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Neither Free Nor Fair: The 1996 Bosnian Elections and the Failure of the U.N. Election-Monitoring Mission

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Neither Free Nor Fair: The 1996 Bosnian Elections and the Failure of the U.N. Election-Monitoring Mission

ABSTRACT

The international community faced a difficult challenge after the Dayton Peace Accords ended the civil war in Bosnia. Free and fair elections became an essential component to establishing a democratic government in the war-torn country. The United Nations and the Organization for Security and Cooperation in Europe responded by carrying out Annex 3 of the Peace Accords, which called for such elections. The resultant election-monitoring mission in Bosnia, however, was unsuccessful. The elections were held under improper conditions. Therefore, the Bosnian people lack confidence in the democratic process, which is necessary for long-term democracy.

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I. INTRODUCTION

Since the end of the Cold War, Yugoslavia has been a region in turmoil. The break-up of the country in 1991 left the resulting republics unstable. Nowhere was this more evident than in Bosnia and Herzegovina. The ensuing civil war in Bosnia and Herzegovina reintroduced the world to a concept rarely seen since Nazi Germany: ethnic cleansing.

After many failed attempts, the international community succeeded in securing peace in Bosnia through the Dayton Peace Accords. Specifically, this treaty gave the United Nations (hereinafter U.N.) an opportunity to take the first steps toward democracy in Bosnia: free and fair elections.¹ Due to the intense hatred between the Serbs, Croats, and Muslims in Bosnia, this was a difficult, but not impossible, task. Unfortunately for those in Bosnia and around the world, the U.N. failed to take full advantage of this opportunity. Through an unsuccessful election-monitoring mission, the U.N. and the Organization for Security and Cooperation in Europe (hereinafter OSCE) failed to instill in the Bosnian people the confidence in the democratic process which is essential to establishing a long-lasting democracy.

Part II of this Note outlines the history of Yugoslavia. Part III discusses the activities of the U.N., the European Community (hereinafter EC), and the United States and their attempts to secure peace in Bosnia. Part IV reviews Annex 3 of the General Framework Agreement for Peace in Bosnia and Herzegovina, which provides for free and fair elections in Bosnia. Part V

1. See generally David Stoelting, *The Challenge of UN-Monitored Elections in Independent Nations*, 28 STAN. J. INT'L L. 371, 375 (1992) (discussing U.N. election-monitoring missions in other countries emerging from civil wars).

explains the history and purposes of multinational election-monitoring missions. Part VI addresses whether the U.N. and the OSCE had the authority to intervene in the Bosnian conflict and monitor its elections. Part VII examines the actual elections that took place on September 14, 1996. Finally, Part VIII analyzes and evaluates the elections to determine whether the election-monitoring mission was successful and considers the impact of the elections and the monitoring mission.

II. THE HISTORY OF YUGOSLAVIA

Yugoslavia was first created as a single nation after World War One.² On December 1, 1918, Prince Regent Alexander proclaimed the creation of the Yugoslav state.³ This first unified Yugoslavia was named the Kingdom of Serbs, Croats, and Slovenes.⁴ Bosnia, while part of this unified Yugoslavia, had actually become an independent state in 1878.⁵ Even after its independence, however, Bosnia's religious and political factions rendered it unstable.⁶

2. Christian J. Garris, *Bosnia and the Limitations of International Law*, 34 SANTA CLARA L. REV. 1039, 1041 (1992).

3. ROBERT J. DONIA & JOHN V. A. FINE, JR., *BOSNIA AND HERCEGOVINA: A TRADITION BETRAYED* 123 (1994); Garris, *supra* note 2, at 1046. This Yugoslavia was considered the first successor to the State of Serbia. Garris, *supra* note 2, at 1046 n.61.

4. ED VULLIAMY, *SEASONS IN HELL: UNDERSTANDING BOSNIA'S WAR* 35 (1994); DONIA & FINE, *supra* note 3, at 123-24.

5. Garris, *supra* note 2, at 1045. Bosnia had been ruled by Turkey for almost five hundred years. H. C. Darby, *Bosnia and Hercegovina*, in *A SHORT HISTORY OF YUGOSLAVIA: FROM EARLY TIMES TO 1966*, at 58, 63-66 (Stephen Clissold ed., 1968). After losing wars to Austria, however, Bosnia gained "independence." *Id.* at 66. This status of independence is somewhat misleading. Control of Bosnia was simply, in practice, transferred to Austria. *Id.* at 68-69. "Thus instead of becoming autonomous, Bosnia continued to be the property of an empire, albeit a different one." Garris, *supra* note 2, at 1045 n.53.

6. DONIA & FINE, *supra* note 3, at 101-09. Bosnia consisted primarily of Serbs, Croats, and Muslims. In 1910, Bosnia consisted of 44% Serbs, 32% Muslims, and 23% Croats. Garris, *supra* note 2, at 1045.

The Bosnian Serbs had struggled for and achieved autonomy for Serbian church and school communes throughout Bosnia. DONIA & FINE, *supra* note 3, at 101-02. This led to the creation of the Serbian National Organization (hereinafter SNO). This party believed that Bosnia was Serbian land and that the Muslims there were of Serbian nationality. In the Bosnian Parliament elections of 1910, the SNO won all 31 Serbian allocated seats. *Id.* at 102. The SNO continued to press the Serbian cause in Parliament and the media. The SNO became the foundation for later Bosnian Serb nationalist parties. *Id.* at 102-03.

The Bosnian Croat political movement originated among intellectuals. One faction formed the secular Croatian National Union (hereinafter CNU) as the counterpart to the SNO. *Id.* at 103. The CNU was founded on the belief that

At the end of World War Two, Yugoslavia came under the socialist leadership of Josip Broz Tito.⁷ Following the war, confusion surrounded the status of Bosnia and Herzegovina in Yugoslavia because it had no majority nationality or national name.⁸ Nonetheless, Tito established six republics, including Bosnia and Herzegovina, with boundaries closely corresponding to those of the former Kingdom of Serbs, Croats, and Slovenes.⁹ Therefore, to an extent, the distinctiveness of Bosnia and Herzegovina was preserved in the Yugoslav political system.¹⁰ Tito continued to rule Yugoslavia, including the ethnically divided Bosnia and Herzegovina, until his death in 1980.¹¹

After Tito's death, the ethnic tensions began to swell and destabilize the country.¹² Serbia, the dominant military and

Bosnia was Croatian land, and that the Muslims present were of Croatian nationality. The other faction organized the Croatian Catholic Association (hereinafter CCA), which emphasized clerical ideals and religious exclusivity. *Id.* at 104. In the 1910 elections, the CNU won 12 seats, and the CCA won four seats. *Id.*

The final group was the Bosnian Muslims. Traditionally, the Muslims have been the "swing" group in Bosnian politics. Until 1992, the Serbs and the Croats both wanted a coalition with the Muslims to forge a majority in government. In 1992, extremists took control of both the Serb and the Croat movements and started the civil war to drive out the Muslims. *Id.* at 104. The Muslims also obtained autonomy and formed the Muslim National Organization (hereinafter MNO). *Id.* at 108. The MNO became the basis for future Muslim political organizations.

Illustrating the tumultuous Bosnian political scene, the Serbs formed a coalition in Parliament with the Muslims in 1910; however, after the Muslims believed the Serbs started a peasant revolt against Muslim landowners, the Muslims allied with the Croats in 1911 to form a new political majority. *Id.* at 109.

7. Garris, *supra* note 2, at 1041; DONIA & FINE, *supra* note 3, at 159. Tito was the leader of the partisans who achieved victory for Yugoslavia in WWII. DONIA & FINE, *supra* note 3, at 149-54. This led to Yugoslav independence and the creation of the socialist "Democratic Federative Yugoslavia." *Id.* at 159.

8. VULLIAMY, *supra* note 4, at 37; DONIA & FINE, *supra* note 3, at 161.

9. VULLIAMY, *supra* note 4, at 37-38; DONIA & FINE, *supra* note 3, at 161.

10. DONIA & FINE, *supra* note 3, at 161. "Tito ruled that a return to the pre-royalist frontiers of a federated Bosnia was the appropriate outcome, and the meeting which founded that republic in 1943 declared: 'The steadfast decision of all nations and nationalities to live firmly united in brotherhood, unity and freedom in the Federal Republic of Bosnia-Herzegovina.' Bosnia would be 'neither Serbian, Croatian, [nor] Muslim, but Serbian, Croatian, and Muslim.'" VULLIAMY, *supra* note 4, at 37-38.

