International Support Policies to South-East European Countries

Lessons (Not) Learned In B-H

MÜLLER

CHAPTER XIII

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HUMAN RIGHTS IN B-H

1. Human Rights in B-H (SFRY) before 1991 - Legislation and Mechanisms for Protection of Basic Human Rights

It is impossible to discuss human rights in pre-war Bosnia-Herzegovina disregarding the federative system of former Yugoslavia and the context of relations in SFRY at the time, i.e. outside of the legal and constitutional framework in effect. Such a view is further supported by the fact that international legal mechanisms for protection of basic human rights in force at the time were all (most of them being applied today) ratified by SFRY. In other words, they were all mandatory for all republics or federal units of the state.

SFRY ratified numerous international legal documents concerning the protection of basic human rights and freedoms, of which we will focus only on several general ones. First of all, the Universal Declaration on Human Rights of December 10, 1948, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights, both from 1966. The Universal Declaration was indeed the first international document that regulated the issue of the protection of human rights and which, and this is the most significant feature of this internationally accepted document, divided basic human rights into two major categories – political and civil rights on the one side, and economic, social and culture rights on the other. With no intention of entering a basic description of the concept of human rights and the protection thereof, we have to point out that this is an international legal document carrying within itself an appeal to all ratifying countries. This appeal urged all countries to initiate the process of legal protection of basic human rights, within their own legal systems, by amending or adjusting them to the principles contained in this Declaration. We emphasize the word 'appeal', as the Universal Declaration is not a legally binding document, and it has no legal mechanism for controlling and sanctioning possible non-compliance. Therefore the Universal Declaration should be seen as a basis for documents that followed after it had been adopted. Naturally, as one of the state founders of the UN, and since the Declaration was the result of work of a UN commission established for this purpose, SFRY was amongst the states which were party to the Declaration.

The above-mentioned covenants, the Covenant on Political and Civil Rights and the Covenant on Economic, Social and Cultural rights, both passed in 1966, were not only more specific in defining basic human rights and freedoms, but, for the first time in the history of protection of basic human rights and freedoms, they incorporated certain protection mechanisms and sanctions and were legally binding for signatory countries. Naturally, this caused a certain reluctance in adoption of these treaties, and despite the fact they had been signed in 1966, they only came into force 1976 when they received a sufficient number of ratification signatures. One of the countries that was reluctant (primarily towards the Covenant on Civil and Political Rights, which was logical for a one-party rule country) was SFRY. In view of a different level of economic development and different economic power, the Covenant on Economic, Social and Cultural Rights left the states a certain margin of appreciation in determining the level of respect of those rights (e.g. the right to work cannot represent the same concept in a well-developed as in an under-developed country). However, the Covenant on Civil and Political Rights was very specific in prescribing identical parameters for all signatories. This was, in fact, the reason for SFRY to be reluctant with its ratification. Moreover, the matter became more serious when the Optional Protocol, which contained certain operational details that had not been resolved by

the Covenants, ensued. In any event, ten years after the creation of the Covenants, they were ratified by a sufficient number of states and entered into force in 1976.

The concept of international legal standards set (primarily) in these documents (which are, naturally, not the only ones, but are the most general and in our opinion the most important for the aspects represented in this study) was the basis of the internal concept of protection of basic human rights and freedoms of each individual state. In the same period, the Council of Europe passed in 1950 the European Convention on Human Rights and Freedoms, which is considered the most significant document of its kind in international law (mainly because of the system of sanctions). We will discuss this Convention in the part of this study related to respect of basic human rights and freedoms in B-H, subsequent to the signing of the Dayton Peace Agreement, which has been applied only to the member states of the Council of Europe, thus not to SFRY.

As a one-party federative state, SFRY had a federative constitution. Constitutions of all the federal units, including the pre-war B-H, had to be in concord with the Federal Constitution. Each of these constitutions contained a certain number of provisions regulating the protection of basic human rights and freedoms. Thus the 1974 the SFRY Constitution defined three groups of basic human rights - constitutional rights, as general human rights, related directly to an individual person; rights of individuals and citizens, and third, special group - socialist, self-management, democratic rights. Before giving an explanation of this categorization, it is necessary to note that, similar to constitutions of other states, the 1974 Constitution spells out certain limitations in protection of basic human rights, mentioning "equal freedoms of others and interests of the self-management socialist community". This Constitution introduced some new specific rights into the group of basic constitutional rights, such as occupancy right (Article 164) over socially-owned flats (the concept which still represents a rigmarole, both for local lawyers and for foreign experts, who simply cannot apprehend its meaning); the right of citizens to participate in social self-defense (Article 173) or, for example, the rights of workers to working conditions that ensure their physical and mental integrity and safety (Article 161).

Human and civic rights, the second of the aforementioned categories of rights integrated into the 1974 Constitution are, in fact, classic political and citizens' rights contained in Chapter III of the Constitution, while specific socialistic, self-management and democratic rights comprised a special group of rights, including: right to self-management, right to work, right to freedom of work, right to limited working hours, rights to basic social insurance, and other rights arising from employment, right to free expression of personality and socio-political activity (freedom of thought and affiliation, press and other forms of information, association, speech and public appearance, etc - *sic*!), right to personal freedom (right to life, freedom of movement and residence, inviolability of home, privacy of correspondence, etc.). All republic and provincial constitutions, including the Constitution of SR B-H, almost literally took over definitions and wording of the Federal Constitution, amending it with more or less "additional rights" in the areas of education, culture, script and language, health, and rights of ethnic groups. As for limitations and mechanisms for protection of basic human rights, the Constitution prescribes that in addition to limitations related to interests of self-managed socialistic community, the rights and freedoms guaranteed by the Constitution can be limited or abolished only in cases as defined by law, and under conditions and limitations strictly defined by the Constitution. The law also defines the manner of exercising the constitutional rights and these rights "cannot be exercised against the order established by the Constitutional or in a way as to jeopardize rights and freedoms of others, or in a manner which offends public ethics. The Constitution provides court protection of the guaranteed rights". (Article 203)

This would be, in short, the constitutional legal concept of basic human rights and freedoms in SFRY, and thus in B-H, as we previously stated that the same concept had been taken over by all republics in the former Yugoslavia. The basic mechanism for protection of basic human rights was the court. Additionally, in relation to a particular category of rights related to the socio-political concept of the socialistic self-management

system, certain powers were vested in the self-management public attorney. Whether and to what extent a gap existed between the norm and reality in the area of basic human rights and freedoms in SFRY and thus in B-H, is an issue that certainly requires a comprehensive study, and to which we cannot pay due attention in this paper. However, it is a painful truth that this area, supported by the nationalist policies of all three parties, was treated as one of those that paved the road to the war in former Yugoslavia. This does not come as a surprise, because it is a well-known political maxim that when one wants to trigger off a conflict within a state, it is enough to 'rake up' the issue of human rights of one group or another, at the expense of the third, provided that 'one', 'another' and a 'third' exist.

2. Human Rights in B-H and the Role of International Factors in Protection Thereof in the Period 1991-1995

The last elections organized before the war brought to power nationalist-orientated leaders on all three sides, which, first with their public appearances, and later by their actions, called to arms and a "final showdown". The status of human rights during the course of the conflict and its end after the signing the Dayton Peace Agreement, can be discussed from several different aspects. For the purposes of this Study, we will focus exclusively on the legal aspect to the extent possible. In that sense we will try to avoid the traps of correlating events and policies of the time.

