pénal International pour l'ex-Yugoslavie (TPI) sur la coopération des parties avec TPI au regard de l'accord de Dayton (14 décembre - 19 avril 1996)*, La Haye, 19 avril 1996.

²⁰⁸ UN Doc. S/PRST/1996/23.

²⁰⁹ President Cassese reports to the Security Council on the continuing violation by the FRY of its obligation to cooperate with the ICTY, 23 May 1996, CC/PIO/075-E. UN Doc. S/1996/364.

²¹⁰ “UN Security Council “deplores” Belgrade’s lack of cooperation”, AFP 290017, 28 May 1996.

F. The failure of other states to enact legislation on cooperation with the Tribunal

As of 1 June 1996, only 17 of the 185 UN Member States and one UN Observer were known to have enacted legislation permitting cooperation with the Tribunal.²¹¹ Three states have informed the Tribunal that no legislation was necessary to permit cooperation.²¹² Only eleven of the 16 NATO states contributing personnel to IFOR and two of the 16 non-NATO states have enacted legislation.²¹³ Several states have informed the Tribunal that they are preparing legislation permitting cooperation with the Tribunals or are known to be doing so.²¹⁴

All UN Member States are obliged under the UN Charter to implement resolutions of the Security Council when it is operating under Chapter VII to maintain or restore international peace and security. On 25 May 1993, the Security Council, acting under Chapter VII, established the Tribunal as a measure to "contribute to the restoration and maintenance of peace".²¹⁵ In that resolution, it decided that

"all States shall cooperate fully with the International Tribunal and its organs in accordance with the present resolution and the Statute of the International Tribunal and that consequently all States shall take any measures necessary under their domestic law to implement the provisions of the present resolution and the statute, including the obligations of States to comply with requests for assistance or orders issued by a trial chamber under Article 29 of the Statute [specifying orders which Trial Chambers may issue]."

The failure of states to enact such legislation severely limits the effectiveness of the Tribunal. In some cases, the absence of legislation has prevented or delayed the transfer of suspects to the Tribunal. In other cases, it has provided those suspected of genocide, other

²¹¹ The 17 UN Member States are: Australia, Belgium, Bosnia and Herzegovina, Croatia, Denmark, Finland, France, Germany, Iceland, Italy, the Netherlands, New Zealand, Norway, Spain, Sweden, the United Kingdom and the United States. Switzerland, an Observer, has also enacted legislation.

²¹² Republic of Korea, Singapore, Venezuela.

²¹³ The 16 NATO states contributing personnel to IFOR are: *Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, the United Kingdom and the United States.* The 16 non-NATO states contributing personnel to IFOR are: Austria, the Czech Republic, Egypt, Estonia, *Finland*, Hungary, Jordan, Latvia, Lithuania, Malaysia, Morocco, Poland, Romania, the Russian Federation, *Sweden* and the Ukraine. States in italics have enacted legislation.

²¹⁴ Austria, Canada, Czech Republic, Hungary, Luxembourg, the Former Yugoslav Republic of Macedonia, Poland, Romania, Slovak Republic, Slovenia, Sri Lanka, Tanzania, Thailand, Turkey and Uganda.

²¹⁵ SC Res. 827 (1993).

crimes against humanity and serious violations of humanitarian law with a haven from justice.

Recommendations:

IFOR and all states contributing personnel to IFOR should fulfill their duty under international law to search for, arrest and bring to justice in their own courts persons suspected of grave breaches or transfer them to the Tribunal.

All states should cooperate with the Tribunal, as required by Security Council Resolution 827, by permitting Tribunal investigators to operate freely in their territory to interview witnesses in confidence, with assurances of their safety, and to gather other evidence and by complying with arrest warrants and other orders of the Tribunal, including orders to transfer witnesses, suspects or accused to the Tribunal.

All states, including states contributing personnel to IFOR, should take effective steps to protect witnesses and other evidence, such as grave sites.

All states which have not yet done so should enact legislation which satisfies Tribunal guidelines permitting their authorities to cooperate with the Tribunal.

All UN Member States should ensure that the General Assembly allocates sufficient resources to the Tribunal and all states should second needed staff, provide necessary equipment and donate funds to the voluntary fund for the Tribunal.

VII. ENSURING THE SAFE RETURN OF REFUGEES AND INTERNALLY DISPLACED PERSONS AND FULL RESTITUTION FOR DELIBERATE DESTRUCTION OF THEIR HOUSES

“Demonstrated respect for human rights must be a precondition to any initiative for the large-scale return of Bosnians back to their country.”

Elisabeth Rehn, United Nations Special Rapporteur on the former Yugoslavia, Report to the United Nations Commission on Human Rights on 14 March 1996

The first six months since the peace agreement was initialled have not been encouraging. The numbers of refugees and displaced persons are enormous. Governments which have

granted them temporary protection²¹⁶ are pressing for their early return, but there are few places in Bosnia and Herzegovina where the safety of refugees and displaced persons can be assured. Despite attempts by the UNHCR to evaluate the conditions in many parts of the country, this effort is proceeding slowly and without sufficient numbers of personnel experienced or trained in human rights monitoring. As stated above in Section V.B, other human rights monitors are unable to cover more than a fraction of the country and are, for the most part, lacking in human rights monitoring experience or training. The Property Commission has not yet adopted its rules of procedure and the remedies available to refugees and displaced persons for destruction of their houses are inadequate.

A. Facilitating the right to return by guaranteeing that it is safe to do so

The situation with regard to the return of refugees and displaced persons to Bosnia and Herzegovina is complex. On the one hand, it is clear that those who wish to do so must be able to return to their homes, otherwise their unlawful expulsion from their territories, which was so apparent during the conflict, will have been legitimized *de facto*.²¹⁷ On the other hand, forcing people to return to areas where they may be at risk of serious human rights violations, or more generally rushing a repatriation program before it is clear that the threat of such abuses is no longer present, must be avoided. The objective of early return spelled out in the peace agreement in practice conflicts with the essential objective of safe return. The UNHCR has stated that a fundamental change in circumstances necessary before the termination by the country of asylum of refugee status should be based on sufficient time elapsing since the fundamental changes occurred to the situation in the country of origin for it to be considered stable²¹⁸. Amnesty International believes that no one should be expected to return to Bosnia and Herzegovina until the conditions there are safe for them to do so. If displaced persons or refugees spontaneously decide to return under pilot schemes of UNHCR, that is their right. However, those granted temporary protection, and who have not had the opportunity to an individual determination of their asylum claim, must not be coerced into returning.

In 1992, responding to the mass influx of refugees from the former Yugoslavia, refugees were admitted to host states (mostly European) under the status of temporary

²¹⁶ Temporary protection was a form of protection offered mainly by European states in 1992 as a way of responding to the mass influx of asylum-seekers from the former Yugoslavia. While its precise nature varied from state to state, it generally allowed asylum-seekers permission to remain and suspended any individual determination of their claims to asylum.

²¹⁷ Article 13 (2) of the Universal Declaration of Human Rights and Article 12 (4) of the International Covenant on Civil and Political Rights (ICCPR) recognize the right to leave and return to one's country. Article 33 of the 1951 Convention relating to the Status of Refugees prohibits the forcible return to one's country of origin when there is a risk of persecution on return.

²¹⁸ Report of the High Commissioner for Refugees, 30 May 1991, UN Doc. E/1991/65, at para.18.

protection. This form of protection was meant to last as long as the conflict in former Yugoslavia rendered it impossible for refugees to return home in safety or until other measures were taken to resettle permanently those forced to flee. Those asylum seekers afforded protection in 1992 were for the most part, granted temporary protection status and not refugee status under the 1951 Convention relating to the status of Refugees. In most cases, they were not permitted to pursue an individual claim to asylum. In effect, they were subject to a general decision that they were entitled to protection on a temporary basis, and it was thus deemed unnecessary to allow for decisions on individual cases. Therefore, because they have not had this individual opportunity to have their claim considered, no person should be *forcibly* returned to Bosnia and Herzegovina until he or she has had access to a fair and satisfactory asylum procedure in the host state and it has been determined that he or she will not be at risk of serious human rights violations if returned.

It is vital that temporary protection be lifted only when conditions in Bosnia and Herzegovina, as well as in Croatia and the Federal Republic of Yugoslavia, are durably safe so that it will be feasible for most refugees to return in safety and dignity, as described below. UNHCR has urged host countries to proceed cautiously in lifting temporary protection status.

Conditions in most parts of the country are unsafe for refugees and displaced persons. As documented in Section V.A above, as of the beginning of June 1996, there was no evidence to suggest that it was safe for refugees or displaced persons to return or that they will be able to do so in the foreseeable future. If refugees decide to return voluntarily to their homes of origin, they should retain the opportunity to return to their host state if return proves not feasible or the human rights situation in Bosnia and Herzegovina worsens.

The immediate confidence building measures stipulated in Annex 7 of the peace agreement have not been undertaken. Discriminatory administrative practices still exist. Incitement of ethnic or religious hostility or hatred may have lessened, but is still evident in the rhetoric of parties. Acts of retribution still occur, as evidenced by attacks in March and April 1996 against those few Serbs who remained in Ilidza, Sarajevo. This further demonstrates that the protection of ethnic or minority populations cannot yet be guaranteed, while the removal and prosecution of those responsible for serious human rights abuses has been limited. The Special Rapporteur on the former Yugoslavia has stated that although there has been a "reduction in gross violations of international human rights and humanitarian law in Bosnia and Herzegovina", "there are still serious threats in the country to the rights to life and personal security" and "there are considerable risks involved for persons from any of the three major national groups travelling through areas controlled by nationals of another".²¹⁹

²¹⁹ Report of the Special Rapporteur on the Former Yugoslavia, 14 March 1996, UN Doc. E/CN.4/1996/63, paras 50, 52 and 54.