11. Garris, *supra* note 2, at 1041. His reign, however, was not without violence. This was especially true during his first years as leader when he punished anti-partisan soldiers and civilians. "It has been estimated that up to 250,000 people were killed by Tito's mass shootings, forced death marches and concentration camps in the period of 1945-[4]6." NOEL MALCOLM, BOSNIA: A SHORT HISTORY 193 (1994). This included many Bosnian Serbs, Croats, and Muslims. *Id.*

12. Garris, *supra* note 2, at 1041.

political republic, fought to maintain the federal system of government in Yugoslavia.¹³ President Slobodan Milosevic led this Serbian movement after he ascended to power in 1987.¹⁴ Ironically, Serbia's failure to recognize Croatia's right to the rotating federal Presidency in 1991 played a key role in the subsequent independence movements by some of the republics.¹⁵ Slovenia and Croatia soon declared their independence, and Macedonia became autonomous.¹⁶ Again, Bosnia's future was uncertain because of its lack of a clear ethnic majority.¹⁷ At that time, the population of Bosnia consisted of approximately forty-four percent Muslims, thirty-three percent Serbs, nineteen percent Croats, and four percent others.¹⁸

The Bosnian Serbs wished to join their occupied regions of Bosnia to Serbia.¹⁹ Similarly, the Bosnian Croats wanted to join their occupied regions to Croatia.²⁰ Alternatively, the Bosnian Serbs and Croats sought complete ethnic autonomy within Bosnia.²¹ The problem with this final alternative was that no clear ethnic lines could be drawn in Bosnia because the three ethnic groups were intermingled throughout the republic.²²

Soon after the conflict surrounding the federal presidency, actions by Yugoslav and international bodies resulted in Bosnian independence. On October 15, 1991, the Bosnian Assembly, under President Alija Izetbegovic, declared its independence.²³ On December 15, 1991, the EC made an offer of recognition to Bosnia.²⁴ On January 3, 1992, the four republics remaining

13. *Id.*

14. DONIA & FINE, *supra* note 3, at 184.

15. *Id.* at 214. Pursuant to a prior agreement, the federal Presidency of Yugoslavia was to be rotated annually among Bosnia-Herzegovina, Croatia, Slovenia, Macedonia, Montenegro, Vojvodina, Kosovo, and Serbia. Serbia, led by President Milosevic, controlled the votes of Montenegro, Vojvodina, and Kosovo. With these four votes, Serbia declined to support the Croatian Stipe Mesic as President. Thus, on May 15, 1991, Yugoslavia was without a president and commander-in-chief. Mesic was subsequently confirmed in July 1991, at the urging of the EC. *Id.* However, the damage to the federal system had already been done.

16. Garris, *supra* note 2, at 1041.

17. EDGAR O'BALLANCE, CIVIL WAR IN BOSNIA, 1992-94, 2 (1995).

18. *Id.*

19. Garris, *supra* note 2, at 1041.

20. *Id.*

21. *Id.* This final alternative was based on the strong desire of the Bosnian Serbs and Croats not to be ruled by the Muslim plurality. Such antagonism dates back hundreds of years. *Id.* at 1041-42.

22. *Id.* at 1042.

23. O'BALLANCE, *supra* note 17, at 7. The Serbian Members of the Assembly abstained from the vote and walked out. *Id.*

24. *Id.* The EC announced full recognition of Croatia and Slovenia on January 15, 1992. However, the EC withheld such recognition from Bosnia

under control of the federal presidency declared themselves the Third Republic of Yugoslavia.²⁵

On January 25, 1992, the Bosnian Assembly followed its independence declaration with the approval of a formal referendum on Bosnia's independence.²⁶ The referendum, held February 29 through March 1, 1992, was boycotted by the Bosnian Serbs.²⁷ Despite the boycott, sixty-three percent of Bosnia's population voted in favor of independence.²⁸

On March 3, 1992, President Izetbegovic proclaimed the independence of Bosnia.²⁹ Formal recognition by the EC followed on April 6, 1992.³⁰ The Bosnian Serbs responded to the independence of Bosnia when Radovan Karadzic announced the formation of The Serbian Republic in Bosnia-Herzegovina.³¹ After this announcement, the Bosnian Serbs launched their offensive to reclaim Bosnia and unite the Serbs.³² This resulted in one of the bloodiest civil wars in recent times.

III. ACTIVITIES OF THE U.N., THE EUROPEAN COMMUNITY, AND THE UNITED STATES IN YUGOSLAVIA AND BOSNIA

The peace process in Bosnia was slow and complicated; it involved several different international bodies and a few interested foreign countries. The five-year process consisted of various unsuccessful agreements among new emerging entities in the region such as the Republic of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. These early negotiations and agreements, while unsuccessful, provided the essential basis for the Dayton Peace Accords. The region's ethnic diversity and its bloody civil war left many important issues to be resolved. The peace process provided a forum through which the emerging entities could develop their own identities. Consequently, a slow

because it believed "the risks of ethnic conflict and constant instability were too great for it to be considered a mature nation in full control of its internal affairs." *Id.* at 7-8.

25. *Id.* at 9. These republics were Serbia, Montenegro, Vojvodina, and Kosovo. *Id.*

26. *Id.* This vote was boycotted by the Serbian members of the Assembly. *Id.*

27. *Id.*

28. *Id.* at 9-10. While between 65% and 66% of the population actually voted, 99% of those votes were in favor of independence. *Id.* at 10; Garris, *supra* note 2, at 1042 n.25.

29. O'BALLANCE, *supra* note 17, at 11.

30. MALCOLM, *supra* note 11, at 234.

31. O'BALLANCE, *supra* note 17, at 14.

32. Garris, *supra* note 2, at 1042 n.25.

peace process was necessary to build a consensus for the Dayton Peace Accords.

A. *Early Attempts at Peace*

Before Bosnian independence, the EC organized the Carrington Conference to discuss the conflict in Bosnia.³³ The original purpose of the conference was to discuss ways to keep Yugoslavia, known as the Socialist Federal Republic of Yugoslavia (hereinafter SFRY), together as a state.³⁴ The result of the complex negotiations was a text prepared by Lord Peter Carrington entitled Treaty Provisions for the Convention.³⁵ After President Milosevic of Serbia refused to accept it, this phase of the conference ended, and the text of the treaty was abandoned.³⁶ In the later stages of the conference, the Badinter Commission³⁷ released a series of advisory opinions pertaining to the conflicts.³⁸ Three of these opinions, recited below, applied to the emerging Republic of Bosnia and Herzegovina:

- 1) though the Bosnian Serbs had a right to self-determination, this did not imply the right to separate themselves from the future state;
- 2) the internal boundaries of the Republics within the former SFRY had, on the dissolution of that state, become international boundaries due to the respect such borders are accorded under international law; and
- 3) the future Republic of Bosnia and Herzegovina, though it had by December 1991 not yet formally decided on independence, would be a state worthy of recognition by the EC and its members once that decision had been taken.³⁹

33. Paul C. Szasz, *The Quest For a Bosnian Constitution: Legal Aspects of Constitutional Proposals Relating to Bosnia*, 19 FORDHAM INT'L L. J. 363, 364 (1995). Szasz is the Legal Adviser to the International Conference on the Former Yugoslavia. *Id.* at 363 n.1. The Carrington Conference, also referred to as the "EC Peace Conference on Yugoslavia," was established in September 1991 and named for its chairman, Lord Peter Carrington. *Id.* at 364.

34. *Id.*

35. *Id.* An earlier version is printed in *Report of the Secretary-General Pursuant to Paragraph 3 of the Security Council Resolution 713*, U.N. SCOR, 46th Sess., Annex VII, at 36, U.N. Doc. S/23169 (1991).

36. Szasz, *supra* note 33, at 364-65. The leaders of five of the six republics accepted the treaty. *Id.* at 364. Although the text was abandoned, the human rights provisions became the basis for future constitutional proposals. *Id.* at 365.