Therefore, if looking at factual events at the time from a legal point of view, we have to state that during the initial phase of the conflict the entire legal system, and obviously the protection of basic human rights, was dissolving or rather in chaos. Political turmoil and the subsequent armed conflict led to the division of Bosnia-Herzegovina, and even to the creation of certain governmental institutions on both sides. To what extent and how indeed these institutions functioned, is illustrated by the fact that almost the entire B-H territory was engaged in war, and that a state of war was declared with much delay.

Declaration of a state of war was mentioned intentionally, especially having in mind the importance it has in the type of a conflict we had. It is, in fact, directly related to the field of protection of basic human rights, as declaring a state of war logically requires a transfer to a legal regime appropriate to war. This simply means the coming into effect of those rules which protect basic human rights in war and which are primarily related to the protection of civilians. At the same time it means a derogation of local regulations in this field, or possibly their enforcement, if they are in compliance with international legal documents regulating the matter. Thus it happened that there was war in Bosnia-Herzegovina and the war was officially never declared. This, of course, does not mean that the parties to the conflict were not obliged to apply the provisions of international laws of war and humanitarian law, primarily the Geneva Conventions and Additional Protocols. Political leaders had advisors who were aware of this fact, and they tried to eliminate some of these defects, at least formally. Thus, for instance, in Geneva on May 22, 1992, the ICRC initiated the signing of an Agreement between representatives of Alija Izetbegović, Radovan Karadžić, and Miljenko Brkić, which obliged them (through their representatives) to respect the rules of International Humanitarian Law (especially emphasizing the issue of caring for the wounded, the sick and the dead).[1] To what extent this Agreement was a political charade is illustrated by the fact that despite the international legal commitment, the reality was exactly the opposite. Illustrative is the example of a huge number of missing persons, about whom even today no information is available. The aforementioned Agreement includes mandatory application of Protocol I, which includes mandatory establishment of the Tracing Agency within the Red Cross. The mandate of the Tracing Agency is to gather, record, process and disseminate information about all victims of war – one's own, those of the allies and of the enemy - additionally, all bodies and organizations,

[1] See Agreement, Annex 1

military units and institutions are bound to provide data and information to the Tracing Agency, in accordance with the law. Such agencies were established, yet according to ICRC[2] information, they failed to fulfil their task. This does not mean that tracing agencies are to be blamed for the huge number of missing persons and no information. On the contrary, according to the International Laws of War, military officers are responsible for gathering and disseminating information on wounded, sick and dead members of enemy armed forces. Specifically, this is the responsibility of officers in charge of the medical corps in charge of aiding the wounded and collecting the dead. The obligation to establish a POW Information Bureau is also prescribed by international legal documents. The main task of the POW Information Bureau is to gather and disseminate data on prisoners of war to the parties concerned and to a central agency. Proven existence of mass graves with unidentified bodies all over B-H indicates the fact that these rules were not even modestly respected. On the other hand, it is necessary to note that no international factor became involved in this activity, except for ICRC, at least not significantly. This is a problem that has not been resolved even five years after the conflict ended, because according to ICRC records there are over 20,000 persons still registered as missing in the territory of B-H. Practice has shown that it is extremely difficult to get hold of any information regarding missing persons, due to the presence of "private camps" or camps held by individuals, outside military control. These camps held (and still hold) both missing soldiers and civilians. Institutional ways of tracing these persons have not proven successful. Traced and found missing persons were usually the result of the engagement of family members, politically and military powerful individuals, etc, despite the fact that signatories of the Dayton Peace Agreement were bound to release immediately and repatriate all prisoners of the war with no delay.

As for the activities related to missing persons, the only active tracing agency was the one within ICRC Tracing Service. Thanks to the possibility of working in a large territory, almost the entire territory of B-H and former Yugoslavia (this was possible thanks to the adjective 'international'), this was the only institution that had and still has the most relevant figures and data on missing persons.

By locating and exhumation of mass graves, depending on the identification results, the figure of 20,000 referring to missing persons will be decreased, but probably not substantially.

The treatment of POWs, i.e. violations of international regulations regarding the status thereof, is also part of the general area of respect of basic human rights, a truly specific category. Nevertheless, the focus of this study is on violations of the regulations related to treatment of civilians during an armed conflict. It is necessary to make a distinction between civilians - citizens of the enemy state, citizens of neutral states, stateless persons and refugees. Whether it is wise to discuss the status of these persons is a separate issue. This is so because the conflict in B-H was very specific, with non-international, ethnic, and even religious features. Therefore it raises a practical dilemma over the applicability of these provisions, as in this case we cannot discuss the presence of e.g. persons of the enemy state citizenship, since the fact is that the conflict took place within the borders of the internationally recognized state of B-H, between groups of three nationalities or ethnicities. Therefore, it might be useful to concentrate only on those provisions related to journalists, women and children. Status of women prisoners of war is formally and legally regulated by the provisions prescribing the obligation towards children under 15, pregnant women, and mothers with small children, in terms of accommodation, work and other aspects, who are to be treated with full consideration of age and health conditions. It is unnecessary to point out that this is yet another in a range of provisions that were not respected. Release and repatriation are a further two issues tackled by the Dayton Peace Agreement. In its General Framework Agreement for Peace, Article 9

[2] See ICRC Records on missing persons in B-H from January 1997 and see the Statement of ICRC Tracing Agency from 16 September 1997.

anticipates, pursuant to international human law, the unconditional and immediate release and repatriation of all soldiers and civilians being held by the parties on the basis of the conflict. Moreover it was agreed that the release and repatriation plan, in coordination with ICRC, was to be carried out within 30 days from the day of transfer of powers. Further provisions of the General Framework Agreement for Peace established the obligation for the parties to prepare, also in co-operation with ICRC, and make comprehensive lists of all prisoners and to hand them over to other contracting parties, to the Joint Military Commission and Office of the High Representative. In Subsection e) of the same Article of the Dayton Peace Agreement it is defined that the parties are obligated to provide for ICRC unhindered access to all locations where prisoners are held. In addition the obligation was set for authorized persons at such locations to enable ICRC representatives to have conversations with detainees in private at least 48 hours prior to release.[3]

The painful truth is, on the other hand, that during the conflict, and even today, more than 5 years after the end of the conflict, information on missing persons, bodies, and the ever more rare cases of survived prisoners, are the subject of trade.

The issue of refugees and displaced persons was one of the major problems during the conflict in B-H. As the main characteristic of the war was conflict between ethnically and religiously diverse groups, the ethnic cleansing policy was one of the principle postulates of unofficial, although no less real, policy. In other words, there are no relevant official data on the policy of ethnic cleansing, although it was more than obvious that it was carried out through steps undertaken by lower levels of government, such as dismissal of staff of other ethnic groups, eviction from apartments, justifying it with “rationalization of residential space”, etc. Rare individuals who did not accept forced evictions, armed with patience and persistence, usually succeeded in exercising their rights before competent governmental, judiciary or executive bodies, or with an assistance of an Ombudsman. Evidence of this can be found in numerous judgements and executive decisions.