As evidenced in the scenes of looting and arson in Sarajevo in February and March 1996, the mass exodus thereafter of Serbs and attacks on those Serbs who remained after the transfer of Serb municipalities to Federation jurisdiction, the conditions in Bosnia and Herzegovina, particularly as they relate to minorities, do not yet constitute the durable and substantial improvement that is a prerequisite for safe return. Until such a durable and substantial improvement can be demonstrated, Amnesty International believes that discussion as to the implementation of plans to repatriate refugees or displaced persons is premature.

As documented in Section V.A. above, attempts by **refugees** and **internally displaced persons** to return home to areas in both the Federation and the Republika Srpska have been blocked either by local authorities or hostile local populations. In the words of UNHCR spokesperson Ry Ryan, "Freedom of movement is the big enchilada for UNHCR and we're getting next to nowhere."²²⁰ Moreover, only two of the four UNHCR pilot projects for the return of **internally displaced persons** have been successful as of the end of May 1996. See discussion below in Section VII.B.

Amnesty International believes that the emphasis in discussions on the return of refugees and displaced persons needs to be the conditions in the relevant area. The parties have repeatedly failed to honour their commitments in full, the pace of civilian institution building has been slow, there is little reliable and accessible information concerning the conditions in Bosnia and Herzegovina and the bodies charged with overseeing the implementation of the peace agreement do not appear to have a structured, coordinated plan. The different bodies charged with implementing the peace agreement seem intent on interpreting their mandate restrictively. Rehabilitation and reconstruction programs, themselves necessary confidence-building measures, have not been undertaken and the world has witnessed the scenes of utilities and homes being destroyed by arson in Sarajevo, while members of IFOR and the IPTF looked on.

Refugees from other republics of former Yugoslavia. The estimated 525,000 Bosnian refugees in other republics of the former Yugoslavia must receive the same level of protection as that afforded to refugees in host states, as discussed above. If the regime of temporary protection for Bosnians is to be lifted in the future, there will be consequences for refugees from the Federal Republic of Yugoslavia (Serbia and Montenegro) and Croatia. The provisions of the peace agreement do not apply to conditions in each of these states. If temporary protection is to be lifted for Bosnian refugees, it should not automatically be lifted for refugees from the Federal Republic of Yugoslavia (Serbia and Montenegro) and Croatia at the same time unless it is durably safe for refugees to return to these countries. Some observers have suggested that this phased return could lead to increased ethnic

²²⁰ Tom Warrick, "Other Yugoslavia Tribunal News", Tribunal Watch, 28 April 1996.

divisions because priority would be given to regions where the refugees were part of the majority.

The right to voluntary return. Before temporary protection is lifted, any return must be voluntary.²²¹ Host governments should comply with international standards governing **repatriation of refugees** which explicitly require that repatriation is voluntary, safe and individual in character. The requirement of voluntariness is supported by the principle of *non-refoulement* as enshrined in Article 33 of the 1951 Convention relating to the Status of Refugees and in the "cessation clauses" in Article 1C of the Convention. The cessation clauses provide that a refugee's right to protection ceases when the refugee "voluntarily re-avails" himself or herself of the protection of his or her country or "voluntarily re-establishes" himself or herself in his or her country. The requirement of voluntariness is more explicitly set out in Conclusion 40(b) of the Executive Committee of the UNHCR, which provides that:

"The repatriation of refugees should only take place at their freely expressed wish; the voluntary and individual character of repatriation of refugees and the need for it to be carried out under conditions of absolute safety, preferably to the place of residence of the refugee in his country of origin, should always be respected."

Once temporary protection has been lifted, enabling most refugees to return to their homes in safety because "the circumstances in connection with which he/[she] [would have] been recognized as a refugee have ceased to exist", any individual from the group who expresses a wish not to return because of fear of suffering serious human rights violations, should have access to an asylum procedure. Only after access to and rejection under a fair and satisfactory asylum procedure, can forcible return of those refused asylum be considered.

Each refugee or displaced person must be able to make a free and informed decision to return with no pressure of any kind being brought to bear to influence their decision. Factors indicating such a free and informed decision to return might include the provision of reliable, objective and impartial information on conditions in areas of prospective return; the responsibility and authority of the receiving state or entity to ensure that no returnee is harassed, threatened, detained, discriminated against or otherwise put in danger; effective and enforceable guarantees to encourage return; the responsibility of the host state not to

²²¹ Since any plans for repatriation must be voluntary until conditions in Bosnia and Herzegovina are durably safe for temporary protection to be lifted in host states, it is vital that any spontaneous returns are truly spontaneous. In the context of the proposed plans for repatriation to Bosnia and Herzegovina, Amnesty International understands *spontaneous return* to mean one in which an individual refugee decides of his or her own volition, to return to his or her country and that no outside agency is involved, while a *voluntary return* would occur when a refugee voluntarily decides to return to his or her country and his or her safety is guaranteed by an outside agency, usually UNHCR.

return refugees against their will; as well as the cooperation of both host state and country of origin to continue to participate fully with UNHCR in the process of repatriation and particularly in continuing to grant UNHCR free and unhindered access to all returnees for the purpose of monitoring.

Special attention should be paid to such cases as individuals coming from areas where they are in the minority, individuals in mixed marriages and conscientious objectors to military service. In particular, any prospective return of ethnic Albanians, Slav Muslims or ethnic Hungarians to the Federal Republic of Yugoslavia (Serbia and Montenegro); Serbs to Croatia; or Bosnian Muslims from the territory once controlled by the forces of Fikret Abdić, to Bosnia and Herzegovina, needs to be monitored particularly closely.

The **relocation of internally displaced persons** must also be voluntary. Although Article 33 of the 1951 Convention relating to the status of Refugees expressly applies to refugees, who are by definition outside their country, Amnesty International believes that persons displaced within their own country must also be protected against forcible return to areas of their country where they would be at risk. Such protection is a necessary consequence of their right to internal free movement and choice of residence in their own country, as guaranteed by Article 12 (1) of the ICCPR.

The provision of reliable, objective and impartial information on conditions on the ground in areas of prospective return. The monitoring and reporting of conditions needs to be improved. At the moment, as a result of the limited number of human rights monitors, there is a gap in reporting on the human rights situation in Bosnia and Herzegovina and UNHCR sees its protection activities in Bosnia as being "to promote, encourage and facilitate the voluntary movements of refugees and displaced persons in conditions of safety to their homes". Given UNHCR's focus on promotion, encouragement and facilitation of voluntary repatriation it would seem that an independent source of information would enhance confidence in any decisions refugees make with respect to the conditions of return.

In order to enable refugees and displaced persons to make an informed decision, UNHCR has undertaken to publish periodic Repatriation Information Reports on the situation in different municipalities. As of the end of May 1996, three sets of Reports had been published, dealing with 26 municipalities: Bosanski Petrovac, Brčko, Breza, Čelinac, Glamoč, Gračanica, Kakanj, Konjic, Kupres, Laktaši, Livno, Olovo, Prnjavor, Sanski Most, Visoko, Zavidovići, Bosanska Krupa, Donji Vakuf, Goržade, Ključ, Lukavac, Maglaj, Modrica, Novi Grad, Ribnik and Vitez. Each Information Report is to be compiled by Information Officers in UNHCR Field Offices throughout Bosnia. Each report will cover

a specific list of topics.²²² There are estimated to be over 100 municipalities in the Federation of Bosnia and Herzegovina. UNHCR plans eventually to cover all municipalities in its reports and to this end, additional Information Officers have been sent to UNHCR Field Offices this year. According to UNHCR, the Reports are now routinely being translated into Serbo-Croatian and German. However, the reports to date include municipalities in Bosnia and Herzegovina which are relatively calm at present and do not necessarily reflect the conditions in Bosnia and Herzegovina generally. In addition, they do not include an assessment of whether human rights violations would recur if refugees or internally displaced persons returned.

In its Briefing Note to these Reports, UNHCR states that one cardinal function of the Reports and information provision is to draw attention to abuses causing displacement. The Reports, however, are not structured in a way which comprehensively indicates the human rights situation in a given area (although implicitly it might be taken to be offering "an authoritative, neutral assessment concerning whether conditions are in fact conducive to encourage voluntary return in safety and dignity"). The Reports, instead, are meant to convey the general situation in a given area, but it does not give an adequate picture of the extent of serious human rights violations occurring or likely to occur if refugees or displaced persons return. It is incumbent upon the bodies charged with monitoring the implementation of the peace agreement to make available detailed assessments of the human rights situation in Bosnia and Herzegovina. These assessments must include detailed and current appraisals of any human rights violations which occur, as well as a prediction of the risk returnees would likely face if forcibly returned to a municipality, under UNHCR's three categories of returnees as described below.

There is a danger that prospective returnees or adjudicating bodies in host states may take these reports to be a definitive, comprehensive evaluation of the human rights situation in given areas, or that the apparent lack of reference to the human rights situation may lessen the impact of what is otherwise a good, logistical paper. Amnesty International believes that each report should describe the purpose of the report, the manner in which information is gathered and that it does not imply a human rights assessment in a given area.