37. This was the Arbitration Commission of the Carrington Conference. *Id.*

38. *Id.*

39. *Id.* See *Conference on Yugoslavia Arbitration Commission Opinion No. 2*, 31 I.L.M. 1497 (1992); *Conference on Yugoslavia Arbitration Commission Opinion No. 3*, 31 I.L.M. 1499 (1992); *Conference on Yugoslavia Arbitration Commission Opinion No. 4 on International Recognition of the Socialist Republic of Bosnia-*

Because the Carrington Conference failed to achieve its original goal of keeping the SFRY together as a state, its purpose fundamentally changed.⁴⁰ First, it was to preside over an "orderly dissolution" of the SFRY.⁴¹ Thereafter, it was to prevent the disintegration of the Republic of Bosnia and Herzegovina once it obtained its independence.⁴² As a result, the Conference organized the Round of Talks on Bosnian Constitutional Arrangements, headed by Portuguese Ambassador Jose Cutileiro.⁴³ On March 18, 1992, just two weeks after Bosnia declared its independence, the talks concluded with the Statement of Principles for New Constitutional Arrangements for Bosnia and Herzegovina.⁴⁴ This solution would divide Bosnia into three autonomous and ethnically-defined areas, held together under a weak central government.⁴⁵ The principles were quickly denounced despite the informal agreement among the leaders of the Serbs, Croats, and Muslims.⁴⁶

Following the failure of the Carrington Conference,⁴⁷ the London International Conference on the Former Yugoslavia (hereinafter ICFY) was jointly formed by the U.N. and the EC on August 26 and 27, 1992.⁴⁸ The Statement on Bosnia that came from the conference called for the "respect for the integrity of the present frontiers" and the implementation of human rights principles to stop the "ethnic cleansing" in the civil war.⁴⁹ The largest contribution of the conference was the establishment of ICFY.⁵⁰

Hercegovina by the European Community and Its Member States, 31 I.L.M. 1501 (1992).

40. Szasz, *supra* note 33, at 365.

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.* The Statement, amended on March 31 to include additional human rights principles, became known as the Cutileiro Principles. *Id.*

45. *Id.* at 366.

46. *Id.*

47. One commentator stated that the Conference was ". . . too large, too wide in scope and too unrealistic, and its delegates were too diverse in beliefs, aims, and attitudes for any significant and positive statesmanlike decisions to emerge. It was little more than a glorified photo opportunity, in which all present basked briefly in international limelight, few gaining any stature." O'BALLANCE, *supra* note 17, at 87.

48. Szasz, *supra* note 33, at 366.

49. *Id.* See *International Conference on the Former Yugoslavia: Documents Adopted at the London Conference*, 31 I.L.M. 1527, 1531-48 (1992).

50. Szasz, *supra* note 33, at 366. The ICFY was also known as the Vance-Owen Negotiations and the Geneva Conference. *Id.*

After negotiations with the Serbs, Croats, and Muslims, Cyrus Vance and Lord David Owen⁵¹ were left to contemplate five different solutions to the constitutional problem in Bosnia and Herzegovina:

- (1) a centralized state, logical for a country of only 4.5 million people;
- (2) a federal state of seven to fourteen "provinces," each with a marked ethnic character but also containing minorities from the other groups;
- (3) three ethnically characterized "republics" loosely confederated in a "union;"
- (4) three ethnically characterized independent states, with only normal neighborly ties; and
- (5) absorption of the Serb areas of Bosnia into Serbia and of the Croat areas into the Republic of Croatia, leaving a Muslim state as the remaining Bosnia.⁵²

After considering these options and further negotiating with the three parties, in October 1992 Vance and Owen presented a detailed proposed constitutional structure for Bosnia and Herzegovina to the ICFY, the U.N., and the parties.⁵³ They based the proposal substantially on option (2) of creating a federal state of seven to fourteen provinces.⁵⁴ The three parties, however, refused to discuss the proposal further because Vance and Owen could not specify the number of provinces, their boundaries, or the number of provinces to be allocated to each party.⁵⁵

B. *The Vance-Owen Plan*

On January 2, 1993, the ICFY met for negotiations with the leaders of the Bosnian Serbs, the Bosnian Croats, and Serbia.⁵⁶

51. Vance and Owen were the co-chairmen of the ICFY Steering Committee. *Id.*

52. *Id.* at 366-67. Option (1) was favored by the Muslims who, with 45% of the population, had a solid plurality and could expect to obtain an absolute majority because of their higher birthrate. For this reason, option (1) was unacceptable to the Serbs and Croats, who favored option (4). Option (3) essentially embodied the Cutleiro Principles. *See supra* notes 44-46 and accompanying text. Vance and Owen considered options (4) and (5) beyond their mandate, as they would not preserve the territorial integrity of Bosnia. They felt (3) was unstable because it was merely a prelude to (4).

53. *Id.* This was the precursor to the Vance-Owen Plan. *See Report of the Secretary-General on the International Conference on the Former Yugoslavia*, U.N. SCOR, 47th Sess., Annex VII, at 45, U.N. Doc. S/24795 (1992).

54. Szasz, *supra* note 33, at 367.

55. *Id.* at 367-68.

56. *Id.* at 368. The Bosnian Serb leader was Radovan Karadzic. He was supported by the Presidents of the Federal Republic of Yugoslavia, Serbia, and Montenegro. The Bosnian Croat leader was Mate Boban. He was supported by the President of Croatia. *Id.*

Vance and Owen submitted a peace plan consisting of four proposals:⁵⁷

(1) a draft "Agreement Relating to Bosnia and Herzegovina," the core of which consisted of ten (later reduced to nine by combining two) briefly expressed Constitutional Principles, largely derived from the earlier Constitutional Proposals;

(2) a proposed map dividing the country into ten provinces, three each with a predominantly, but not exclusively, Muslim, Serb, or Croat ethnic character, plus a multi-ethnic Sarajevo;⁵⁸

(3) a draft "Agreement for Peace in Bosnia and Herzegovina," largely developed by the military leaders of the three parties meeting under the chairmanship of the U.N. Protection Force (hereinafter UNPROFOR) Commander, specifying detailed arrangements for the cessation of hostilities and the withdrawal of forces under UNPROFOR supervision; and

(4) a draft "Agreement on Interim Measures" to bridge the gap between the ongoing warfare and the implementation of the proposed decentralization of Bosnia under a Constitution conforming to the Constitutional Principles.⁵⁹

This became known as the Vance-Owen Plan (hereinafter Vance-Owen Plan).⁶⁰

The Bosnian Croats quickly accepted all parts of the Vance-Owen Plan because the proposed map was quite favorable to them.⁶¹ At the end of March 1993, the Muslims reluctantly accepted all parts of the Vance-Owen Plan.⁶² After intense pressure from Serbia and the Federal Republic of Yugoslavia (hereinafter FRY), the Bosnian Serbs accepted the Vance-Owen Plan, subject to ratification by their Assembly.⁶³ The Bosnian

57. *Id.* The original plan consisted of only three proposals. See *Report of the Secretary-General on the Activities of the International Conference on the Former Yugoslavia*, U.N. SCOR, 48th Sess., Annex V, at 16, Annex VI, at 20, Annex VII, at 36, U.N. Doc. S/25050 (1993). A fourth was added during the negotiations. Szasz, *supra* note 33, at 368.

58. The central government and the provinces, except Sarajevo, would have separately elected legislatures and chief executives and independent judiciaries. O'BALLANCE, *supra* note 17, at 136. The central government would have a nine-member presidency consisting of three members of each ethnic group. The provinces would be responsible for the majority of governmental functions, but they would have no international legal status and could not enter into legal agreements with foreign states or international organizations. *Id.* See also VULLIAMY, *supra* note 4, at 250 (map of Bosnia under the Vance-Owen Plan); O'BALLANCE, *supra* note 17, at 257 (map of Bosnia under the Vance-Owen Plan).

59. Szasz, *supra* note 33, at 368. See *Report of The Secretary-General on the Activities of the International Conference on the Former Yugoslavia: Peace Talks on Bosnia and Herzegovina*, U.N. SCOR, 48th Sess., Annexes I-IV, at 27-36, U.N. Doc. S/25479 (1993).

60. Szasz, *supra* note 33, at 368.

61. *Id.* at 368-69.