It was usually municipal crisis boards and international humanitarian organizations that took care of displaced persons and refugees. On the other hand, the fact is that a small number of international organizations put in an effort to be more involved in taking care of refugees and displaced persons. The assistance that was provided in the field, far from the pessimistic and fluid political negotiations, was organized again by ICRC, UNHCR and several religious humanitarian organizations. Unfortunately, this assistance was insufficient, as the number of refugees and displaced person was constantly increasing. The final conclusion is that none of the segments of international humanitarian law was more disrespected and violated than the protection of displaced persons and refugees. One cannot say that a single provision of either international or national protection mechanisms was applied.

Having in mind the fact that the B-H conflict was a conflict of armed members of different ethnic and religious communities, this makes this issue subject to international humanitarian law (as this was an armed conflict), as well as an issue of basic human rights and freedoms (as we are talking about division based on ethnic or religious affiliations). It is also important to repeat the fact that during the course of the conflict, regardless of the parties involved, the policy of ethnic cleansing was carried out and resulted in the creation of more or less ethnically cleansed areas, i.e. a huge number of refugees on both, or rather all three, sides to the conflict. Mechanisms used for implementation of such policy were mentioned earlier, as well as protection mechanisms that were formally and legally operational (although better wording would be ‘formally and legally existent’). One should also note that the international community never considered B-H or the former Yugoslavia to be a burning problem which directly resulted in the fact that today, five years after the conflict had ended, the process of return of refugees and displaced has not yet been completed (nor is its end in sight). The Dayton Peace Agreement could not tackle or resolve this problem in full, as its priority objective was putting an end to the conflict. It was believed

[3] See Article 9, General Framework Agreement.

that the imposed implementation of 16 international legal documents in the area of protection of basic human rights and freedoms would not only pave the road to return of refugees and displaced persons, but would also help the establishment of the system of protection of these rights and freedoms.

Thus, parties to the conflict that signed the Dayton Peace Agreement, committed themselves to respect and apply (among other documents), the provisions of the European Convention on Human Rights and Fundamental Freedoms from 1950, although B-H was not a member state of the Council of Europe, thus a precedent was applied. This was done due to the urgency of application of international standards for the protection of basic human rights and freedoms, which absolutely justifies inclusion of the Convention into the domestic legal systems of both entities. Realization of this idea was supported by the introduction of the institution of Ombudsman for B-H, an institution entirely unknown to the legal systems of former Yugoslav federal units. This institution is competent to act in both entities in matters related to violations and disrespect of basic human rights and freedoms. All this resulted in caution and reluctance demonstrated by the authorities in both entities. The outcome is seen in more and more decisions on eviction of illegal occupants who moved into apartments or houses during the course of the conflict. This does not mean that the European Convention or any of the 16 international documents are really operational in B-H, which is something that the entity judiciary systems are, indeed, not only to blame for. The fact that official translation of this Convention was made only in the year 2000; that judges in both entities are not sufficiently educated in terms of the Convention itself, (which constitutes a legal basis for decisions in the common law system, while the legal system in both entities is based on the European continental system). This is obvious from the simple fact that, for instance, local courts in RS have passed only five, and in the Federation (FBiH) they have passed no, judgements based on the Convention. On the other hand, in B-H there are numerous representatives of different Bar Associations (from Spanish to American!), a large number of not only non-governmental but governmental organizations as well, have departments for reform of the legal and judicial system, whereas at the same time specific tasks, such as official translation of the European Convention have been delayed for several years.

When talking about protection of basic human rights and freedoms, both in peace and in war, an inevitable issue is the issue of responsibility for violation of basic human rights and freedoms. During the course of armed conflict, this issue turns into criminal responsibility primarily for violating the provisions of international laws of war and humanitarian law.

The concept of individual criminal responsibility, or responsibility of the individual who violates international humanitarian laws, even during the course of the conflict in former Yugoslavia, and including the conflict in B-H, resulted in the creation of the Tribunal in The Hague, whose mandate is to sanction all perpetrators who committed war crimes in the region of former Yugoslavia. As this is criminal responsibility, it is defined and sanctioned in the internal legal systems of the entities, in their criminal codes. There exists a tendency (or attempts) for the former exclusive competence of The Hague Tribunal to be, on the basis on the principle of universal jurisdiction, at least partially transferred onto entity courts, or the State court that is in the process of establishment at the time this Study was made.

3. The Dayton Peace Agreement and Changes in the Protection of Basic Human Rights as a Consequence of its Signing

War events in the region of former Yugoslavia in the past, in addition to vast human suffering, agony, material damage and economic devastation, led to the creation of some forms of state structures unknown to international law (both theoretically and practically).

After the secession (which caused an extremely high number of human casualties and material damage in some areas and less in others) of some federal units in SFRY, the conflict in B-H, which is considered the climax of war activities, was ended by the signing of Dayton Peace Agreement in November 1995.

That Agreement (it is primarily a peace agreement) constituted “Bosnia-Herzegovina comprising two Entities: the Federation of Bosnia-Herzegovina and Republika Srpska."

Bosnia-Herzegovina, (re)constituted by the Dayton Agreement, with two entities, as the agreement provision foresaw it, was supposed to “continue its legal existence in accordance with international law, as a State with an internal structure as modified by this document and with the existing internationally recognized borders."[4]

The state structure and its organizational forms have not been yet subjects of serious theoretical research. This is logical, as the practical aspect of this issue, i.e. focusing on the ending of atrocities, establishment of a lasting peace and reconstruction of devastated areas, was far more important to not only the parties in conflict, but also to the international community as the creator of this agreement. Therefore, even in the agreement itself a specific definition of the system of government was left out, as can be recognized in the vague wording of the above-quoted provision ("...with an internal structure as modified by this document...").

Of course, this fact does not prevent anyone from noticing and commenting on certain elements that set grounds for the initial theoretical, at least minor, attempts at focusing on the problem. The Dayton Agreement itself, as we have noticed from the quoted provision, does not define Bosnia-Herzegovina simply as a confederation or federation. This primarily indicates the political sensitivity of this issue and caution present during the process of creation of the Agreement. The elements that define Bosnia-Herzegovina as a specific kind of state should be looked for in the provisions of the Agreement primarily related to the responsibilities of Bosnia-Herzegovina and each of the entities respectively.

The Preamble of the Constitution (Annex IV of the Dayton Agreement) reads that Bosniacs, Serbs and Croats, as constitutive peoples of Bosnia-Herzegovina are ”committed to the sovereignty, territorial integrity and political independence of Bosnia-Herzegovina ".

The intention of these remarks on constitutional and legal issues was to draw attention to the urgency of ending the conflict, which made the international community make some concessions in the form of a vague definition of the state and legal system in Bosnia-Herzegovina and its entities. Being an extremely sensitive issue, it was simply set aside for some ‘more calm’ times, for politically less sensitive times. Today, one has the impression that as a part of the competencies of the High Representative, the Venice Commission, or even the Constitutional Court B-H, whether we like to admit it or not, they are, in a way, the constitutional legislators in Bosnia-Herzegovina.

The reason for our research in this field is the simple fact that, unless you have a set system of government, you will not have standardized protection of basic human rights. Nowadays, it is more than obvious that there are not two (entity), but 13, legal systems, due to the existence of cantons in the Federation. This means not only diversity of provisions within a canton, or entity, but also a certain legal insecurity. At the same time, at least in accordance with experiences from the past, OHR is the only one who exercises its competencies in the entire B-H.