UNHCR have stated that the success of any Repatriation Plan includes factors beyond UNHCR's control. The international community has an obligation to ensure that the human rights situation in Bosnia and Herzegovina improve to a substantial and durable degree to allow people to return to their homes in safety and dignity. Just as the confidence building measures enunciated in the peace agreement have not yet been implemented in full,

²²² These topics include : security, housing, registration procedures, routes and means of transport, documents required, pertinent legal developments, infrastructure, public utilities, public services , economic activity and UNHCR and other assistance programs.

so it is that institution building in Bosnia and Herzegovina will be a slow process. Amnesty International believes that if refugees and displaced persons are to return to their homes in safety and dignity, the process of return will, by necessity, be a slow and gradual one. It points out that the focus must now shift from logistics of return to conditions of return.

B. UNHCR plans to return refugees and internally displaced persons

The scale of the problem is enormous. It is estimated that at the beginning of June 1996 there were approximately one million displaced Bosnians in Bosnia and Herzegovina, 525,000 Bosnian refugees in other republics of the former Yugoslavia and between 500,000 and 700,000 Bosnian refugees in third countries (host states). In addition, there are Croatian and Serbian internally displaced persons and Croatian, Serbian and other minority group refugees in third countries.

The UNHCR Repatriation Plan. At the meeting of the Humanitarian Issues Working Group in Geneva on 16 January 1996, the UN High Commissioner for Refugees, Sadako Ogato, introduced a Repatriation Plan pursuant to Annex 7 of the peace agreement.²²³ The plan covers both **repatriation of refugees** (both in other republics of former Yugoslavia and in third countries) and **relocation of internally displaced persons**. It made planning assumptions that 870,000 refugees and displaced persons would return in 1996: 500,000 internally displaced persons in Bosnia and Herzegovina, 170,000 refugees in other republics of former Yugoslavia and 200,000 refugees in third countries. The objective of UNHCR's protection activities in Bosnia was stated to be: "to promote, encourage and facilitate the voluntary movements of refugees and displaced persons in conditions of safety to their homes".

At the follow-up High-Level Working Meeting in Oslo on 8 March 1996, and the subsequent Humanitarian Issues Working Group in Geneva on 13 May 1996, UNHCR accepted that these were only maximum numbers and depended upon such matters as security, funding, immediate large-scale reconstruction and de-mining.²²⁴ UNHCR also accepted that such plans are improbable, being contingent upon optimum implementation of the peace agreement and large-scale reconstruction. UNHCR's planning assumptions have laid the basis for detailed logistics of return. The plans for the three categories of persons are discussed separately below.

UNHCR's planning assumptions were based on the viability of refugee returns and on the safety of return. However, six months after the peace agreement, the only spontaneous returns to date have been returns to majority areas, while several pilot projects of UNHCR, including "look and see" visits (see below) have encountered violence,

²²³ Humanitarian Issues Working Group, HIWG/96/2, 10 January 1996.

²²⁴ Humanitarian Issues Working Group, HIWG /96/4, 6 May 1996, para. 18.

emanating from the opposition of local populations, sometimes with the tacit or explicit support of local authorities. Freedom of movement, guaranteed in the peace agreement, cannot be said to have been secured in Bosnia and Herzegovina.

Plans for repatriation of refugees from host states. At the Oslo meeting, UNHCR outlined a phased plan for **repatriation of refugees from host states** (Operational Plan) and divided its plan into three categories of movement. These would be:

- The repatriation of refugees to their homes in areas in which their ethnicity constitutes the majority today.
- The repatriation of refugees who do not wish to return to their former home areas, where they would be in a minority, but wish to relocate elsewhere within Bosnia and Herzegovina.
- The repatriation of refugees wishing to return to their homes in areas where their ethnicity now constitutes a minority.²²⁵

Such plans are divided into those for "spontaneous voluntary repatriation", which is the spontaneous and voluntary return of refugees although the area of origin may not be safe, and plans for the repatriation of refugees which will coincide with the proposed lifting of the regime of temporary protection in host states.

Pilot projects for return of internally displaced persons. As of the beginning of June 1996, there was no comprehensive plan for the entire country to relocate **internally displaced persons**. On 2 November 1995, the Presidents of Bosnia and Herzegovina and the Federation signed an agreement in Dayton for the return of 600 families of internally displaced person in the Federation to four towns. This agreement provides for the return of 300 Croat families to two predominantly Muslim towns, 100 to Travnik and 200 to Bugojno. In addition, 300 Muslim families are to return to two predominantly Croat towns, 200 to Jajce and 100 to Stolac. UNHCR was involved in the negotiations on the implementation of these pilot projects and has agreed to assist with transport and provision of basic materials for small-scale repairs and food for up to six months, subject to UNHCR confirming that the relocations were voluntary. Only two of these pilot projects appear to be successful. According to reports, 94 Bosnian Croat families have returned to Travnik, but questions remain whether any of the 200 Bosnian Croat families had been able to return to Bugojno, both predominantly Muslim towns. Approximately 135 of the 200 Bosnian Muslim families had been able to return to Jajce, but in Stolac, Bosnian Croat authorities have placed political obstacles on the return of 100 Bosnian Muslim families. Jajce and Stolac are both

²²⁵ Repatriation movements since January 1996 have been predominantly to majority areas. Humanitarian Issues Working Group, HIWG/96/4, 6 May, para. 24.

predominantly Bosnian Croat towns. UNHCR has stated that, while the returns to Travnik and Jajce were largely successful, those to Stolac and Bugojno were not.

UNHCR has stated that these pilot projects have proved to be highly labour intensive, have highlighted the complexity of relocations and “demonstrated that return of the displaced will be heavily conditioned by the availability of housing and the scrupulous observance of and commitment to the basic principles of Annex 7 by municipalities”.²²⁶ At the beginning of June 1996, there were an estimated one million displaced persons in Bosnia and Herzegovina. Of these, a certain proportion may wish to return to their homes in an area where they form the ethnic majority; others may wish to return to their homes in areas where they do not form the ethnic majority; and others may not wish to return to their homes. Widespread destruction of property has rendered the desire to return home an unrealistic one in the short term for many displaced persons and refugees. According to UNHCR, more than 60% of all houses are estimated to have sustained some damage, while 18% have been completely destroyed.²²⁷ Many others are in the hands of other persons, including displaced persons. As such, feasibility of return to their homes for those wishing to do so will depend to a large degree on the work of the Property Commission (see Section II.A.5 above).

A pilot “look and see” project for potential Bosnian Muslim returnees organized by UNHCR with the assistance of the IPTF, IFOR and local authorities from both sides, to the village of Potočani on 2 June 1996 failed to protect the returnees from being attacked and underscored the lack of freedom of movement in the Republika Srpska. A mob of Bosnian Serb civilians stoned the buses, injuring several people in the attack and forced the convoy to turn back.

A similar visit of potential returnees to the town of Teslić in the Republika Srpska, and the site of a recent spate of forcible expulsions (see above), was also turned back on 2 June 1996. Two hundred Bosnian Croats were stopped by a crowd of a few dozen Serbs, waving clubs and flags and the visit was abandoned.

Amnesty International believes that it is not safe for Bosnian Croat or Muslim refugees or displaced persons to return to the Republika Srpska at present. Harassment and expulsion of members of minorities, which has characterized much of the conflict, has recently surfaced again with increasing frequency.

C. UNHCR benchmarks for the cessation of temporary protection

The UNHCR has drafted criteria for the cessation of temporary protection in host states which focus on the compliance of the parties with three benchmarks which are outlined

²²⁶ Operational Plan, 27 February 1996, HLWM/96/1 para 30.

²²⁷ Humanitarian Issues Working Group, HLWM/96/1.

below. These criteria are inadequate and cannot of themselves guarantee that conditions are durably safe.

UNHCR inadequate criteria for determining whether return would be safe. At the Humanitarian Issues Working Group Meeting in January 1996, UNHCR announced three conditions for the lifting of temporary protection in host states:

- The implementation of the **military provisions** of the peace agreement;
- The proclamation of an **amnesty** as foreseen in Annex 7; and
- The establishment and functioning of **mechanisms for the protection of human rights**²²⁸

These benchmarks were taken from Annexes 1, 6 and 7 of the peace agreement. Compliance with each of these three benchmarks will not, however, demonstrate that conditions in Bosnia and Herzegovina have substantially and durably improved so as to remove the risk of serious human rights violations against most would-be returnees. They will simply demonstrate the parties' compliance with these elements of the peace agreement. A related difficulty is the inability of each of the parties to control all local authorities within their jurisdiction.

More specifically, the three benchmarks are flawed for the following reasons. IFOR has described the adherence to the **military provisions** of the peace agreement as "partial compliance" only. UNHCR has identified three main areas of non-compliance: non-removal of landmines, non-release of prisoners and discrepancies on the number of heavy weapons removed to containment sites.²²⁹ In the context of the military prescriptions of the peace agreement, Amnesty International points out that human rights violations have continued and could increase.

²²⁸ The German authorities intend to repatriate refugees from 1 July 1996 under three benchmarks which are more restrictive than those of UNHCR. These are :

- The conclusion of the IFOR implementation;
- Declarations of amnesty for draft resisters and deserters; and
- The appointment of the Commissions on Human Rights and the Property Commission.

²²⁹ Humanitarian Issues Working Group, HIWG/96/4, 6 May 1996, paras 4-5. See also letter dated 22 May 1996 from the Secretary-General of the North Atlantic Treaty Organization addressed to the Secretary-General, UN Doc. S/1996/375, para. 5 (noting lack of full compliance by the parties with the military provisions of the peace agreement).