62. *Id.* at 369.

63. *Id.*

Serb Assembly swiftly rejected ratification.⁶⁴ The results of a referendum demonstrated overwhelming agreement with this decision.⁶⁵

While the Vance-Owen Plan failed to negotiate peace, it also proved immensely harmful to the military conflict in Bosnia.⁶⁶ The proposed map gave the provinces ethnic labels, while at the same time negotiations gave the impression the boundaries were not final.⁶⁷ This had the effect of renewing military competition for the labeled territories, and became "the second most important contribution of the West to the destruction of Bosnia: it stimulated the development of a genuine Bosnian civil war, and in so doing it broke down the Croat-Muslim alliance which had been the only effective barrier to the Serbs."⁶⁸

After the Bosnian Serb rejection of the Vance-Owen Plan, the ICFY⁶⁹ encouraged the Bosnian Croats and Muslims to reach an agreement similar to the Vance-Owen Plan to govern the territories they controlled.⁷⁰ The two parties reached an agreement on draft instruments on certain subjects.⁷¹ Although the proposed agreement was quickly abandoned, draft instruments on three issues became the basis of most later constitutional proposals:

- (1) the role of ombudsmen;
- (2) the creation of a Human Rights Court; and
- (3) a list of international human rights instruments to be incorporated into any constitutional or legislative arrangements.⁷²

64. *Id.*

65. *Id.* Many Serb leaders in the political and military ranks believed they could get what they wanted without an agreement such as the Vance-Owen Plan. MALCOLM, *supra* note 11, at 248.

66. MALCOLM, *supra* note 11, at 248.

67. *Id.*

68. *Id.*

69. After the Bosnian Serb rejection, Cyrus Vance departed and was replaced by Thorvald Stoltenberg. Szasz, *supra* note 33, at 369. Stoltenberg was the Foreign Minister of Norway and a U.N. High Commissioner for Refugees. *Id.* at n.10.

70. *Id.* at 369. The Bosnian Croats and Muslims still nominally participated in governing the Republic of Bosnia and Herzegovina. *Id.*

71. *Id.*

72. *Id.*

C. *The Invincible Plan*

The next attempt at peace was under the Invincible Plan (hereinafter IP).⁷³ The thrust of the IP was a proposed Constitutional Agreement, reflecting the Cutileiro Principles and ICFY option (3).⁷⁴ It called for three predominantly ethnic provinces loosely governed by a weak union.⁷⁵ Although accepting its principles, the Muslims quickly rejected the IP on territorial grounds: it allocated only thirty percent of Bosnia to the Muslims, compared to thirty-six percent under the Vance-Owen Plan.⁷⁶

The new European Union (EU) later attempted to revive the IP. The EU persuaded the Bosnian Serbs, who held approximately seventy percent of Bosnia, to allocate one-third of Bosnia to the Muslims and 17.5% to the Croats.⁷⁷ There was no consensus, however, as to how to alter the IP map. Consequently, this attempt to revive the IP was abandoned in January 1994.⁷⁸

D. *U.S. Intervention*

After these attempts at peace failed, the United States organized new negotiations between the Bosnian Muslims,⁷⁹ the Bosnian Croats, and Croatia.⁸⁰ On March 1, 1994, the parties agreed to the Framework Agreement for the Federation and the outline of a Preliminary Agreement on the Principles and Foundations for the Establishment of a Confederation Between the Republic of Croatia and the Federation.⁸¹ Negotiations continued, and on March 18, 1994, the parties agreed to the Proposed Constitution of the Federation of Bosnia and Herzegovina⁸² and the Outline of a Preliminary Agreement

73. *Id.* at 370. The Invincible Plan, negotiated on September 20, 1993, was named after the British carrier HMS Invincible where the agreement was finalized. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.* at 371.

79. The Bosnian Muslims called themselves Bosniacs to emphasize their alleged non-ethnic, non-religious character. *Id.*

80. *Id.*

81. *Id.* (quoting *Letter Dated 3 March 1994 From the Permanent Representatives of Bosnia and Herzegovina and Croatia to the United Nations Addressed to the Secretary-General*, U.N. Secretary-General, Attachment II, at 13, U.N. Doc. S/1994/255 (1994)).

82. *Bosnia and Herzegovina: Proposed Constitution of the Federation*, 33 I.L.M. 740 (1994).

Concerning the Establishment of a Confederation Between the Federation of Bosnia and Herzegovina and the Republic of Croatia.⁸³ On March 30, 1994, the parties established the Federation, despite the fact that the boundaries of the eight "cantons" constituting the Federation of Bosnia and Herzegovina were not defined.⁸⁴ Ultimately, on May 11, 1994, the parties reached an agreement on the cantonal boundaries.⁸⁵

The Federation Constitution divided the Federation's eight cantons between two groups;⁸⁶ four cantons were to be Muslim (Bosniac), two were to be Croat, and two were to consist of a mixture of Muslims and Croats.⁸⁷ Consequently, the Constitution restored the Vance-Owen Plan and ICFY option (2), albeit between only two parties.⁸⁸

E. *The Contact Group*

The formation of the Federation of Bosnia and Herzegovina (hereinafter BH Federation) between the Muslims and Croats still left the Serbs out of the peace process.⁸⁹ As a result, in May 1994, the United States, Russia, France, Germany, and the United Kingdom formed the Contact Group to work alongside the ICFY.⁹⁰ After significant negotiations, the Contact Group presented the Bosnian Serbs and the BH Federation with a proposed map of Bosnia based on a 51/49 division of the land in favor of the BH Federation.⁹¹ The Bosnian Serbs, however, rejected the proposal on the basis of the placement and quality of the land allocated to the Serbs.⁹²

83. Szasz, *supra* note 33, at 372. See *Bosnia and Herzegovina-Croatia: Preliminary Agreement Concerning the Establishment of a Confederation*, 33 I.L.M. 605 (1994). The Federation would have a strong central government on Sarajevo. O'BALLANCE, *supra* note 17, at 241. The Muslims and Croats would each have a certain number of self-administering cantons. More importantly, the Muslim and Croat armies would be merged. *Id.*

84. Szasz, *supra* note 33, at 372.

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. The Serbs occupied as much as 70% of Bosnia. *Id.* at 373. Therefore, any peace negotiations needed to include the Serbs.

90. *Id.* The parties agreed that the Contact Group could only act by consensus. *Id.*

91. *Id.* The ratio for division came from two prior Serb concessions to allow one-third of Bosnia to the Muslims and 17.5% to the Bosnian Croats. *Id.* at n.18. This amounted to 50.8% of Bosnia. *Id.*

92. *Id.* at 373. The BH Federation had reluctantly accepted the map. *Id.*

Despite the failure of the territorial negotiations, the Contact Group informally proposed a text for a Union Constitution.⁹³ The constitution was an ICFY option (3) construct⁹⁴ limited to two parties: the Muslim-Croat BH Federation⁹⁵ and the Bosnian Serb Republika Srpska⁹⁶ (hereinafter RS).⁹⁷ Because the Bosnian Serbs did not accept the map agreements, however, no comprehensive agreement on the constitutional principles could be reached.⁹⁸

With the Contact Group stalled, the United States took the lead in establishing further negotiations between the two principal groups: (1) the Republic of Bosnia and Herzegovina (hereinafter BH Republic) and the BH Federation, and (2) the RS.⁹⁹ These negotiations, led by Assistant U.S. Secretary of State Richard Holbrook, resulted in two fragmented constitutional agreements.¹⁰⁰ These agreements, between the BH Federation and the RS, were similar to the Contact Group proposal, ICFY option (3), with details to be finalized later.¹⁰¹ This ultimately led to the Dayton Peace Accords.

F. *The Dayton Peace Accords*

Under the auspices of the Contact Group,¹⁰² the many interested parties met at Wright-Patterson Air Force Base near Dayton, Ohio, from November 1 to November 21, 1995. These Bosnia Proximity Peace Talks were attended by the BH Republic, represented by President Izetbegovic; the Republic of Croatia, headed by President Tudjman; the FRY, represented by President Milosevic of Serbia, who also represented Republika Srpska; the BH Federation, led by President Kresimir Zubak; and the Contact

93. *Id.*

94. ICFY option (3) provided for three ethnically characterized "republics" loosely confederated in a "union." See *supra* Part III.A.