If we go back to the Dayton Peace Agreement and its provisions regulating the protection of basic human rights, we must admit that, having in mind the circumstances under which the Agreement was created, it did make an important step forward in the field of the protection of basic human rights and freedoms. In the provisions of Annex IV, Article 2, Bosnia-Herzegovina and both entities are obliged to exercise “the highest level of internationally recognized basic human rights and freedoms". Parameters used in this context are international standards, incorporated primarily in the European Convention for the Protection of Human Rights and Fundamental Freedoms from 1950, which has to be

[4] Annex 4, Dayton Peace Agreement, Art. 1, Para. 1.

directly applied in the whole of Bosnia-Herzegovina, as a legally binding document that has priority over domestic regulations. Bosnia-Herzegovina, despite the fact that it is not a member state of the Council of Europe, accepted this, rather unusual manner of implementing an international agreement, i.e. the European Convention on Human Rights. We have to mention the paradox that regardless of the obligatory nature of implementation of this Convention, entity judicial bodies and judges who are dealing with cases of human rights violations, were (and most of them still are) virtually professionally and financially unable to implement the said Convention, since the European Convention was a practically unknown document in our region. In addition to that, we have to say that not only the Convention, but also the entire legal system created based on the Convention, and on the work of the European Court for Human Rights, was based on the application of the law of precedence, which to our pre-war, and now to our post-war, systems, based on European continental law, was unknown. What makes the situation even more absurd is the fact that official translation of the Convention (that supposedly should be the basis for judges in processing cases related to protection of basic human rights) appeared only in early 2000, almost five years after the Dayton Peace Agreement. Therefore, we should not be surprised by the ridiculously insignificant number of finalized court cases with reasoning backed up with provisions of the European Convention on Human Rights. We can see, thus, that even if the entity governments' political resistance to application of the European Convention is taken into consideration, the international community itself has not done much for the implementation of the Convention. Education of judges and others within or outside the institutions, who are involved in the area of human rights protection, was organized sporadically, not systematically, and without comprehensive activities in terms of implementation of the Convention, or even its official translation and distribution. However, the most important segment of the Dayton Peace Agreement is Annex VI, which is entirely dedicated to the issue of protection of basic human rights, and which officially bears the name "the Human Rights Agreement ". Thus, in the same Annex (Article 1) provisions on mandatory application of international standards in the area of human rights protection contained in the European Convention was repeated, along with a list of basic human rights that have to be honored. Article 2 of the Annex establishes the Commission for Human Rights comprising two operational components - the Ombudsman and the Human Rights Chamber (their work shall be discussed in further text). Article 13 of the Annex anticipates the obligations of the parties to encourage the work of non-governmental and international organizations for protection and promotion of human rights. Responsibility for monitoring of the above-mentioned obligation is given to OSCE's Human Rights Commission, the UN High Commissioner and "other non-governmental and regional missions or organizations" as contained in Article 13, Paragraph 2. Paragraph 3 of the same Article constitutes the obligation for the parties to "allow free and full access to NGOs for the purpose of research and monitoring of the conditions in the field of human rights in Bosnia-Herzegovina, and to refrain from preventing or hindering their activities". Vagueness in terms of defining supervisory or monitoring competencies led to a situation whereby with no system, order and often unauthorized organizations of unknown founders, NGOs were simply "wandering around" (often with no legal qualifications or authority, and also not duly registered). All this is happening under the mask of "human rights and freedoms protection", but in fact the intention is to take their own "piece of the cake" granted by not only this quite awkwardly formulated provision of the Dayton Peace Agreement, but also by a range of conclusions and recommendations issued by different, both local and international, institutions.

The Appendix of the Annex includes a list of other international legal documents regulating the area of basic human rights (16 in total) that have to be adhered to as parameters of the generally-recognized international standards for the protection of basic human rights. From our point of view Annex VII is very important, since it regulates the status and rights of refugees and displaced persons, i.e. the repatriation process. Article 1 of the Annex consists of a provision defining the right of all displaced persons and refugees to return freely to their homes, a guaranteed right to restitution of the property and right to

indemnity for the property that cannot be returned. Paragraph 2 of the same Article obliges the signatories to ensure safe return to everyone, with no disturbances, intimidation, terrorizing or discrimination. Paragraph 3 prescribes the undertaking of all necessary measures to prevent activities directed against safe return. Some of the measures include prevention of media, press or verbal encouragement to spread hatred and atrocities or actions of retaliation; protection of minorities and a ban on expulsion, etc. Today, five years after the adoption of these regulations we still have, in both entities, collective centers for refugees, returnees who have not regained their property, returnees who are in possession of their property but without a regular source of income, let alone health and social security. Entity governments are to be blamed for some of these problems. Nonetheless, it is not always the case. For example, in the areas with no official resistance to return of displaced persons and refugees, there is an “unofficial” one, and further even if there is no resistance at all, then there is no possibility for employment. Governmental bodies cannot be blamed for the latter, as the economies of both entities were devastated by the war and cannot sort out the unemployment problem. This does not refer only to new job creation, but to return to old jobs. The question that probably each returnee is asking him/herself when considering return, or after returning is “ what is next?” The question logically following that one is “why, if the international community wanted to assist repatriation process, did they not invest in the opening of new working posts for returnees?" The truth is that the same Annex to the Dayton Peace Agreement, prescribes responsibility of the contracting parties to provide certain preconditions for the return process. On the other hand, it is also a known fact that the organizations that have been encouraging and assisting the process of return, had vastly larger budgets immediately after the war than today, and that the number of returnees on the waiting list has not been reduced in the same proportion. (Examples of UNHCR or ICRC).

Missing persons are probably the most tragic segment of this Annex, since according the ICRC’s official records, created at the end of 1997, over 20,000 persons are still missing. The exhumations and identification process reduced this number by no more than 500. The entity authorities, primarily commissions for missing persons (and some of them being members or mediators within these bodies) are faced with the phenomenon of “purchasing information” on missing persons for large amounts of money, according to our standards. As far as the author of this paper is aware, none of the international organizations, except for ICRC, has become seriously involved with this issue.

The inevitable conclusion is that the Dayton Peace Agreement has not fully defined and determined the mechanisms for legally concise protection of basic human rights. Unfortunately this could not be achieved by this kind of document which is, above all, a peace agreement. Its main objective was to achieve peace and end the conflict, and create the conditions for recovery and progress of the newly-constituted Bosnia-Herzegovina. Unfortunately this document has not followed a logical set of steps initiated by legal regulation of certain problems, leaving no space for manipulation, not only to individuals in power, but on a wider scale. Economic revival that was supposed to constitute the grounds for implementation of the range of provision of this agreement, is also missing. The consequence is an even more difficult economic situation, not only of returnees but also of the population that remained in the same place of residence. There was simply no subject (also not envisaged by the Dayton Peace Agreement) that would not only have competencies in deciding upon some of the above-mentioned problems, but also be responsible for the failure to carry out the specific tasks.

4. Mechanisms for Protection of Basic Human Rights introduced by the Dayton Peace Agreement, Constitution of B-H and Constitutions of the Entities - Newly Created Institutions in the Field of Human Rights and Their Practice to Date

4.1. Local Institutions

When discussing the protection of basic human rights by local institutions, we cannot say that the situation in this segment has changed in comparison to the pre-war period. The only change is in the number of cases related to the realization of the right to property (based on pre-war ownership or the occupancy right concept, specific to the former government system). A small step forward can be seen in the efficiency of local courts, which are slightly more efficient in processing the cases regarding repossession of property. Unfortunately this is not a result of a change in the way of thinking, but a result of political pressure of primarily the High Representative on entity governments.