Returnees will not be protected by the **proclamation of amnesties** unless their safety is also in practice monitored and the amnesties implemented. Those persons who need effective protection on return include persons who for reasons of conscience, did not engage in military service. It might extend to persons who in the future would be in danger of imprisonment or other sanction if they refuse to engage in military service for reasons of conscience. The peace agreement provides that all returnees charged with a crime “. . . other than a serious violation of international humanitarian law . . . or a common crime unrelated to the conflict shall upon return enjoy an amnesty”. A crime “other than a serious violation of international humanitarian law” must not result in an amnesty being afforded to any person who has violated the human rights of another. In particular, impunity must not be borrowed from the term “international humanitarian law” if that term is interpreted to grant impunity to any person who violated the human rights of his or her own people.

It is important that the amnesty laws of each of the parties to the peace agreement reflect totally the spirit of this agreement and that no law or practice intentionally or unintentionally subvert this spirit by act or omission. It must be also demonstrated that each of the parties can effectively control all local authorities and municipalities under its jurisdiction. The safe return of refugees and displaced persons must be totally guaranteed.

On 12 February 1996, the Parliament of **Bosnia and Herzegovina** adopted an amnesty law, which suspends criminal proceedings against persons not charged with war crimes, but refugees and displaced persons are not referred to in the text of the law. It is important to note that the amnesty covers only criminal acts committed *on the territory of Bosnia and Herzegovina* thus, arguably, certain acts committed in Croatia, the Federal Republic of Yugoslavia (Serbia, Montenegro) or other countries, but aimed at endangering the security of Bosnia-Herzegovina would not be included.

Anyone with a conscientiously held objection to performing military service could also be prosecuted if he or she were to be called up after 14 December 1995 and refused to perform the service (there is currently no civilian alternative service although the possibility of alternative service may eventually be offered). In the immediate future this is unlikely to be a problem as soldiers are being demobilized rather than mobilized. However, tension will inevitably increase in Bosnia-Herzegovina towards the end of the year when the IFOR are due to pullout. Further mobilizations could occur. At present, there has yet been no order for general demobilisation from the armed services.

The Parliament of the **Republika Srpska** has submitted a draft law to Parliament which only provides for an amnesty to persons for whom legal proceedings have been initiated, while a challenge to an amnesty which has been decreed can suspend the decree until the claim is decided. The same concerns about conscientiously held objection to military service outlined above, apply to this draft law.

Neither of these amnesty laws goes far enough to protect all prospective returnees, in their present form.²³⁰

Mechanisms for the protection of human rights have only just been established and begun to function. This paper highlights areas of human rights institution building and the various bodies charged with translating rhetoric into practice. If these mechanisms are to protect human rights, the rule of law must be respected in Bosnia and Herzegovina. The mechanisms must have the weight of law and be capable of being enforced.

In its Repatriation Plan, UNHCR introduced the concept of "absorption capacity". Although this concept is not clearly defined, it seems to mean that refugees and internally displaced persons can be repatriated by reference to the ability of the area of prospective return to absorb such returnees into its community. Amnesty International believes that absorption capacity cannot supplant fundamental protection principles. Focus on repatriation plans must be primarily on the areas of prospective return.

On 19 April 1996, the OSCE, which established the Provisional Election Commission, and UNHCR co-hosted a meeting in Geneva on the elections at which voter registration rules were presented. Amnesty International is concerned that provision 3 (c) of these rules provides that refugees and internally displaced persons who do wish to return to their homes "may be registered to vote in the municipality in which they intend to live in future, and may vote there in person, but not by absentee ballot". Persons who do not have appropriate accommodation in host states could be disenfranchised under provision 3 (c) of the rules. Amnesty International is concerned that the proposed elections may be used by certain governments to repatriate refugees when it may not yet be safe for temporary protection to be lifted. Refugees and internally displaced persons should have the option of voting by absentee ballot in the elections. In this respect, Amnesty International notes with concern that no provision has, as of May 1996, been made in relation to refugees and internally displaced persons being able to vote in the municipal elections to be held in Mostar at the end of June.²³¹ As stated in this section, there must be an improvement in the monitoring and reporting of human rights conditions, between the OSCE and UNHCR, if prospective returnees are to make a free and informed decision to return.

After the lifting of temporary protection, all refugees still in need of protection must be identified and protected. Once temporary protection has been lifted, enabling most refugees in host states to return to their homes in safety because the causes of their initial flight have ceased to exist, any individual from the group who expresses a wish not to return because of fear of suffering serious human rights violations, should have access to an

²³⁰ See Humanitarian Issues Working Group, HIWG/96/4, 6 May 1996, paras 6-12.

²³¹ See Humanitarian Issues Working Group, HIWG/1996/4, 6 May 1996, paras 45-47.

asylum procedure. Only after access to and rejection under a fair and satisfactory asylum procedure, can forcible return of those refused asylum be considered.

Recommendations.

The High Representative and members of the Human Rights Task Force should ensure effective monitoring of human rights and frequent, comprehensive public reporting to enable refugees and internally displaced persons to make informed decisions about when it is safe to return.

No state should plan to repatriate refugees from the former Yugoslavia until durable safety exists in areas of prospective return:

- **Before temporary protection is lifted, all return must be voluntary.**
- **Temporary protection must only be lifted when there is durable safety in Bosnia and Herzegovina according to the standards of the cessation clauses in Article 1C of the Convention relating to the Status of Refugees.**
- **Protection must not be withdrawn for refugees from Croatia or the Federal Republic of Yugoslavia (Serbia and Montenegro) until there is durable safety in those countries to allow this.**
- **Once temporary protection is lifted, there must be a multilateral and coordinated approach among host states to repatriation in consultation with UNHCR.**
- **When temporary protection is lifted, those refugees who express a wish not to return because of fear of suffering serious human rights violations, should have access to an individual asylum procedure in the host state.**
- **Special attention should be paid to the cases such as individuals coming from areas where they are in the minority, individuals in mixed marriages and conscientious objectors to military service.**

Similar protection principles should apply to the relocation of internally displaced persons.

As a confidence building measure, states should indicate that future returnees to Bosnia and Herzegovina will not lose their protection status in host states if conditions there deteriorate in the future.

The international community must take immediate steps to ensure that attacks on returning refugees and displaced persons cease. IFOR and the High Representative should develop, as a matter of priority, effective plans to permit the safe return of refugees and displaced persons, in addition to temporary visits.

VIII. RESOLVING CASES OF "DISAPPEARED" AND "MISSING" PERSONS

"It is to be feared that the great majority of missing persons in the territory of the former Yugoslavia have been victims of arbitrary executions or armed confrontations and are buried in more than 300 mass graves in Bosnia and Herzegovina and Croatia. The search for truth, therefore, includes the urgent need to locate, guard and excavate these mass graves and to exhume and identify the mortal remains therein."

Manfred Nowak, the United Nations Expert on missing persons, Report to the United Nations Commission on Human Rights, 4 March 1996

The number of "disappeared" and "missing" persons after four years of war in Bosnia and Herzegovina is staggering and the number of grave sites which may hold the secret of the fate of many of them is huge. Nevertheless, it must be a matter of priority to resolve the fate of the "disappeared" and "missing" to ensure that their relatives can get on with their lives. Some are no doubt still alive; most may have been deliberately and arbitrarily killed. The search for those who are still alive must be vigorous and thorough. The bodies of those who have been killed should be found, identified and returned to their families or localities to be given a dignified burial. Those responsible for their death must be brought to justice by the Tribunal or, when a judicial system is able to conduct fair trials in accordance with international standards, in national courts. The peace agreement, however, fails to provide for an effective international or national mechanism which can perform these essential tasks adequately and little progress has been made in the six months since the peace agreement to resolve these pressing problems. Amnesty International believes that it is essential for the international community to devise a long-term action program as a matter of priority which will ensure that both the humanitarian needs of the relatives and the requirements of the Tribunal are addressed, without prejudice to either. The international community has recognized the urgent need to resolve the fate of the "disappeared" and "missing", by exhumation, if necessary, but has failed to provide more than a tiny fraction of the funding, staff and equipment needed. The Commission on Human Rights has drawn attention to:

"the need for immediate and urgent efforts to determine the fate of missing persons, including in cases where other means of determining the fate of the missing have proved unsuccessful and upon the recommendation by qualified experts that exhumation will provide an efficient means for resolving cases that are unlikely to be resolved by other means, an eventual examination by such experts of mass grave

sites or sites where arbitrary executions or killings of many thousands of persons are reported to have taken place”.²³²

The scope of the problem is huge, but it can and must be solved. Estimates of the number of missing persons from all sides in Bosnia and Herzegovina amount to a total of at least 27,000 people.²³³ Although a significant proportion of the individuals may have been casualties of armed conflict rather than victims of violations or abuses of international human rights or humanitarian law, there is considerable evidence to indicate that large numbers of them were victims of deliberate “disappearances” or were made deliberately “missing”. Similarly, there are reports of the existence of up to 3,000 grave sites in Bosnia and Herzegovina, of which an estimated 300 are believed to be mass grave sites with large numbers of bodies. It is unclear how many contain victims of violations of international humanitarian human rights or humanitarian law as opposed to victims of armed conflict. The existence or exact location of the vast majority of the reported sites also remains to be confirmed by on-site investigations. Nevertheless, the large number of reported or confirmed sites in itself represents an enormous problem, but one which can and must be solved. In contrast to the enormous scale of the problem, few dedicated resources have been made available by the international community for the resolution of cases of “disappeared” at the hands of government forces or “missing” persons at the hands of non-governmental entities.