95. As discussed, the BH Federation was actually based almost exclusively on ICFY option (2). See *supra* Part III.A.

96. For a definition of Republika Srpska, see *A Framework for Bosnia: Text of an Accord by Three Governments*, N.Y. TIMES, Sept. 27, 1995, at A10.

97. Szasz, *supra* note 33, at 373-74.

98. *Id.*

99. *Id.* at 374. Serbian President Slobodan Milosevic represented the RS. *Id.*

100. Szasz, *supra* note 33, at 374. See *Details of Accord: Division Within Unity*, N.Y. TIMES, Sept. 9, 1995, at A4 (reporting details of the accord); Elaine Sciolino, *Enemies in Bosnia Devise Structure for a Government*, N.Y. TIMES, Sept. 27, 1995, at A6 (describing the new governmental structure).

101. Szasz, *supra* note 33, at 374.

102. The Dayton Talks were primarily the work of the U.S. State Department. *Id.* at 375.

Group.¹⁰³ The main outcome of the Dayton Talks was the General Framework Agreement for Peace in Bosnia and Herzegovina (hereinafter GFA).¹⁰⁴ The GFA was an agreement among the BH Republic, the Republic of Croatia, and the FRY.¹⁰⁵ The document contained eleven agreements annexed to the GFA:

- (1A) Agreement on Military Aspects of the Peace Settlement, plus Status-of-Forces Agreements between the North Atlantic Treaty Organization (hereinafter NATO) and Bosnia and Croatia, and a Transit Agreement between NATO and the FRY;¹⁰⁶
- (1B) Agreement on Regional Stabilization;¹⁰⁷
- (2) Agreement on Inter-Entity Boundary Line and Related Issues;¹⁰⁸
- (3) Agreement on Elections;¹⁰⁹
- (4) Constitution of Bosnia and Herzegovina;¹¹⁰
- (5) Agreement on Arbitration;¹¹¹
- (6) Agreement on Human Rights;¹¹²
- (7) Agreement on Refugees and Displaced Persons;¹¹³
- (8) Agreement on Commission to Preserve National Monuments;¹¹⁴
- (9) Agreement for the Establishment of Bosnia and Herzegovina Public Corporations;¹¹⁵
- (10) Agreement on Civilian Implementation;¹¹⁶
- (11) Agreement on International Police Task Force.¹¹⁷

The parties formally signed the GFA and the other agreements at the Paris Peace Conference on December 14, 1995.¹¹⁸

Of particular importance to the nature of the "new" Bosnia is Annex 2: Agreement on Inter-Entity Boundary Line and Related

103. *Id.* at 374-375.

104. *Id.* at 375. For a text of the GFA, see Bosnia and Herzegovina - Croatia - Yugoslavia: General Framework Agreement for Peace in Bosnia and Herzegovina With Annexes, Dec. 14, 1995, 35 I.L.M. 75 [hereinafter GFA].

105. Szasz, *supra* note 33, at 375.

106. GFA, *supra* note 104, annex 1-A, at 91.

107. *Id.* annex 1-B, at 108.

108. *Id.* annex 2, at 111.

109. *Id.* annex 3, at 115.

110. *Id.* annex 4, at 117. The BH Constitution is not in the form of an agreement; rather, it sets out the text of the constitution. Szasz, *supra* note 33, at 375 n.23. It is supported by identically-worded declarations from the BH Republic, the BH Federation, and the RS stating that they approve the constitution. *Id.*

111. GFA, *supra* note 104, annex 5, at 129.

112. *Id.* annex 6, at 130.

113. *Id.* annex 7, at 136.

114. *Id.* annex 8, at 141.

115. *Id.* annex 9, at 144.

116. *Id.* annex 10, at 146.

117. *Id.* annex 11, at 149.

118. Szasz, *supra* note 33, at 376.

Issues.¹¹⁹ This annex provides the map setting the boundaries between the BH Federation and the RS.¹²⁰ The map is based on the 51/49 split proposed earlier by the Contact Group; however, it differs considerably in the details of specific land allocations.¹²¹

Another provision of significant importance is Annex 4, the Constitution of Bosnia and Herzegovina.¹²² It provides for the formation of "Bosnia and Herzegovina" from the BH Republic and recognizes as its "constituent peoples" "Bosniacs, Croats, and Serbs . . . (along with others)."¹²³ Bosnia and Herzegovina was to consist of the BH Federation and the RS.¹²⁴ The constitution provides for three principal governmental bodies, a fifteen-member House of Peoples of the Parliamentary Assembly, a three-member Presidency, and a six-member Constitutional Court.¹²⁵ The essential feature of these three bodies is that they contain an equal number of Bosniac (Muslim), Serbian, and Croatian members.¹²⁶

IV. THE GENERAL FRAMEWORK AGREEMENT FOR PEACE IN BOSNIA AND HERZEGOVINA

The relevant GFA provision for purposes of this discussion is Annex 3: Agreement on Elections.¹²⁷ Annex 3 consists of six Articles and an Attachment.¹²⁸ Annex 3 purports to do more than simply establish an election process; it ultimately seeks to achieve a democratic government.¹²⁹ The Annex delegates the election oversight authority to the Organization for Security and Cooperation in Europe (hereinafter OSCE).¹³⁰

119. GFA, *supra* note 104, annex 2, at 111.

120. Paul C. Szasz, *Introductory Note to Bosnia and Herzegovina - Croatia - Yugoslavia: General Framework Agreement for Peace in Bosnia and Herzegovina With Annexes*, 35 I.L.M. 75, 79 (1996).

121. *Id.*

122. GFA, *supra* note 104, annex 4, at 117.

123. Szasz, *supra* note 120, at 79.

124. *Id.*

125. *Id.*

126. *Id.*

127. GFA, *supra* note 104, annex 3, at 114-17.

128. *Id.* Article six merely contains signatures of representatives of the Republic of Bosnia and Herzegovina, the Federation of Bosnia, Herzegovina, and the Republic of Srpska. *Id.* at 116.

129. *Id.* at 115 (stating parties agree "to promote free, fair, and democratic elections and to lay the foundation for representative government and ensure the progressive achievement of democratic goals throughout Bosnia and Herzegovina").

130. *Id.* The OSCE originated from the Conference on Security and Cooperation in Europe. *Organization for Security and Co-operation in Europe*:

A. Article I: Conditions for Democratic Elections

In Article I, the parties agree to ensure that proper conditions are available for elections.¹³¹ The parties place special emphasis on a “politically neutral environment.”¹³² This article gives the OSCE the power to certify whether proper election conditions exist.¹³³ Article I concludes with an agreement to comply with specific comprehensive guidelines, listed in the Attachment, for ensuring proper election conditions.¹³⁴

B. Article II: The OSCE Role

Article II specifically grants OSCE the power to establish and oversee the elections program.¹³⁵ The OSCE is given broad discretion to supervise the elections for the House of Representatives of Bosnia and Herzegovina, the Presidency of Bosnia and Herzegovina, the House of Representatives for the BH Federation, the National Assembly of the RS, and the Presidency of the RS.¹³⁶ Furthermore, the OSCE may establish and supervise elections for the cantonal legislatures and municipal governments “if feasible.”¹³⁷ To implement the elections program, the OSCE

Budapest Summit Declaration on Genuine Partnership in a New Era, Dec. 6, 1994, 34 I.L.M. 764, 764 [hereinafter *OSCE Budapest Summit*]. The OSCE is a security-related entity with a membership “embracing States from Vancouver to Vladivostock.” *Id.* at 767. The OSCE plays a role in “early warning, conflict prevention, and crisis management” in troubled regions. *Id.* at 768. “The [OSCE is] a forum where concerns of participating States are discussed, their security interests are heard and acted upon.” *Id.* A focal point of the group is to “build a genuine security partnership” in the regions of participating states. *Id.*

The OSCE is forthright about its democratic goals: “[D]emocratic values are fundamental to our goal of a community of nations with no divisions, old or new, in which sovereign equality and the independence of all States are fully respected, there are no spheres of influence and the human rights and fundamental freedoms of all individuals, regardless of race, colour, sex, language, religion, social origin or of belonging to a minority, are vigorously protected.” *Id.* The OSCE recently played an active role in the Baltic conflicts. *Id.* at 776. The emphasis on democratic goals and security helps validate the OSCE’s role in the Bosnian War. A comprehensive list of the objectives the OSCE adopted at the Budapest Summit appears at 34 I.L.M. 773-776. *Id.* The OSCE’s specific role in the Bosnian elections is discussed in Article II of Annex 3. GFA, *supra* note 104, annex 3, art. II, at 115.