Judiciary systems in the entities have preserved organizational concepts from before the war, while some of the relevant areas have experienced changes (e.g. new regulations in criminal law), although generally speaking, one can hardly say that the situation has changed. The problem that has been totally denied, principally by the international factors, and then with the tacit agreement of the local factor, is the fact that now in Bosnia-Herzegovina we have the most confusing mixture of legal regulations and principles in the area of basic human rights. The situation is becoming more complicated due to the fact that, along with the implementation of 16 international documents on the protection of basic human rights, some new bodies were introduced. The competencies and work of these bodies confuse professionals, let alone ordinary persons, potential beneficiaries of the said regulations, or applicants before these bodies. The gap in terms of interpretation and application of legal provisions regarding the differences between the common law system and European continental law, have already been a subject of our discussion. At the time of creation of this Study, there is an ongoing procedure for establishment of another institution, the so-called State Court. This court would, in certain fields, have competencies over both entities, although for now, according to the Draft Law on State Court, its competencies seem to be quite confusing and fluid.

The basic shortcoming notable in the process of work of local authorities in the area of basic human rights protection are inefficiency of the courts, tardiness in work and decision-making, no mechanisms for execution of decisions even when they enter into force and become final, justified by the difficult financial situation of the sector, insufficient number of judges in comparison to the number of cases, etc.

4.2. The Human Rights Chamber

Annex VI of the Dayton Peace Agreement anticipates the establishment of a Human Rights Commission, comprised of two components: The Human Rights Chamber and the Ombudsman. Both of them have certain judiciary functions, although they are not a part of judiciary system in a formal legal sense.

The Human Rights Chamber, defined by the Dayton Peace Agreement, is a body composed of 14 judges, six citizens of Bosnia-Herzegovina (four judges from FB-H and two from RS), and the rest are foreign judges. As far as composition of the national part of the Chamber is concerned, it was obviously conditioned by ethnic representation (two judges are of Croat, two of Bosniac, and two of Serb nationality). On the other hand, in order to ensure that the majority of the votes for decisions are favorable for the international community, the rest of the judges (eight, i.e. more than half) are foreigners. The Chamber decides in chambers composed of seven judges (two from the Federation of Bosnia-Herzegovina, one from RS and four foreign judges).[5] Trials before the Chamber are public, the process ends either with a “friendly settlement” or with a decision of the Chamber. The decision is final and binding and must contain a reasoning. Entity governments abide by

[5] See Dayton Agreement, Annex VI, Article 9

the Chamber decisions. In addition to the governments of the entities, the decisions are distributed to the Office of the High Representative, General Secretary of the Council of Europe and OSCE, as they are mandated with implementation of the Chamber decisions.

Since March 1996, when the Chamber was constituted, until the end of 2000, according to available data, the Chamber has received over 3,500 individual applications. A statistics review, based on the Chamber reports, is as follows:

Year	Applications received	Decisions issued
1996	31	0
1997	83	19
1998	1,382	67
1999	1,953	206
Total as of December 1999	3,449	292

The Chamber has heard cases related mainly to protection of property rights and occupancy rights, rights of ownership, and abuse of the Law on Abandoned Property, and this is usually when the domestic legal remedies have been exhausted or clearly inefficient. There were a few cases dealing with illegal arrest, abuse of police or other public authority, violations related to a fair trial, and a minor number of cases of violation of the right to freedom of religion, etc.

Statistics of the cases of the Human Rights Chamber is as follows:[6]

	Total
Applications received and registered by the Chamber	3,449
Decisions of the Chamber (decisions for 408 applications) *	292
Decisions on admissibility - admissible (16) - inadmissible (103)	119
Decisions on admissibility and merits	51
Decisions on merits	10
Decisions on compensation	11
Decisions on requests for reconsideration - accepted (1) - rejected (19)	20
Decisions on rejection	80
Reports on settlement (friendly settlement)	1

*One decision can cover more than one individual application.

As already mentioned, the decisions of the Chamber are final and binding. In that context, one needs to note that the Chamber is formally and legally not a domestic institution and does not come under domestic (entity and canton) legal norms regulating the judiciary system. The binding nature of these decisions finds grounds in political pressure and authority of the High Representative, which undoubtedly cannot be understood as a legal but rather as a political mechanism. This fact, to a certain extent, explains the resistance to the implementation of the decisions, as the general legal principle is that the binding nature of the decisions of domestic institutions rests on the monopoly of authority over the power to use force, which is not the case with the decisions of the Chamber. Criticism that we must mention is related to the building of parallel systems of governmental

[6] See details of Annual Report, Human Rights Chamber, Sarajevo, March, 2000.

bodies - on the one side there are local, domestic governmental bodies, including the judiciary, and on the other side there are institutions like the Human Rights Chamber and Ombudsman, The High Representative and IPTF, that can in no context and under no circumstances be treated as components of the local legal system. Nonetheless, we have witnessed that they are functioning as such. Of course, the legal grounds for their operation is defined by the Dayton Peace Agreement, which being an international agreement takes precedence over local regulations. Now we are faced with a simple and economically irrational duplication of not only competencies and functions, but costs of the work of these bodies. On the one side we have the extremely difficult financial situation of local judicial bodies (which is partly the reason for inefficiency and length of processing issues regarding protection of basic human rights), and on the other side there are parallel bodies, financed by the international community, whose annual budgets exceed many times over the possible costs of regular or Constitutional Courts. A frequently raised issue in the circles familiar with the work of the Chamber is a great number of foreigners engaged, judges etc., who were not aware of the basic features of the pre-war legal system, i.e. the legal systems that existed in SFRY and SRB-H. Certainly, letting local judicial bodies take exclusive responsibility for the protection of basic human rights would be a risk that the international community was not prepared to take, primarily because of the evident inefficiency in ensuring the rights of national minorities. However, on the other hand, five years after the end of the conflict, there is no visible end to this situation. Therefore a logical question arises - how much longer will these parallel institutions exist (the Dayton Agreement foresees a five-year period) and what will happen once they cease to function? To what extent will the domestic judicial institutions be educated and trained to take over that function, and to be truly impartial and independent in their work? With no intention of offering a final answer to all these questions, we do believe that the protection of basic human rights in B-H in the future depends in some part on this answer.