Families need to learn the fate of their loved ones. Far too often, even the enormity of a tragedy such as this one cannot prevent the issue from slipping off the international agenda for action. With the passage of years, a feeling of resignation sets in among members of the international community about the fate of the “disappeared” or “missing”. The failure to achieve any progress in such cases leads to a sense of fatalism and defeat. More immediate human rights crises engage the attention of both politicians and activists, and the victims and their families are left feeling frustrated and abandoned. A world which once proclaimed its outrage about their plight suddenly no longer seems to remember or to care that these families are effectively stranded in time - unable to move forward with their lives.²³⁴

²³² Res. 1996/71, adopted 23 April 1996, UN Doc. E/CN.4/1996/L.11/Add.3.

²³³ Report submitted by Mr. Manfred Nowak, expert member of the Working Group on Enforced or Involuntary Disappearances, responsible for the special process, pursuant to paragraph 4 of Commission resolution 1995/35, 4 March 1996, UN Doc. E/CN.4/1996/36, para. 1. See also the Amnesty International reports: ‘*An unknown destination*’ - ‘*Disappeared*’ in former Yugoslavia: *Case sheets* (AI Index: EUR 05/08/95); ‘*Destination unknown*’ - ‘*Disappeared*’ in former Yugoslavia: *Recommendations* (AI Index: EUR 05/06/95); *Bosnia-Herzegovina: The missing of Srebrenica* (AI Index: EUR 63/22/95).

²³⁴ The Expert on missing persons has explained: “Fifteen years of experience of the Working Group on Enforced or Involuntary Disappearances show that the relatives of the missing persons constantly keep up the hope that their loved ones are alive until it has been proven beyond a reasonable doubt that they have died.” Report of the Expert on missing persons, UN Doc. E/CN.4/1996/36, para. 78.

The terrible emotional and psychological effects on a family of up to four years of waiting for some conclusive information about the fate of their relative need to be acknowledged through a clear commitment of political will and financial resources from the international community and regional authorities. The resolution of cases of "disappearance" and "missing persons" must be viewed as a long-term project. Persistence must be an absolutely essential component of the international community's approach to this matter. It is also important to emphasize that the actual physical reappearance of an individual is not the only objective here. Although physical reappearance may be a realistic goal in only a limited number of cases, obtaining the simple truth about the fate of the individual and pressing for those responsible for "disappearances" to be brought to justice are equally important motives for concerted action by regional authorities and the international community. Moreover, there is an increasingly pressing need for the international community to document in careful and exhaustive detail the fate of as many of the "disappeared" and "missing" as possible in light of the recent emergence of those who deny that these and other grave crimes were committed or who trivialize their extent.²³⁵ As explained below, the Tribunal, which has the primary task of bringing to justice individuals rather than providing a comprehensive historical record, cannot - and should not - be expected to document the fate of all those who are "disappeared" or missing.

For many months now, Amnesty International has been campaigning vigorously for a commitment by the international community to extend all necessary financial and political support to efforts by the UN to exhume mass graves and conduct proper autopsies. The organization has also campaigned for the return of victims' remains to their families for burial, and intends to continue to press the international community and its constituent governments on this point. Amnesty International has frequently cited the 1994 report on a visit to the former Yugoslavia by a member of the UN Working Group on Enforced and Involuntary Disappearances (WGEID), where a delegate noted that

"for the purposes of clarifying the cases of 'missing persons', all bodies must be exhumed and if possible identified. Apart from manifold sensitivities - political will must be unconditional - such an undertaking would be a Herculean task. The UN should seek to establish such a forensic enterprise under its auspices, help to find available experts and procure funds, if need be from private sources."²³⁶

²³⁵ A similar pattern has occurred with respect to killings which took place in Rwanda. Members of the former government have denied that any acts of genocide or crimes against humanity were committed by that government, minimized their extent or argued that they were all the responsibility of the Rwandese Patriotic Front. Attempts in the past decade to deny or minimize the Holocaust in the Second World War have been unsuccessful in light of the careful and thorough documentation of these crimes by the International Military Tribunal at Nuremberg, military and national courts and non-governmental organizations.

²³⁶ UN Doc. E/CN.4/1994/26/Add.1, para. 111.

Amnesty International believes that the international community must position itself squarely behind such a proposal, and ensure that this public commitment to a comprehensive program of ante-mortem data collection, excavations, identification of bodies and return of remains to families is communicated effectively to non-governmental organizations, relatives, and others concerned.

It is of particular concern that despite the gravity of the problem, the only international body specifically addressing cases of "disappeared" or "missing persons" lacks adequate resources and international support to do so. The main international body responsible for investigating such cases in the former Yugoslavia is WGEID, which normally does not address "disappearances" occurring in situations of armed conflict or abductions by groups not connected with a government. Therefore, in 1994, the UN Commission on Human Rights established a "special process on missing persons in the territory of the former Yugoslavia" (Special Process).²³⁷ The mandate of this new UN mechanism covers all cases of "disappeared" and "missing persons" in the territory of the former Yugoslavia, regardless whether the victim was a civilian or a combatant or whether the perpetrators were connected to a government or not.²³⁸ In this paper, Amnesty International uses the term "disappeared" to cover people who have been "disappeared" by government forces, whether in armed conflict or not, and the term "missing" to cover persons who are "missing" following abduction by non-governmental entities.

The Special Process was set up as a joint mandate of the UN Special Rapporteur on the former Yugoslavia and the WGEID - and was defined by the latter in its January 1995 report as having a "strictly humanitarian and non-accusatory nature".²³⁹ An Expert on missing persons, Manfred Nowak, nominated by the Chairman of the WGEID, was appointed to carry out the work of this Special Process. The sole responsibility of the Expert on missing persons is to determine the fate and whereabouts of "disappeared" and "missing persons", and does not extend to identifying who was responsible.

Since his appointment and until very recently, the work of the Expert on missing persons has been greatly hampered by a chronic lack of adequate resources, logistical obstacles to travel and information-gathering in the region (especially in Bosnia and Herzegovina), and the refusal of all cooperation on the part of the government authorities of the Federal Republic of Yugoslavia. In its 1995 international action on "disappeared" and "missing persons" in the former Yugoslavia, Amnesty International has expressed great concern that the current level of resources made available by the UN for the Special Process was clearly inadequate to the task. The organization called on the international community,

²³⁷ Res. 1994/39, para. 23; Res. 1994/72, para. 24.

²³⁸ Report submitted by Mr. Manfred Nowak, member of the Working Group on Enforced or Involuntary Disappearances, pursuant to paragraph 24 of Commission resolution 1994/72, para. 10.

²³⁹ *Id.*

through member states of the UN, to provide whatever resources were required - whether it was a question of funding, staffing, or logistical help and political support - to ensure that the Special Process was a genuinely concerted and comprehensive effort to document and resolve the cases of thousands of "disappeared" and "missing persons" in the former Yugoslavia. Amnesty International also called on all parties to the conflict to cooperate with the Special Process to trace "disappeared" and "missing persons", making records available and permitting access to territories under their control.²⁴⁰

As stated earlier in this paper, the lack of any clear direction or a sense of determination regarding the resolution of cases of "disappeared" and "missing persons" in the peace agreement of December 1995 was a considerable disappointment. The failure to spell out any clear role for the Special Process or to underline the responsibilities of the parties to the agreement with regard to clearing up the many thousands of such cases was especially disturbing. Between the beginning of March 1996 and the end of April 1996 when the UN Commission on Human Rights addressed the situation, however, there were a number of positive developments which at least pointed the way toward a comprehensive strategy for the resolution of cases of "disappeared" and "missing persons" in all parts of the former Yugoslavia. Nevertheless, the political will and financial support of UN member states - as well as the full cooperation of regional governments - are still lacking.

On 1 March 1996, an Expert Group on Exhumation and Missing Persons (Expert Group) was established to coordinate the different activities related to exhumation and missing persons. The Expert Group is chaired by a representative of the High Representative, who is to be the focal point for the Expert Group, and consists of representatives of the Tribunal, the Expert on missing persons, the UN Special Rapporteur on the former Yugoslavia, the International Committee of the Red Cross, Physicians for Human Rights, IFOR and the IPTF.²⁴¹

The proposed guidelines of the Expert Group state that the primary objective of the Expert Group is to coordinate activities related to exhumation of suspected mass grave sites and exhumation of mortal remains and the collection of *ante-mortem* data to facilitate the identification of individual victims. The Expert Group has the "humanitarian goal of determining the fate of the missing and informing the families of their findings". In line

²⁴⁰ See Amnesty International, 'Destination Unknown' - 'Disappeared in Former Yugoslavia (AI Index: EUR 05/06/95), at 6-7.

²⁴¹ The Expert Group is not to be confused with a separate Working Group on Missing Persons established under the chairmanship of the ICRC on 1 March 1996 in Sarajevo in accordance with the peace agreement which has a mandate to trace missing relatives. See Bildt report, UN Doc. S/1996/190, paras 75-76. The Expert on missing persons is an observer and the parties to the peace agreement participate in the Working Group.

with this goal, priority is given to tracing missing persons by collecting information through both public and confidential approaches. Thus,

“exhumations for purposes of identification should occur after other means of identification have proven unsuccessful or when there is reason to believe that exhumation, because of the particular circumstances involved, will provide an efficient mean[s] for resolving cases which are unlikely to be solved by other means. In all circumstances, exhumation of grave sites should be performed in accordance with international[ly] recognized standards, including the recognition of the right to decent burial, for both identified and unidentified remains. The Group agrees that the collection of ante-mortem data is, in principle, necessary before any exhumation for identification purposes.”