131. GFA, *supra* note 104, annex 3, art. II, at 115.

132. *Id.*

133. *Id.* annex 3, art. I(2), at 115.

134. *Id.* annex 3, art. I(3), at 115.

135. *Id.* annex 3, art. II(1), at 115.

136. *Id.* annex 3, art. II(2), at 115.

137. *Id.*

must establish a Provisional Election Commission.¹³⁸ Article II(4) creates a timetable for the elections.¹³⁹ The elections must occur within six months after the GFA enters into force, but no later than nine months if the OSCE encounters a delay.¹⁴⁰

C. Article III: The Provisional Election Commission

The Provisional Election Commission (hereinafter Commission) is charged with implementation and oversight of the elections.¹⁴¹ This occurs through rules regarding the registration of political parties and candidates, eligibility of candidates and voters, role of the election observers, open and fair campaigns, and the publication and certification of election results.¹⁴² The responsibilities of the Commission include general oversight, determination of voter registration procedures, compliance with the election rules and appropriate remedies for violations, and accreditation of international and domestic observers.¹⁴³ The Commission comprises the Head of the OSCE Mission or his or her designee, representatives of the parties to the GFA, and others the head of the OSCE may decide to include.¹⁴⁴

D. Article IV: Eligibility

Article IV establishes voter eligibility criteria and polling requirements.¹⁴⁵ To be eligible to vote, a person must be eighteen years old *and* appear on the 1991 census for Bosnia and Herzegovina.¹⁴⁶ While this provision seems standard, the Article also attempts to reverse one of the most serious effects of the Bosnian War: ethnic cleansing.¹⁴⁷ Voters are generally required to vote, in person or by absentee ballot, in the municipality where

138. *Id.* annex 3, art. II(3), at 115. The duties of the Provisional Election Commission are explained in Article III. *Id.* annex 3, art. III, at 115.

139. *Id.* annex 3, art. II(4), at 115.

140. *Id.*

141. *Id.* annex 3, art. III(1)(2), at 115-16.

142. *Id.* annex 3, art. III(1), at 115.

143. *Id.* annex III, art. III(2), at 115-16.

144. *Id.* annex 3, art. III(3), at 116. In addition, the Head of the OSCE is the chairman of the Commission. Should any disputes arise, the decision of the chairman is final. Finally, the Commission and the chairman are accorded diplomatic privileges and immunities. *Id.* annex 3, art. III(4), at 116.

145. *Id.* annex 3, art. IV, at 116.

146. *Id.* The Article does state that the Commission may provide eligibility procedures for citizens not listed in the 1991 census. *Id.*

147. Szasz, *supra* note 120, at 79. "[Article IV] specifies that citizens are generally to vote, in person or as absentees, in the place where counted in the 1991 census; thus, even if ethnic cleansing is not actually reversed, at least by then, its effects on the political scene might be mitigated." *Id.*

they lived in 1991.¹⁴⁸ While a refugee may apply to vote in another municipality, the "vote shall be interpreted as confirmation of his or her intention to return to Bosnia and Herzegovina."¹⁴⁹ Therefore, Article IV provides that, at least in the initial elections, refugees and others who were displaced by the war are given the opportunity to reverse ethnic cleansing politically, even if unable or unwilling to do so physically.¹⁵⁰

E. Article V: Permanent Election Commission

Article V provides that the parties will create a Permanent Election Commission to supervise future elections in Bosnia and Herzegovina.¹⁵¹ In Article I(3), the parties agreed to comply with paragraphs seven and eight of the OSCE Copenhagen Document.¹⁵² The Attachment contains certain provisions of the Copenhagen Document.¹⁵³ This is one of the most important parts of Annex 3 because it specifically lists certain actions the parties will undertake to ensure the establishment of a democratic form of government, including guaranteed open elections, universal suffrage, the establishment and maintenance of political parties and campaigns, open access to the press, and the voluntary presence of interested foreign and domestic election observers.¹⁵⁴

148. GFA, *supra* note 104, annex 3, art. IV, at 116.

149. *Id.*

150. Paul C. Szasz, *The Protection of Human Rights Through The Dayton/Paris Peace Agreement on Bosnia*, 90 AM. J. INT'L L. 301, 312 (1996).

151. GFA, *supra* note 104, annex 3, art. V, at 116.

152. *Id.* annex 3, art. I(3), at 115.

153. *Id.* annex 3, attachment at 117.

154. *Id.* Specifically, the Copenhagen Document declares:

(7) To ensure that the will of the people serves as the basis of the authority of government, the participating States will

(7.1) hold free elections at reasonable intervals, as established by law;

(7.2) permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote;

(7.3) guarantee universal and equal suffrage to adult citizens;

(7.4) ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public;

(7.5) respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination;

(7.6) respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities;

V. THE HISTORY AND PURPOSE OF MULTINATIONAL ELECTION
MONITORING

As a general concept, the idea of election monitoring came directly from the Peace of Versailles after World War One.¹⁵⁵ Former U.S. President Woodrow Wilson articulated the principle of self-determination as a justification for election monitoring in his famous Fourteen Points.¹⁵⁶ The League of Nations consequently began administering and observing elections to enforce "the right of [people] to dispose of their own destiny."¹⁵⁷ Subsequently, self-determination became one of the purposes of the U.N.¹⁵⁸ Article I(2) of the U.N. Charter states that one purpose of the U.N. is "[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-

(7.7) ensure that law and public policy work to permit political campaigning to be conducted in a free and fair atmosphere in which neither administrative action, violence, nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear or retribution;

(7.8) provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process;

(7.9) ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in that office until their term expires or is otherwise brought to an end in a manner regulated by law in conformity with democratic parliamentary and constitutional procedures[.]

(8) The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other . . . [OSCE] participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law. They will also endeavor to facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings.

Document of the Copenhagen Meeting of the Conference on the Human Dimension, June 29, 1990, paras. 7-8, 29 I.L.M. 1306, 1310 [hereinafter Copenhagen Document].

155. Kofi D. Asante, *Election Monitoring's Impact on the Law: Can It Be Reconciled With Sovereignty and Nonintervention?*, 26 N.Y.U. J. INT'L L. & POL. 235, 271 (1994).

156. *Id.*

157. ALFRED COBBAN, *THE NATION STATE AND NATIONAL SELF-DETERMINATION* 58 (1970). See Asante, *supra* note 155, at 272.

158. YVES BEIGBEDER, *INTERNATIONAL MONITORING OF PLEBISCITES, REFERENDA AND NATIONAL ELECTIONS: SELF-DETERMINATION AND TRANSITION TO DEMOCRACY* 18 (1994).

determination of peoples”¹⁵⁹ Along with self-determination, the existence of international human rights became embodied in various international covenants.¹⁶⁰ The many emerging human rights treaties began to include in their provisions the right of political participation, the normative basis for election monitoring.¹⁶¹ For example, the 127 parties¹⁶² who signed the International Covenant on Civil and Political Rights guaranteed in Article 25 the right to “genuine periodic elections.”¹⁶³ Numerous other treaties and covenants contain similar provisions that guarantee periodic elections.¹⁶⁴

This slow progress of the U.N. human rights agenda led the organization to accept and promote democratic principles as universally-recognized rights.¹⁶⁵ These human rights instruments provided the impetus for the U.N. to offer assistance in the technical and legal aspects of democratic elections and ultimately to organize and monitor democratic elections in sovereign states.¹⁶⁶ Election monitoring served to validate people’s right to participate in their state’s political development.¹⁶⁷ Therefore, as a legal matter, international law authorized the election-monitoring concept.¹⁶⁸

159. U.N. CHARTER art. 1, para. 2. Self-determination is also embodied in Article 55 of the U.N. Charter. Asante, *supra* note 155, at 272.