4.3. Ombudsman

The Ombudsman is an institution that is the second operational component of the Human Rights Commission, established by Annex VI of the Dayton Peace Agreement, the person whose mandate was intended for five years (but in the meantime extended) and a person who is not a B-H citizen.[7] Competence of this institution is similar to that of the Human Rights Chamber, but the procedure for investigation of allegations and decision-making is distinctively different. In short, the Ombudsman receives individual or group applications, investigates the allegations, and in the event of identifying a violation of basic human rights, prepares general and special reports which are binding for the parties. At the same time, it can forward cases to the Chamber. The statistics of activities of the Ombudsman for B-H, as of the end of 1999, read as follows:

Total number of cases	10,073
Registered number of cases	3,785
Investigations:	
Open	828
Not open	617
Closed	142
Number of cases submitted to the Chamber prior to approval of the Final Report	118
Approved reports:	
Final	599
Special	17

[7] See Annex VI, Dayton Peace Agreement, Part B, Par. 2 and 3

Number of proceedings initiated before the Chamber based upon the Final Report	52
Final and Special reports submitted to OHR, for further activities of the Presidency/President of the contracted party	282

As to the nature of applications submitted to Ombudsman, a rough estimate is that over 50 percent of applications are related to protection of property and respect and recognition of right to one's home, 30% are related to protection of other rights related to property rights (e.g. right to choose place of residence), while 20% is on fair trial, right to liberty and security of person, etc. In the offices of the Ombudsman (who is a foreign national) in Sarajevo and Banja Luka there are more than 20 lawyers and they are citizens of B-H.[8]

The Ombudsman institutions in the entities are connected to this institution, and they are considered domestic, although (in spite of entity laws regulating their operation) they do not have real influence in the field of protection of basic human rights. The criticism of the work of the Human Rights Chamber can be repeated, maybe not to the same extent, for the work of the Ombudsman for B-H. The power of this institution in the implementation of the Report finds its grounds in the political pressure of the OHR, and in the political good will of the entity and cantonal governments to co-operate and assist in the process of implementation of the decision issued by these institutions. This is absolutely not in accordance with the principles of rule of law and legal security that are the main principles for organization and operation of democratic states.

4.4. The Constitutional Courts of the Entities

The constitutional courts of the entities, whose work is regulated by the entity Constitution, are part of the legal system of the entities. Their primary function is to protect constitutionality and legality, and then partly and in the context of the prime function, to protect basic human rights and freedoms. The specifics of their function in the context of protection of basic human rights are reflected in the fact that their mandate is to evaluate, upon request of an individual or group of individuals, the constitutionality and legality of the laws of lesser legal power than the Constitution. This is the case when a petitioner requests an evaluation of constitutionality or legality of a certain document, claiming that in some way it violates basic human rights and freedoms. Constitutional courts as institutions are neither new nor unknown to the pre-war legal and judicial system, and in view of the fact that they deal only with local regulations, we will not discuss this issue more extensively in this Study. Their role in the segment of human rights protection is significant to the extent that petitions for assessment of constitutionality or legality of some legal acts, which allegedly are not in compliance with the constitutional provisions regulating the protection of basic human rights and freedoms, are submitted to them. The cases which, for example, have arrived before the Constitutional Court in RS were mostly related to housing relations[9], right to work and rights which derive from the right to work[10], and the issue of official use of language and script.[11]

4.5. The Constitutional Court of B-H

[8] For details see: *Fourth Annual Report*, Office of the Human Rights Ombudsperson for Bosnia and Herzegovina, Sarajevo, 2000.
[9] For details see: *Bulletin of the Constitutional Court of RS*, Banja Luka, 1-5, 1999. p.230
[10] For details see: *Bulletin of the Constitutional Court of RS*, Banja Luka, 6, 2000, p.169
[11] For details see: *Bulletin of the Constitutional Court of RS*, Banja Luka, 1-5, 1999. p.227

The Dayton Peace Agreement, Annex IV, Article 6 regulates the Constitutional Court of B-H, its composition, competence and procedure. This institution consists of nine members, four of them appointed by the FB-H House of Representatives, two appointed by the National Assembly of RS, while three others are appointed by the President of the European Court of Human Rights, with previous consultation with the Presidency of Bosnia-Herzegovina. These three cannot be citizens of Bosnia-Herzegovina or of any neighboring country. And of course, the B-H state structure conditioned the composition of the Constitutional Court, i.e. the same model of parity of entities was applied. This means that the legislative bodies of the entities appoint the national members. Although the Constitution defines no system of representation, in practice two national members of the court represent each one of the three constitutive nationalities, i.e. two judges are Bosniacs, two Croats and two are Serbs. This is supported by the Rules of Procedure of the Constitutional Court of B-H[12], Articles 78 - 106. A logical consequence of the organization of other judicial bodies (previously discussed - Ombudsman and the Human Rights Chamber) is the fact that foreign judges are not only participating but creating the decisions of the Court, despite the fact that the Constitutional Court of B-H is considered part of the national judiciary system. However, this is where the lack of real sovereignty of Bosnia-Herzegovina is most obvious, since the provision on the composition and influence of foreign judges "compromises the sovereignty of Bosnia-Herzegovina, since it empowers persons, who according the Constitution cannot be citizens of the state, to be decisionmakers"[13] The Court decisions are made by a majority vote of all judges, voting is public and no judge can abstain from voting.

The B-H Constitutional Court has another specific feature that differs from any other institution on the state level. While in all other B-H institutions there is the possibility for protection of vital interests of the people, this is not the case with the Constitutional Court of B-H, so in reality the decisions are made by simple majority (five votes), not considering that votes of judges from both entities should be present in these five votes. In this way, the possibility for a decision to be made by judges from one of the entities in combination with foreign judges has been created. In public, and naturally in legal circles, this phenomenon creates certain dilemmas in terms of the legitimacy of the Court. Thus, more or less well intentioned claims about foreign judges ruling the Constitutional Court can be considered justified. For example, a decision of the Court that might be unfavorable for the vital interests of the Federation, or RS, can be passed by votes of judges from the RS (two) or FBiH (four) along with the votes of foreign judges (three). In practice such decisions are valid. In this way, in fact, there has been a tacit adoption of a principle through which the blockade of the court work is impossible.

Another criticism of the Court's operation is the possibility of assigning legislative function to this institution, which is not only inappropriate, but also is not defined by the Constitution. In practice, all intentions that cannot be realized through parliamentary procedures in the Parliamentary Assembly (the legislative body in B-H) then materialize through the decision of the Constitutional Court of B-H. The Constitutional Court is no longer an institution that assesses only the constitutionality and legality of B-H legal documents, but it also has appellate competence. This means it is a highest instance court also for the regular entity courts and their legal systems that have been established at the entity level by the Dayton Peace Agreement.

In the past, in addition to the requests for determination of constitutionality and legality of local governments acts, the Constitutional Court was asked to assess the constitutionality of documents issued by the Office of High Representative, and once even Rules of the Temporary Electoral OSCE Commission, and from a legal point of view these

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[12] Rules and Regulations of the Constitutional Court of B-H, Article 1, *Official Gazette of Bosnia-Herzegovina*, no.2/97, 16/99 and 20/99.

[13] R.M. Hayden, *House Blueprints Divided, The Constitutional Logic of the Yugoslav Conflict*, University of Michigan Press, 1999, p.131.

were the most exciting cases in the work of the Constitutional Court of B-H. Upon requests for evaluation of constitutionality and legality of OHR documents (cases of Law on State Border Service from November 2000, OHR Decision on Changes and Amendments to the Law on Purchase of Apartments in FB-H, February 2001, and Decision on Changes and Amendments to the Law on Travel Documents, March 2001) the Constitutional Court decided that it could not interfere with the competence of the High Representative, but that it could assess documents as they were still B-H documents irrespective of who had passed them. On the other hand, it did not get involved in assessing the Temporary Electoral OSCE Commission Regulations, stating that these were decisions made by an international organization for which the Constitutional Court as an institution of the national legal system was not competent. This actually reflects a political and not a legal opinion of the Court, which should not be the case with an institution intended to be a highly professional legal body. Under no circumstances should this institution exercise a policy of double standards. The judgements and decisions of the Court, in view of the voting system and the possibility of submitting separate opinions, in no way reflect a unity of the Court as the highest instance in the protection of the constitutions and laws of Bosnia-Herzegovina, but rather the contrary, an extended hand of politics (and policies), conditioned by the current constellation of relations and different objectives and interests of subjects involved in the work of the Court.