The Expert Group has agreed that any exhumations performed by local authorities should be performed professionally in accordance with international standards under the supervision of international experts and that local authorities should be encouraged to focus on information gathering. The responsibilities of the focal point attached to the Office of the High Representative include enhancing cooperation “through suggesting sequencing of efforts, advising Members concerning conflicts or overlaps in their work, . . . identifying possibilities for additional information sharing” and coordinating fundraising efforts. The Expert Group gives special attention to organizing training of local experts, providing information to families on actions being taken to determine the fate of the missing, supporting local non-governmental organizations and determining the preferences of the parties and families concerning burial.²⁴²

As of the beginning of June 1996, the investigation and prosecution requirements of the Tribunal have priority over other issues relating to cases of “disappeared” and “missing persons”. Given the need to focus its work very precisely in order to proceed as swiftly as possible with indictments and prosecutions and its severely limited resources, it is unlikely that Tribunal will be able to pursue a program of excavation of more than a handful of suspected mass grave sites in Croatia and Bosnia this year. The selection of these sites will naturally be determined by the needs of the criminal investigations currently underway, and these excavations will be carried out chiefly for the purposes of collecting evidence for indictments and prosecutions. The identification of *all* “disappeared” or “missing” persons and the return of the remains of those identified in the course of the excavations are considered to be matters outside the remit of the Tribunal.

²⁴² This account of the work of the Expert Group is based on a copy of its proposed guidelines dated 3 April 1996 obtained by Amnesty International and other sources. It is believed that the guidelines accurately represent current practice and policy of the Expert Group.

However, it is apparently the intention of the Expert Group to pursue a broader agenda once the immediate needs of the Tribunal have been sufficiently met. This broader agenda would focus on the identification of individual victims - made possible by a large-scale operation to collect all available information about physical characteristics, health histories, etc. from families and relatives of the "disappeared" or "missing". The setting up of additional field offices of the High Commissioner (especially in Tuzla, where most of the relatives of the "missing" of Srebrenica are located) is essential.

Such an operation will require considerable resources to fund both the *ante-mortem* data collection project in the field and the exhumations themselves. The Expert on missing persons, therefore, requested the UN Commission on Human Rights at its 18 March to 26 April 1996 session to "authorize the necessary resources from the regular budget or establish a special voluntary fund" to which governments could make contributions specifically for this purpose.

The UN Commission on Human Rights, unfortunately, did not call for IFOR to provide adequate security for grave sites, but it did urge the Expert on missing persons to cooperate with the members of the Expert Group to prepare a comprehensive plan for exhumations and underlined the need for the establishment of an *ante-mortem* data base.²⁴³ Amnesty International is dismayed that the UN Commission on Human Rights did not call for the allocation of the necessary resources to meet this pressing human need. Instead, it simply requested the Expert on missing persons "to assume responsibility for securing appropriate support, including financial assistance, for the activities of the Expert Group, . . . request[ed] the international community to make available the necessary means for this undertaking" and recommended that the High Commissioner "provide, through existing voluntary funding mechanisms, means to assist the expert for the special process to secure the necessary financial assistance".²⁴⁴ Putting the entire responsibility on the Expert on missing persons to seek the necessary funding is in marked contrast to the normal funding arrangements for thematic mechanisms. For example, the UN Commission on Human Rights urged the Secretary-General, "from within existing resources, to make all necessary resources available for the Special Rapporteur [on the former Yugoslavia] to carry out her mandate successfully and in particular to provide her with adequate staff based in those territories to ensure effective continuous monitoring of the human rights situation there and coordination with other United Nations bodies involved".²⁴⁵ In contrast, the Expert on

²⁴³ UN Commission on Human Rights Resolution adopted on 23 April 1996, UN Doc. E/CN.4/1996/L.11, para. 34 (a) - (b).

²⁴⁴ *Id.*, paras 36-37. The High Commissioner has opened a sub-account of the trust fund for the activities of the Centre for Human Rights, destined to support the activities of the Expert on missing persons with regard to exhumations and the identification of mortal remains. Letter to Permanent Representatives to the UN in Geneva dated 22 May 1996 from the Expert on missing persons.

²⁴⁵ *Id.*, para. 46.

missing persons has been left to take his hat in hand from government to government to raise the funds himself.

After consulting the Expert Group, the Expert on missing persons prepared a budget totalling \$6,120,000 to provide for the compilation of *ante-mortem* data on 8,000 missing persons and the exhumation and identification of the mortal remains of 1,000 persons over one year. On 22 May 1996, he appealed to the international community to provide the Special Process and the Expert on missing persons "with either qualified forensic scientists, logistical donation or financial contribution in order for them to carry out their mandate with a view to alleviating the suffering of the families who are seeking the truth about the fate of their beloved ones".²⁴⁶ He then convened a meeting in Geneva on 30 May 1996 of more than 30 government representatives to present the budget. Although there were no formal pledges made at this meeting, the comments by government representatives were generally positive.

In these circumstances, Amnesty International is calling on the international community to make firm commitments to the establishment of a comprehensive program aimed at the identification of individuals buried in mass graves in Bosnia and Herzegovina and their return in dignity for burial. The program will need the full support of the Special Process, the Tribunal, ICRC, the office of the High Representative, IFOR and non-governmental organizations, as well as states acting through the General Assembly and Commission on Human Rights and through donations to existing voluntary funds. Such a program should be developed by a single international body with responsibility to ensure that it was implemented so as to ensure effective leadership, but would have to maintain close contacts with the others, in particular the Special Process, ICRC and the Tribunal. Amnesty International believes that the Expert on missing persons would be the appropriate institution to carry out, in close cooperation with the Expert Group, such a program. The one-year program proposed by the Expert on missing persons, although an important first step, must be only the initial part of a comprehensive program to resolve cases of the "disappeared" and "missing".

The program could draw on the numerous forensic experts round the world who have volunteered their expertise.²⁴⁷ It would also need to work closely with the authorities

²⁴⁶ Letter to Permanent Representatives to the UN in Geneva dated 22 May 1996 from the Expert on missing persons. The itemized budget attached to the letter makes clear that significant cost reductions in administrative, logistical and other support have been achieved as a result of the willingness of a number of organizations, including the Office of the High Representative, the ICRC and IFOR to support the Special Process without charge.

²⁴⁷ The UN Centre for Human Rights has compiled a list of forensic experts who have volunteered to undertake such tasks. See UN Commission on Human Rights Res. 1996/31, adopted 19 April 1996, UN Doc. E/CN.4/1996/L.11/Add.1; Res. 1994/31, adopted 4 March 1994; Report of the Secretary-General on human rights and forensic science, UN Doc. E/CN.4/1996/41; Report of the Secretary-General on

and the relatives of the victims, particularly for the purposes of gathering accurate ante-mortem data and also pay particular attention to ensuring that the relatives were properly informed so as to work towards realistic expectations on all sides. The program would also need to be carried out over a long time span as the sheer scale of the problems mean that work may have to continue over several years, but the UN General Assembly has made clear that the obligation to investigate cases of "disappearance" continues until the case is clarified, the victims or their families compensated and those responsible brought to justice.²⁴⁸

Governments would have the primary responsibility to implement such a program, but the Special Process would supervise the ante-mortem data collection, monitor excavations to ensure that they are carried out in a professional and impartial manner in accordance with international standards, taking into account the needs of the families of the victims and the Tribunal. If governments were unable or unwilling to carry out the excavations in the manner required, the Special Process would carry out the excavations itself.

Regardless whether the prime objective of any individual exhumation is obtaining evidence to be used in any prosecution or the identification of victims, it is vital that all work is carried out to the highest professional standards so as to ensure that mistakes are avoided in identifications and that all evidence is of a quality that can be presented in the Tribunal or any national court. Similarly, all exhumations, whether by the Tribunal or the Special Process, should be carried out in accordance with international standards, including the UN Guidelines for the Conduct of United Nations Inquiries into Allegations of Massacres, the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, the UN Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions (Minnesota Protocol) and the UN Model

human rights and forensic science submitted pursuant to Commission Human Rights resolution 1992/24, UN Doc. E/CN.4/1993/20.

²⁴⁸ An investigation in accordance with international standards "should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified". UN Declaration on the Protection of All Persons from Enforced Disappearance, Art. 13 (6). "The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependants shall also be entitled to compensation." *Id.*, Art. 19. "Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified." *Id.*, Art. 17.

Autopsy, which provide safeguards to ensure that the interests of the relatives are fully represented in the course of such exhumations.²⁴⁹

Recommendations:

The Expert on missing persons, in coordination with the Expert Group should develop, in cooperation with relevant organizations, a program of action to resolve all cases within three years and return bodies which can be identified to families or communities. The program of action should include establishment of a comprehensive *ante-mortem* data collecton project.

The program of action must ensure that both the pressing and legitimate needs of the Tribunal to gather admissible evidence and the humanitarian concerns of relatives are met without harming either. The program of action should ensure good communications with the families of the “disappeared” and “missing” about the scope and pace of the excavations and identification.

The High Representative and the High Commissioner should call upon the international community to provide the necessary staff, equipment and funding to carry out this program as a matter of priority and should ensure that the parties to the peace agreement cooperate fully with the Expert on missing persons.

The international community should provide the necessary staff, equipment and funding to carry out this program as a matter of priority.

²⁴⁹ These and other international standards are included in *Guidelines for the conduct of United Nations inquiries into allegations of massacres* (Office of Legal Affairs, United Nations, New York 1995). Principle 16 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions requires that

“[f]amilies of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted, and the family or relatives of the deceased immediately informed. The body of the deceased shall be returned to them upon completion of the investigation.”

Paragraph D (13) of the Minnesota Protocol states that “families of the deceased and their legal representatives shall be informed of, and have access to, any hearing and to all information relevant to the investigation, and shall be entitled to present evidence. This particular emphasis on the role of the family as a party to the proceedings implies the specially important role the family’s interests play in the conduct of the investigation.”