160. Asante, *supra* note 155, at 272. See Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., at 71, U.N. Doc. A/810 (1948); International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, S. EXEC. DOC. E, 95-2 (1978), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter Covenant on Civil and Political Rights]; International Covenant on Economic, Social, and Cultural Rights, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3, 6 I.L.M. 360 (entered into force Jan. 3, 1976); Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514, U.N. GAOR, 15th Sess., Supp. No. 16, at 66, U.N. Doc. A/4684 (1960).

161. Gregory H. Fox, *Multinational Election Monitoring: Advancing International Law on the High Wire*, 18 FORDHAM INT’L L. J. 1658, 1660 (1995).

162. As of July 1994, there were 127 parties to the agreement. *Id.*

163. Covenant on Civil and Political Rights, *supra* note 160, art. 25.

164. See e.g., European Convention for the Protection of Human Rights and Fundamental Freedoms (Protocol No. 1), Nov. 4, 1950, art. 3, 213 U.N.T.S. 22; American Convention on Human Rights, Nov. 22, 1969, art. 23, 1144 U.N.T.S. 123, 9 I.L.M. 673 (entered into force July 18, 1978); African Charter on Human and Peoples’ Rights, June 27, 1981, art. 13, O.A.V. Doc. CAB/LEG/67/3/Rev.5, *reprinted in* 21 I.L.M. 59 (1982); International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, art. 5(c), 660 U.N.T.S. 195, 5 I.L.M. 352 (1966); Convention on the Political Rights of Women, *opened for signature* Mar. 31, 1953, art. 1, 27 U.S.T. 1909, 193 U.N.T.S. 135.

165. BEIGBEDER, *supra* note 158, at 91.

166. *Id.* at 91-92.

167. Asante, *supra* note 155, at 273.

168. *Id.*

A. Acceptance of the Election-Monitoring Concept

Concerns about electoral issues have not traditionally been at the human rights forefront for several reasons. First, modification of election and participatory rights by a foreign entity have traditionally been considered highly intrusive to a state.¹⁶⁹ These rights have been viewed as local in nature, and states have been free to reject the doctrine that political participation is prerequisite to legitimate governmental power.¹⁷⁰ With the increased recognition of human rights, concerns about intrusiveness have been displaced by widespread acceptance of the political participation doctrine.

A second reason is that modern democratic governments are a recent development.¹⁷¹ For example, universal suffrage was not common in Western Europe until the mid-twentieth century, and the United States did not eliminate poll taxes until 1964.¹⁷² If a full participatory democracy did not prevail in two of the largest "democratic" regions of the world, it would have been unrealistic to expect it as an international norm.¹⁷³ Now, however, elected governments are common in all regions of the world.¹⁷⁴

Finally, "international law has traditionally failed to distinguish between regimes chosen by democratic procedures and those chosen by other means."¹⁷⁵ Any group in effective control was to be recognized as the state's legitimate government.¹⁷⁶ This is at odds with the legitimacy principle of democracy, the basis for the right to political participation.¹⁷⁷ Although the traditional rule may still exist today, the rise of human rights norms has increased the international concern over the quality of democratic governance.¹⁷⁸

B. Recent Developments Concerning Election Monitoring

Nonetheless, the primary impetus for increased U.N. activity in election monitoring was the end of the Cold War.¹⁷⁹ After 1989, the U.N. could focus on the precise meaning of "democracy"

169. Fox, *supra* note 161, at 1662.

170. *Id.*

171. *Id.* at 1663.

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.* at 1662.

and the role of elections and election monitoring in a democracy,¹⁸⁰ asserting that:

[F]ree and periodic elections are the basis of any genuinely democratic system and democracy is an essential condition for the achievement of the fundamental liberties for all to which Member States have committed themselves [T]he promotion of free elections is closely tied to the support of the U.N. for the universal realization of the right to self-determination, which is commonly regarded as fundamental to the fulfillment of all human rights.¹⁸¹

As election monitoring assists states in the transition to democracy, the recent U.N. actions in establishing elections were undertaken for the following reasons:

Democracies almost never fight each other. Democratization supports the cause of peace. Peace in turn is a prerequisite to development. So democracy is essential if development is to be sustained over time. And without development there could be no democracy. Societies that lack basic well-being tend to fall into conflict. So three great priorities are interlocked.¹⁸²

The institutional framework within the U.N. for monitoring elections emerged in 1992 with the establishment of the Unit for Electoral Assistance within the Secretariat.¹⁸³ The Unit was subsequently upgraded to the Division of the Department of Peacekeeping Affairs due to increased demand for election-monitoring involvement.¹⁸⁴ In recent times, the U.N. participated in the monitoring of elections in Namibia, Korea, Nicaragua, Haiti, Angola, Cambodia, Mozambique, and Liberia.¹⁸⁵ The operations

180. *Id.*

181. *Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections: Report of the Secretary-General*, U.N. GAOR, 46th Sess., Agenda Item 98(b), at 5, U.N. Doc. A/46/609 (1991) [hereinafter *Periodic and Genuine Elections*]. However, another view states that elections are only one part of a democracy:

Elections in and of themselves do not constitute democracy. They are not an end but a step, albeit an important and often essential one, on the path towards the democratization of societies and the realization of the right to take part in the governance of one's country as enunciated in major human rights instruments. It would be unfortunate to confuse the end with the means and to forget that democracy implies far more than the mere act of periodically casting a vote, but covers the entire process of participation by citizens in the political life of their country.

Id. at 24.

182. Boutros Boutros-Ghali, *An Agenda For Peace: One Year Later*, 37 *ORBIS* 323, 329 (1993).

183. Fox, *supra* note 161, at 1661.

184. *Id.*

185. *Id.*; BEIGBEDER, *supra* note 158, at 98; David Stoelting, *The Challenge of UN-Monitored Elections in Independent Nations*, 28 *STAN. J. INT'L L.* 371, 375 (1992).

in Angola, Cambodia, Mozambique, and Liberia were the result of U.N.-negotiated peace agreements to end civil wars.¹⁸⁶ The situation in Bosnia is similar. In Nicaragua, the monitoring process was part of a five-state peace agreement that called for free and fair elections.¹⁸⁷ In contrast, election monitoring in Haiti was the result of an invitation from then-President Trouillot of Haiti, which the U.N. General Assembly ultimately accepted.¹⁸⁸ Thus, the U.N. decision to monitor elections could be the result of a negotiated peace plan or an invitation to monitor.

C. Goals and Purposes of Election Monitoring

Election monitoring serves two main purposes. The first and broader purpose is to promote and maintain international peace and security.¹⁸⁹ The second is to promote self-determination and democracy in individual countries.¹⁹⁰ The latter purpose is accomplished through aspiring:

- 1) to bear witness to the election process;¹⁹¹
- 2) to discover and to reveal problems that might emerge in the electoral process, ideally when there is still time to do something about the problems, thereby helping to solve them;¹⁹²

186. Fox, *supra* note 161, at 1661.

187. Asante, *supra* note 155, at 273.

188. *Id.* at 274.

189. Melida N. Hodgson, *When to Accept, When to Abstain: A Framework for U.N. Election Monitoring*, 25 N.Y.U. J. INT'L L. & POL. 137, 150 (1992).

190. See generally Sonia K. Han, Note, *Building a Peace That Lasts: The United Nations and Post-Civil War Peace-Building*, 26 N.Y.U. J. INT'L L. & POL. 837 (1994). Han notes:

In every mission, the central task of the United Nations is to conduct or supervise national elections, including establishment of electoral laws, voter and party registration, voter education, polling, investigation of complaints, and verification of the elections. In all cases, there is to be universal suffrage in multi-party elections by secret ballot under a politically neutral environment. The former warring factions are to be transformed into political parties standing for elections. There is to be free and equal access of the parties to the media, as well as freedom of speech, assembly, and movement, and the absence of fraud and intimidation. Every adult citizen, including refugees and displaced persons, have the same rights, freedoms, and opportunities to take part in the electoral process.

Id. at 871.

191. Michael Carowitz, *International Observations of Elections*, 84 AM. SOC'Y INT'L L. PROC. 375, 376 (1990). This includes observation and, perhaps, written reports, press conferences, meetings and newspaper articles to help provide a free, electoral environment. *Id.* at 378-86.

192. *Id.* at 376.