5. Specialized UN Agencies and Their Role in the Protection of Basic Human Rights in B-H

In addition to what has already been said, we believe there is no need to emphasize the role of specialized UN agencies in B-H during the war and especially after the war. The fact is that when mentioning the segment of protection of basic human rights and freedoms, the most important work was that of UNHCR. Their activities and efforts became notable during the course of the conflict. On the other hand, it should be pointed out that this organization could not remain outside the specifics of events and all the difficulties which were common among the organizations that dealt with protection of basic human rights and freedoms. However, a general feature of all forms of assistance provided to Bosnia-Herzegovina, during and after the conflict, has been the **total disharmony** of the activities of all factors engaged in the process of providing assistance. In that way, some activities consumed large amounts of money and energy for the same area of interest, while other segments remained totally neglected.

A segment that draws extreme interest in the area of human rights and freedoms is the issue of refugees and displaced persons. After the conflict ended, in 1995, there were about 2.2 million refugees and displaced persons in B-H. In order to get a full picture, one should note that a certain number of refugees from neighboring countries fled to B-H. Thus, in RS there are approximately 50,000 refugees of Serb nationality from Croatia, whose status is worse than the status of some other categories, as this category does not enjoy basic human rights.[14] On the other hand, according the UNHCR estimates, during 1999, approximately 32,000 refuges, mostly from Kosovo and Sandžak, were in B-H, whereas the local authorities show figures of 35,000 refugees in FB-H and 10,000 in RS.[15]

The Convention on the Status of Refugees as an international document which B-H is obliged to implement, as is also the case with the Dayton Peace Agreement[16], guarantees the right to return, right to repossess property and compensation for the property that cannot be repossessed. On the other hand, the dynamics of the return process does not show any major progress for the time being.

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[14] This category has no right to vote either in RS or Croatia
[15] UNDP, *HDR – B-H – 1998*, UNDP/IBHI, 1999.
[16] See *Dayton Peace Agreement*, Annex IV, Article 5.

Return of all refugees and displaced persons is, in fact, much more complicated than the way it has been defined by norms. The act of return itself is not what deters people. The living conditions of returnees are the factor that makes returnees give up the idea of return. As already mentioned, even when returnees regain their per-war property, they usually do not have any income, nobody guarantees them basic economic rights – the right to work and rights arising from work, such as the right to health care and social security, etc. Freedom of movement guaranteed by the B-H Constitution, (Article 1, Para. 4) and realized through common car registration plates and single passports in both entities has encouraged the process of return, although today it cannot be considered a solid and sufficient factor of personal security for a returnee. All this leads to the conclusion that return is motivated (exclusively and only) by the emotional attitude of the returnee, his/her wish to "return to his/her place", even if lacking every other factor, economic and other, to return in accordance to plans. In addition to the activities of UNHCR, it is necessary to mention the efforts of IOM, and a number of NGOs mostly organized by the returnees themselves. The role of the Ombudsman, the Human Rights Chamber, as well as CRPC (the Commission for Real Property Claims) in the process for the regaining of property has already been discussed. We still cannot say that CRPC closely co-operates with the entity governments. Furthermore, the absence of adequate unique and accurate records on real figures of the repatriation process complicates the issue, because without accurate and truthful figures we cannot obtain a picture of the real situation in this area.

6. The Role of NGOs in the Field of Basic Human Rights

We will not discuss in detail the role of NGOs and civil sector development, as this is the subject of another part of the Study. We will emphasize only a few essential issues related to NGO activities in the area of basic human rights and freedom. An important step forward from the pre-war period was the increase of awareness of the importance of building a civil and non-governmental sector. This is primarily due to the fact that the pre-war concept of "citizens' associations" had grown into a concept of non-governmental associations based on the interests of individuals for solving particular problems in a particular segment of society. Here we have to mention the importance of the international NGO presence, which contributed to the increased awareness of the necessity of a civil society, regardless of the state legal system. There are no precise figures on the number of NGOs in B-H, but a rough estimate is over 1,500 with a trend for that number to be growing.[17] The first local non-governmental organizations established during the war, being a specific feature of the wartime circumstances as we have mentioned, mainly provided and distributed humanitarian aid. Today, most of their activities are concentrated on providing psycho-social help, legal aid (mainly in the area of the protection of basic human rights and freedoms), raising awareness about basic human rights and education in general, social care of vulnerable groups (children, women, and elderly), dissemination of information, rarely lobbying, and almost no economic assistance. Bearing in mind the importance of the local factor (most of these organizations operate on the local level), one could expect their activities at least partly to be directed to solving the problems related to local self-management bodies operation (in the West this is a regular activity of such type of organizations), criticizing them and lobbying for changes. However, this is more an exception rather than a regular activity of local NGOs. Suspicion of the state bodies towards NGO sector efforts, and creation of a civil sector in general originated in (justified) criticism of the work of state bodies, where local NGOs are still quite submissive and unskilled. Another discouraging factor is obviously the gigantic, and still old-style socialist procedure for the establishment of an NGO or "citizens' association" (according to the old terminology

[17] See IBHI "Local NGO sector in Bosnia and Herzegovina-problems, analysis and recommendations", Sarajevo, 1998.

still in use). At least it seems there will be some progress, based on the initiative for changing the Law on Citizens' Associations. This would facilitate not only the establishment, but also the work, of the NGO sector. The often repeated idea that democracy in society can, inter alia, be measured through the level of civil sector development, will then, at least to a certain extent, achieve its full materialization.

7. Recommendations for Policy Changes

All the above represents in a way a checklist of the problems existing in post-war Bosnia-Herzegovina, and it contains both positive and negative criticisms of some phenomena in the domain of protection of basic human rights and freedoms. In certain segments of the protection of basic human rights and freedoms, this criticism indicated some recommendations. The main miscalculation of the international community activities, if internationally relevant factors' activities in war and post-war B-H can be defined as such, was in a constant tendency to apply distinctively different experiences gained all over the world. Some of the actions had, of course, a positive effect (e.g. encouraging building of the non-governmental sector), whereas other proved to be a total or partial failure (e.g. the repatriation process). The concept of the state and the legal system arranged clumsily and short-sightedly, as described in the beginning of this paper (which was justified by the urgency for bringing the conflict to an end) resulted in constant tensions, not only between the entity governments, but within the entities themselves (disagreements present in the Federation of B-H, between the governmental bodies representing the Croat population and governmental bodies representing the Bosniac population). These mistakes could have been avoided if the end of the conflict and real pressure and the power of international community were adequately used for the establishment of more realistic system of government, based on facts. Thus, the reality is that none of the three parties concerned, to call them that, is satisfied with the current situation. This, of course, required the respect of indigenousness of not only history, but also tradition, circumstances of specific development of the area, pre-war situation and finally (although using this wording reluctantly) the mentality – or the mental outlook of an individual from this region. The international community did not pay due attention to all these factors. A 'semi-protectorate situation', currently in existence, will definitely not and cannot lead to lasting solutions that would make everyone happy. At the moment there are, at different levels of power, 13 constitutions in force in Bosnia-Herzegovina. There are entity bodies of legislative, executive and judicial power, and the Office of High Representative, whose powers and authorities are a mystery even for those who are well-informed. With no intention to criticize actions of this institution (of the High Representative), as some of the actions have had a real and positive impact, we have to say that the existing parallel system of power distribution (official entity authorities and the powers of the High Representative) has caused a certain legal insecurity with citizens, in the sense of mistrust towards local governmental institutions, closely followed by unaccountability of local authorities for their actions, because even if they 'mess up' during the course of performing their duties, the matter will be resolved by decision of the High Representative. The worst that can happen to representatives of local authorities is the High Representative suspending their laws or dismissing them from service (banning public service involvement). Such actions logically lead ordinary citizen to the conclusion that local authorities have no real power, which can be partly the reason for a relatively low turnout at the last elections. Over the last five years the euphoria that followed after the war was ended itself has come to an end and has slowly grown into lethargy and despair of ordinary persons in both entities and in any of the cantons. The unfavorable economic situation (caused by numerous factors) obviously contributes to the lethargy. The stories about repatriation problems of either refugees or displaced persons could have been easily solved, as with a magic wand, if only the enormous funds intended for B-H were adequately