IX. ESTABLISHING EFFECTIVE NATIONAL INSTITUTIONS

“While much is being done to try to ensure immediate protection of human rights in the region of the former Yugoslavia, it is vital to sow the seeds now for post-IFOR peace. All possible assistance should be given to official human rights institutions, such as the Ombudsman and the Human Rights Chamber created by the Dayton Agreements in Bosnia and Herzegovina, and the Ombudsmen of the Federation, since they will take over once the international community leaves.”

Elisabeth Rehn, United Nations Special Rapporteur on the former Yugoslavia, Report to the United Nations Commission on Human Rights, 14 March 1996

Amnesty International has repeatedly emphasized the importance of long-term measures for human rights protection:

“Human rights components in peace-keeping operations should assist in the establishment of permanent, independent and effective national institutions for the long-term protection of human rights and the reinstatement of the rule of law, including an independent judiciary and fair criminal justice system. Other mechanisms, such as ombudsmen or national commissions, may be encouraged to reinforce respect for human rights. Such mechanisms must be impartial, independent, and competent with the necessary powers and resources to be effective. They should conform to international guidelines and must never be a substitute for a fair and independent judiciary.”²⁵⁰

The strengths and weaknesses of the mandates of the national institutions established under the peace agreement are discussed above in Section I.A.

The Office of the High Representative has not published a plan of action or budget covering the establishment and operation of important national institutions such as the Human Rights Commission (Ombudsperson and Human Rights Chamber) and the Property Commission which now exist or those which are to be created or now exist at the national or entity level, such as the Constitutional Court and judicial institutions. Much of the information about the international role in practice in establishing and operating these institutions can only be obtained from the international bodies which have played a role in appointing individuals to these institutions. The information available about how these crucial new institutions are operating - both from the international institutions and the

²⁵⁰ Amnesty International's 15-Point Program for Implementing Human Rights in International Peace-keeping Operations, Point 9.

national bodies themselves - is limited and gathering further information is one of the areas of inquiry for the Amnesty International mission which went to Bosnia and Herzegovina in June 1996.

A. Human Rights Commission

The Ombudsperson, Gret Haller, appointed by the OSCE on 21 December 1995, has been operating in Sarajevo since February in establishing her office even before she formally took up her post on 27 March 1996. Her office has published rules of procedure and began accepting complaints in March. Complaint forms and guides on filing complaints in English and the local language have been distributed throughout the country. As of 13 May 1996, the Ombudsperson had compiled 70 provisional files, including 12 registered cases.²⁵¹ Amnesty International had not been able to obtain copies of the rules, forms or guides by the end of May 1996 requested from the Office of Ombudsperson, but communications with the country are difficult. Apparently, the Ombudsperson has not issued any press releases or other documents concerning her work and there is no recent information about her activities in the *OHR Bulletin* or funding and resources provided by the international community. It is not known when the Ombudsperson plans to issue reports about her activities.

Despite the provisions in the peace agreement requiring compliance with the decisions of the Ombudsperson (see Section I.A.5 above), it is not clear to what extent that the authorities will comply with her recommendations. The Special Rapporteur on the former Yugoslavia has stated that despite the "excellent work in documenting and responding to . . . allegations of discrimination" of the Federation Ombudsmen in their first year, "other Federation and government authorities have been slow, and in some cases, completely uncooperative in responding to the Ombudsmen's findings".²⁵² Some observers have claimed that as many as 80% of the decisions of the Federation ombudsmen's decisions have not yet been fully implemented.

The Human Rights Chamber has had two ordinary sessions, following an inaugural session on 27 March 1996 in Sarajevo, 27 to 29 March 1996 and 7 to 10 May 1996. It is not known if it has finished drafting rules of procedure. No recent information about the Human Rights Chamber and its activities or funding and resources supplied by the international community had been published in the *OHR Bulletin* as of the beginning of June 1996.

²⁵¹ This account is based in part on the information in *OHR Bulletin*, No. 2, 13 May 1996, at 2.

²⁵² Report of the Special Rapporteur on former Yugoslavia, UN Doc. E/CN.4/1996/63, para. 43.

B. Strengthening remedies for the deliberate destruction of houses

Little progress has been made to ensure that those whose houses have been deliberately destroyed as punishment for their religion, ethnicity, nationality or political opinion have effective remedies. The peace agreement presents refugees and displaced persons with an unpalatable choice between restoration of their destroyed or seriously damaged homes without any further compensation for the damage or, in cases where they fear to return, the option to lease their property - sometimes to those responsible for the destruction - or to obtain compensation. Many refugees and displaced persons faced with this choice may decide not to return, thus leaving the community where they lived occupied solely or primarily in the hands of members of other groups, some of whom have also fled after their own homes have been destroyed as punishment.

The International Office of Migration convened a meeting in Geneva on 16 February 1996 on progress on the establishment of the Property Commission, chaired by Italy, of all Contact Group States, countries hosting refugees and international organizations, which agreed to undertake preparatory work pending its establishment. The Property Commission has only just been established and as of the beginning of June 1996 does not appear to have adequate staff and resources, despite the commitment in the peace agreement to ensure this.

A member of the Council of Europe's Parliamentary Assembly's Committee on Migration, Refugees and Demography who visited the country in April 1996 reported on 18 April 1996 that it was "most regrettable that at the time of writing the Commission lacks funds to ensure its operation. The financial situation is so grim that its members cannot even travel to Sarajevo!"²⁵³

Since then, the Property Commission has had its second meeting and hired an interim executive director for three months, Rodney Inder, who took up his post on 20 May 1996. The Property Commission is now drafting its rules of procedure. Donations of \$1 million from a variety of sources reportedly have been offered for six months of operation, but it is not known if this money has been received. This amount, however, appears to be wholly inadequate to ensure that claimants will be able to receive adequate financial compensation. Moreover, as stated above, it is not clear whether local authorities in either entity will be able or willing to enforce decisions of the Commission. Local property laws may have to be revised to ensure that those whose houses have been deliberately destroyed as punishment will be able to obtain adequate relief. The international community can assist in that effort. The Human Rights Coordination Centre staff have participated in meetings on this issue and the Human Rights Task Force has launched an effort to repeal or amend property laws which infringe on rights guaranteed in the peace agreement.²⁵⁴ No further

²⁵³ Mr Iwinski, Contribution to the debate of the Assembly concerning the implementation of the Dayton Agreements for Peace in Bosnia-Herzegovina, Council of Europe, Parl. Ass. Doc. 7524, 18 April 1996.

²⁵⁴ *OHR Bulletin*, No. 3, 20 May 1996, at 3.

information on this international effort had been published in the *OHR Bulletin* as of the beginning of June 1996.

C. Other human rights programs

One of the most important tasks facing the international community in rebuilding existing national institutions to ensure protection and promotion of human rights is the reconstruction of judicial, prosecutorial and law enforcement institutions. Although the IPTF mandate under the peace agreement is to advise, train and facilitate national and local law enforcement activities and to advise government authorities on the "organization of effective civilian law enforcement agencies", as of the beginning of June 1996, it had not published a plan of action for rebuilding these institutions. This appears to be a major weakness of international implementation of human rights provisions so far. The UN Crime Prevention and Criminal Justice Division (Crime Division), in addition to its proposals concerning the training of IPTF CIVPOLs (see Section V.B above) reached a Memorandum of Understanding with the Ministry of Justice of Bosnia and Herzegovina on the provision of technical assistance. Based on a fact-finding mission to the country in February and a needs assessment mission in April, the Crime Division prepared a series of project proposals, including training for selected local police, development of training materials, establishment of a national police judicial academy and creation of a focal point at the UN Office at Vienna on crime prevention and criminal justice for all of the former Yugoslavia. Another project on strengthening the administration of justice in Bosnia and Herzegovina is being developed jointly with the UN Department for Development Support and Management Services, which will include training. As of the beginning of June 1996, however, the international community had not provided funding for these projects.

The Council of Europe has undertaken a number of small, but important, projects. For example, the Human Rights Directorate, is translating the European Convention on Human Rights into local languages, providing a basic human rights library to the national governments and entities, organizing seminars on the European Convention on Human Rights and organizing study visits for officials and lawyers in charge of implementing the European Convention on Human Rights.

Recommendations:

The international community must ensure that adequate financial and other resources are provided to new and existing national and local institutions which protect and promote human rights and see that their decisions are fully implemented.

ANNEXES

Amnesty International's 15-Point Program for Implementing Human Rights in International Peace-keeping Operations

International implementation of human rights provisions in the peace agreement

Amnesty International's 15-Point Program

1. The political role of the international community.
2. No international 'silent witnesses'.
3. Human rights chapters in peace agreements.
4. Effective and independent human rights verification.
5. Ensuring peace with justice.
6. On-site human rights monitoring.
7. Frequent and public reporting.
8. International civilian police monitors.
9. Long-term measures for human rights protection.
10. Human rights education and advisory assistance programs.
11. The protection of refugees, internally displaced persons and returnees.
12. The gender dimension.
13. Adherence of international peace-keeping forces to human rights and humanitarian law standards.
14. Prosecution of war crimes and attacks on international peace-keeping personnel.
15. Continued promotion and protection of human rights in the post-settlement phase.

Amnesty International's 15-Point Program for Implementing Human Rights in Interna- tional Peace-keeping Operations

1. The political role of the international community.

The UN and its Member States should give early, consistent and vigorous attention to human rights concerns when designing and implementing peace settlements and should plan for a continued human rights program in the post-peace-keeping phase. The international community must be prepared to publicly condemn human rights violations during and after the settlement process and to ensure that recommendations for institutional reform are fully and promptly implemented. Human rights protection measures should be kept under review, strengthened as necessary and properly evaluated at the end of the operation.