directed, followed by a synchronized efforts of all relevant factors. However, in reality there were thousands of same or similar activities of different governmental and non-governmental organization taking place at all levels from municipalities, cantons, and entities to the state level. These activities were founded from their own resources, engaging thousands of both local and international experts, which resulted in time, money and energy being wasted and no major or significant positive progress. A whole range of international "experts" who came here, and were paid enormous salaries (according to local parameters), instead of contributing through concrete activities, spent half a year or a whole year in learning the language, traditions, way of thinking of the people living here, and learning about everything that had happened during the past decade, only to be transferred to some other "crisis area", as their "contract expired", after getting the picture and some sort of vision for possible solutions. Therefore, it is not surprising that the peoples of Bosnia-Herzegovina feel like an experimental training site, with their destiny depending on empirically gained experiences of the world magnates. Results of the International Red Cross and Crescent Project in cooperation with Greenberg Research, called "People on War", carried out in Bosnia-Herzegovina during 1999, can serve as an illustration of the above statement. It says: "The people in B-H see the role of international actors dually. In target groups and detailed interviews people repeatedly assessed positively the international community efforts in terms of ending the fighting, the killing, the war…"[18], whereas on the other hand they expressed skepticism in terms of future events -"The international community will do what they believe is appropriate. They should have intervened after the first shot. But their response is always late. They were late in Croatia, in Bosnia, and now they are late at Kosovo and Albania."[19] The Report further reads: "Findings of research undertaken in Mostar, Banja Luka and Sarajevo, show that people think that the international community, and NATO and USA in particular – had decided to stop the war, but not allow anyone to realize their objectives. The war did not stop itself, but only when international forces decided to intervene. This belief among the people of Bosnia-Herzegovina has embedded the feeling that they are helpless in terms of taking control over their own destiny:

"Turkey ruled for 600 years, and then left, then came the Austro-Hungarian Empire, and after them Germany. The time will come when NATO will be ashamed of what they are doing today." (Statement from a demobilized soldiers target group)

"As they stopped it, they could have prevented it." (Statement from a demobilized soldiers target group)

"If there was anyone capable of ending it, it was the English or American factor, or as they call it now - the world factor. Definitely, it did not depend on us." (Statement taken from journalists target group)

"For instance, what is that one American, or the world in general, to me? They make the moves and rule our lives, and there you are small and helpless." (Statement from a target group of mothers of soldiers killed in war) [20]

From the above one may conclude that there is mistrust towards the international community, supported by all the events described in earlier chapters. Defeatism in relation to the future of Bosnia-Herzegovina can be overcome, according to our findings, only with the improvement of the economic standard of the people, which is certainly the strongest motivation factor for massive return. Paving the road to this objective is feasible, and that is primarily through changes within local authorities. Establishment of expert authorities (profiling expert legislative bodies is impossible as it would close the road to the development of democracy and open the road to technocratic regime of power), instead of

[18] Report "People on war", ICRC, October, 1999, p.40
[19] Ibid, statement given by D.I., demobilized soldier in FB-H, p.40
[20] Ibid, p.42

political governments where politically proper mannequins are holding ministerial positions, would be the first step in a process of reconstruction of the economy and establishment of legal security and rule of law as the basic principles of a democratic state. Specific international assistance targeting revitalization of economic potentials (which will be possible upon completion of the privatization process) would be the next step towards progress, and all this provided that a system of political and material accountability is established for the actions of all the relevant, primarily local authorities. With no intention to say that criticizing means that we are capable of solving the problems, we think that any serious thinking, wherever there is any enthusiasm for it, should be focused in the directions we have argued for. With no intention of prejudging, we want to say that we are not the only ones responsible for the current situation in Bosnia-Herzegovina. The conflict ended five years ago, and democracy, including the protection of basic human rights, has not become operational, at least not to the extent expected. International standards of basic human rights protection have encountered resistance in much more developed societies than ours, and this is the specific element that a state finds difficult to give up. The fact is that constant efforts directed towards the protection of an individual, his/her rights and freedoms, is hard to attain. A war is not necessary to create the violating of basic human rights and freedoms; they can be violated in peacetime as well. For us, the awareness of this is yet to come.

References

'Annex IV - Article 5.' In *General Framework Agreement for Peace*.

'Annex VI - Article 9.' In *General Framework Agreement for Peace*.

'Annex VI - Part B, Par. 2.' In *General Framework Agreement for Peace*.

'Annex VI - Part B, Par. 3.' In *General Framework Agreement for Peace*.

'Article 1, Para. 1.' In *General Framework Agreement for Peace*.

Article 9.' In *General Framework Agreement for Peace*.

Constitutional Court of B-H (1997) *Official Gazette of Bosnia-Herzegovina Rules and Regulations of the Constitutional Court of B-H*. No. 2, Article 1.

Constitutional Court of B-H (1999) *Official Gazette of Bosnia-Herzegovina Rules and Regulations of the Constitutional Court of B-H*. No. 16.

Constitutional Court of B-H (1999) *Official Gazette of Bosnia-Herzegovina Rules and Regulations of the Constitutional Court of B-H*. No. 20.

Constitutional Court of RS (1999) *Bulletin of the Constitutional Court of RS*. No. 1-5. Banja Luka.

Constitutional Court of RS (2000) *Bulletin of the Constitutional Court of RS*. No. 6. Banja Luka.

Hayden, R.M. (1999) *House Blueprints Divided: The Constitutional Logic of the Yugoslav Conflict*. University of Michigan Press.

Human Rights Chamber (2000) *Annual Report*. Sarajevo: Human Rights Chamber.

Independent Bureau for Humanitarian Issues (1998) *Local NGO sector in Bosnia and Herzegovina - Problems, Analysis and Recommendations*. Sarajevo: IBHI.

ICRC (1997) Records on missing persons in B-H. January.

ICRC Tracing Agency (1997) Statement from 16 September.

ICRC (1999) *People on War: Bosnia-Herzegovina*. http://nt.oneworld.org/cfods/icrc/pages/reports/bosnia-herzegovi.html

Office of the Human Rights Ombudsperson for Bosnia-Herzegovina (2000) *Fourth Annual Report*. Sarajevo.

UNDP (1999) *Human Development Report - Bosnia-Herzegovina - 1998*. Sarajevo: UNDP/IBHI.