2. No international 'silent witnesses'.

All international field personnel, including those engaged in military, civilian and humanitarian operations, should report through explicit and proper channels any human rights violations they may witness or serious allegations they receive. The UN should take appropriate steps, including preventive measures, to address any violations reported.

3. Human rights chapters in peace agreements.

Peace agreements should include a detailed and comprehensive list of international human rights laws and standards to be guaranteed in the transitional and post-settlement phase, as well as providing for specific and effective oversight mechanisms. Peace settlements should require eventual ratification of any human rights treaties and adherence to any international systems of human rights protection to which the state concerned is not yet a party.

4. Effective and independent human rights verification.

A specialized international civilian human rights monitoring component should be part of all peace-keeping operations. These components should have adequate resources and staff with human rights expertise. Their mandates should include human rights verification, institution-building, legislative reform, education and training. Monitors should be trained and should operate under consistent guidelines and in conformity with international standards. Human rights components should be explicitly and structurally independent from the political considerations of the operation and on-going negotiations relating to the settle-

ment and their decision-making mechanisms must not be constructed so as to permit parties to the conflict to obstruct investigations. Effective human rights mechanisms, such as advisers or independent jurists, should also be established in less comprehensive peace settlements and should have an oversight role in matters such as the release of prisoners and the guarantee of rights to freedom of speech and assembly.

5. Ensuring peace with justice.

Peace settlements should provide for impartial investigation of past abuses, processes aimed at establishing the truth and measures to ensure that any perpetrators of human rights violations are brought to justice. Individual responsibility for human rights violations, past and present, must be made explicit and sweeping pre-conviction amnesties should not be part of peace settlements.

6. On-site human rights monitoring.

Human rights monitors should be mandated out to carry out investigations and verify compliance with human rights obligations and to take corrective action in respect of violations. They should have broad access to all sectors of society and relevant institutions and the full protection of those who are in contact with them must be assured. Peace-building measures, such as institutional and legislative reform and education and training, must complement but never replace the verification role.

7. Frequent and public reporting.

To guarantee the effectiveness, security and credibility of international human rights personnel there must be frequent comprehensive public reports of their activities and findings which should be broadly disseminated nationally as well as internationally.

8. International civilian police monitors.

Civilian police monitors should monitor, supervise and train national police and security forces and verify their adherence to international human rights and criminal justice standards. Police monitors should cooperate fully with any human rights component or mechanisms and should themselves be trained in and fully respect international human rights and criminal justice standards at all times. There should be full public reporting of their activities.

9. Long-term measures for human rights protection.

Human rights components in peace-keeping operations should assist in the establishment of permanent, independent and effective national

institutions for the long-term protection of human rights and the reinstatement of the rule of law, including an independent judiciary and fair criminal justice system. Other mechanisms, such as ombudsmen or national commissions, may be encouraged to reinforce respect for human rights. Such mechanisms must be impartial, independent, and competent with the necessary powers and resources to be effective. They should conform to international guidelines and must never be a substitute for a fair and independent judicial system. While national institutions are being constituted, consideration should be given to establishing an interim relationship with relevant international tribunals.

10. Human rights education and advisory assistance programs.

Public education and training on human rights standards and complaints procedures should be provided to all sectors, particularly the judiciary, lawyers and law enforcement officials. Other technical assistance programs should be provided, including drafting legislation in conformity with international standards and support for national human rights NGOs. Such programs should not be a substitute for human rights verification by a specialized monitoring component.

11. The protection of refugees, internally displaced persons and returnees.

Refugee repatriation programs should include an effective monitoring and protection aspect for as long as necessary. International refugee law and protection standards must be adhered to at all times, including the principles of *non-refoulement*, the right to seek asylum and repatriation only on a voluntary basis with international supervision.

12. The gender dimension.

Measures should be taken to guarantee consideration and respect for the particular needs of women in armed conflict situations. Peace-keeping personnel should receive information on local cultural traditions and should respect the inherent rights and dignity of women at all times. Human rights components should include experts in the area of violence against women, including rape and sexual abuse.

13. Adherence of international peace-keeping forces to human rights and humanitarian law standards.

The UN should declare its formal adherence to international humanitarian law and human rights and criminal justice standards, including in relation to the detention of prisoners and the use of

force. The UN should ensure all troops participating in international peace-keeping operations are fully trained in those standards and understand their obligation to adhere to them. There should be specific mechanisms at the international level for monitoring, investigating and reporting on any violations of international norms by peace-keeping personnel and to ensure that personnel responsible for serious violations are brought to justice in accordance with international standards.

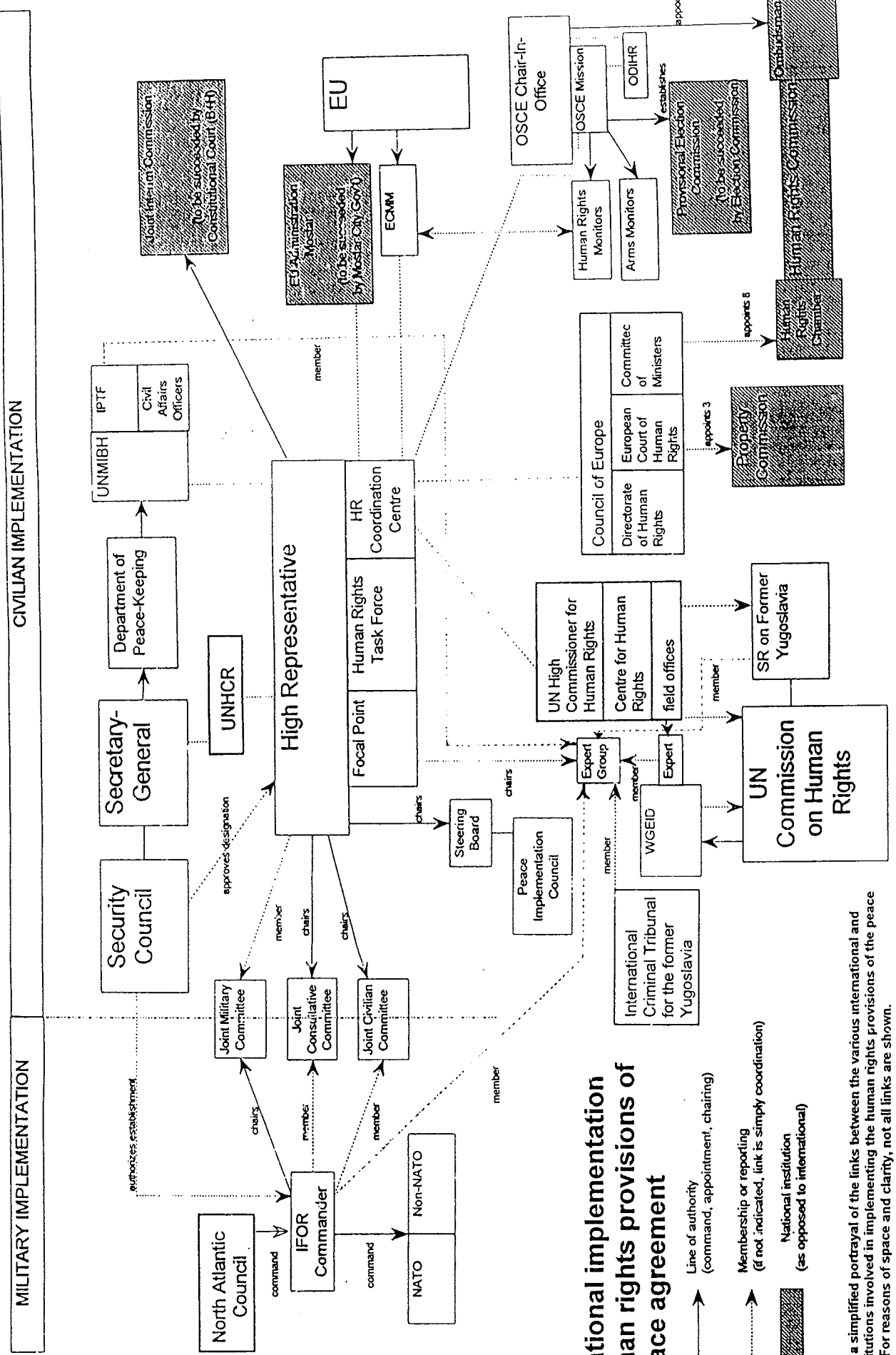
14. Prosecution of war crimes and attacks on international peace-keeping personnel.

The investigation and prosecution of violations of humanitarian and human rights law or attacks against international peace-keeping personnel

should be undertaken by appropriate national authorities or under international jurisdiction. Any international mechanisms must conform to international fair trial standards and the creation of a permanent institution for the prosecution of international crimes should be encouraged.

15. Continued promotion and protection of human rights in the post-settlement phase.

Effective international human rights monitoring and assistance should be continued for as long as necessary, until it is clear that the government concerned is implementing international human rights guarantees effectively. The UN's human rights bodies should develop a more effective and comprehensive role in the post-settlement phase.



International implementations of human rights provisions of the peace agreement

- Line of authority (command, appointment, chairing)
- Membership or reporting (if not indicated, link is simply coordination)
- National institution (as opposed to international)

This chart is a simplified portrayal of the links between the various international and national institutions involved in implementing the human rights provisions of the peace agreement. For reasons of space and clarity, not all links are shown.