- 3) to embolden those who might otherwise be intimidated about participating in the political process;¹⁹³
- 4) to ensure that an independent, impartial, and objective report evaluating the electoral process in a particular country is prepared;¹⁹⁴
- 5) to encourage participation in the electoral process by undertaking to report any significant manipulation of the electoral process;¹⁹⁵
- 6) to assist in ensuring the integrity of the electoral process;¹⁹⁶ and
- 7) to evaluate the general human rights situation of the country.¹⁹⁷

The U.N. Secretary-General emphasizes the U.N.'s broader purpose of promoting self-determination and democracy, rather than merely election observation: "Electoral verification goes beyond the mere recording of the process A passive role is untenable, all the more so in situations of extreme mistrust, polarization, or violence."¹⁹⁸ Therefore, the U.N. seeks more than simple procedural improvements in the electoral process; it wants to "increase confidence in the electoral process, which should, in turn, result in increased voter participation and greater legitimacy for the process itself."¹⁹⁹ This comment illustrates the likely focus of U.N. election-monitoring policy in the coming years.

D. OSCE and Election Monitoring

The OSCE, the organization in charge of monitoring the Bosnian elections, only recently emphasized the importance of free elections in a democratic society.²⁰⁰ Its member states declared that the basis of authority and the legitimacy of a state's government is the "will of people, freely and fairly expressed through periodic and genuine elections."²⁰¹ This led states to encourage and recommend the enhanced presence of election observers at national elections.²⁰²

The OSCE established the Office of Free and Fair Elections in Warsaw in 1991.²⁰³ Its original task was to facilitate contacts

193. *Id.*

194. LARRY GARBER, INT'L HUM. RTS. L. GROUP, GUIDELINES FOR INTERNATIONAL ELECTION OBSERVING 13 (1984).

195. *Id.*

196. *Id.*

197. *Id.*

198. *Periodic and Genuine Elections*, *supra* note 181, at 20-21.

199. *Id.*

200. BEIGBEDER, *supra* note 158, at 256.

201. *Id.* at 257. *See generally* Copenhagen Document, *supra* note 154.

202. BEIGBEDER, *supra* note 158, at 257.

203. *Id.* at 258.

and an exchange of information on elections within OSCE member states.²⁰⁴ A year later, this office was renamed the Office for Democratic Institutions and Human Rights (hereinafter ODIHR).²⁰⁵ The name change alone reflected a new and enhanced purpose. Instead of simply focusing on elections, the ODIHR became an institutional framework for the sharing of information on technical assistance and programs to assist newly-developed democracies in establishing permanent democratic institutions.²⁰⁶ The increased responsibilities were the result of the OSCE's recognition that free and fair elections did not guarantee a democracy.²⁰⁷ The ODIHR organized election seminars before elections and conducted full election-monitoring missions in subsequent years.²⁰⁸ These seminars and missions took place in Bulgaria, Poland, Albania, Estonia, Romania, Georgia, and Lithuania.²⁰⁹

The OSCE has prior experience in the Yugoslav region. In 1992, the OSCE conducted a highly successful election-monitoring operation in Slovenia.²¹⁰ After declaring the elections free, fair, and consistent with international standards, the OSCE stated it did not anticipate the need to monitor further elections in Slovenia.²¹¹

The OSCE's missions in Serbia and Montenegro in 1992 did not have similar success. An ODIHR advance team of observers initially postponed the elections after concluding that proper conditions for free and fair elections did not exist.²¹² Despite a recommendation for postponement for at least two months, the

204. *Id.* Specifically, the Office was to compile information on the dates, procedures, official results of national elections, and reports of election observations. On request, these were to be provided to governments, parliaments, and interested private organizations. In addition, it was to facilitate contact among governments, parliaments, or private organizations wishing to observe elections and competent authorities of the states in which the elections are to take place. Finally, the Office was to organize and serve as the venue for seminars or other meetings related to election procedures and democratic institutions at the request of the participating states. *Id.* at 258-59.

205. *Id.*

206. *Id.*

207. *Id.* In addition, the ODIHR's expanded role was the result of the OSCE's increased membership after the break-up of the USSR and Yugoslavia. *Id.*

208. *Id.* at 259-61.

209. *Id.* For the most part, these were successful missions. However, consistent with the expanded role of the ODIHR, improvements in the local procedures were suggested. *Id.*

210. *Id.* at 261.

211. *Id.*

212. *Id.*

elections took place without OSCE election observers.²¹³ The OSCE noted significant problems with subsequent elections in December 1992. The election, which re-elected Serbian President Slobodan Milosevic, was also declared not to be free and fair.²¹⁴ The observers recognized the ruling party's abuse of power in using the parliament, judiciary, and electoral administrations to suppress opposition candidates.²¹⁵

Therefore, the OSCE entered the Bosnian elections with experience in election monitoring in the Yugoslav region; however, the violence and ethnic tensions surrounding Bosnia presented the OSCE with a unique challenge to its election-monitoring capabilities.

VI. DO THE U.N. AND THE OSCE/ODIHR BELONG IN BOSNIA?

The enhanced role of the U.N. election-monitoring effort has been criticized by those who view it as "social engineering" or "nation building" and consider it an interference with sovereignty.²¹⁶ Because many states subject to U.N. election monitoring have little experience transferring power through elections, the risk of failed missions is substantial.²¹⁷ Furthermore, failed monitoring operations can lead to "widespread cynicism about the viability of 'nation-building' efforts."²¹⁸ Additionally, national discretion regarding sovereign power within a state is the "essence of political autonomy."²¹⁹ Under the U.N. scheme, the choice of whether election monitoring

213. *Id.* The advance team recognized that the FRY did not function as a multi-party system. The ruling party had exclusive control of the nationwide electronic media. *Id.*

214. *Id.*

215. *Id.* at 261-62. Such problems included the monopoly of the media, multiple registration and voting, intimidation of voters, low standards of secrecy at the polls, and group and military voting prior to election day. *Id.*

216. Fox, *supra* note 161, at 1659.

217. *Id.* at 1659-60. It is possible that "the results of an extremely close election may be rejected by claims of fraud; a coup may topple the elected government; the incumbent government may refuse to yield power; the winning party may begin to oppress its opponents; new guarantees of party pluralism may institutionalize old ethnic rivalries; and the high expectations of instant social reform that often accompany democratic transitions may not materialize." *Id.* The threat of new political parties reviving ethnic conflicts is especially substantial in Bosnia. The rotating presidency by the Serbs, Muslims, and Croats virtually guarantees this occurrence.

218. *Id.* at 1660.

219. *Id.* at 1659.

occurs rests with individuals and organizations whose only relationship to the state is their presence during an election.²²⁰

A. *The U.N. Debate*

The overarching principle regarding U.N. participation in election monitoring is whether the U.N. Charter prohibits its involvement in electoral matters despite the invitation or consent of a member state. Article 2(7) of the Charter provides:

Nothing contained in the present Charter shall authorize the U.N. to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.²²¹

The debate focuses on the tension between two competing principles: support for the free and fair elections as an expression of an individual's participatory right of government, on the one hand, and respect for state sovereignty on the other.²²²

The opposition to U.N. election monitoring voices the developing nations' concern that increased election monitoring will result in renewed cultural and political imperialism.²²³ U.N. Resolution 45/151, sponsored by these states, "affirmed that it was the concern solely of peoples to determine methods and to establish institutions regarding the electoral process."²²⁴ The Resolution further stated that "any extraneous activities that attempt, directly or indirectly, to interfere in the free development of national electoral processes, in particular in developing countries, or that intend to sway the results of such processes, violate the spirit and letter of the principles established in the Charter."²²⁵

220. *Id.*

221. U.N. CHARTER art. 2, para. 7.

222. Jon M. Ebersole, *The United Nations' Response to Requests for Assistance in Electoral Matters*, 33 VA. J. INT'L L. 91, 97 (1992).

223. Hodgson, *supra* note 189, at 146.

224. *Respect for the Principles of National Sovereignty and Non-Interference in the Internal Affairs of States in their Electoral Process*, G.A. Res. 151, U.N. GAOR 3d Comm., 45th Sess., pt. 1, 69th mtg., at 460, U.N. Doc. A/45/151 (1990), reprinted in *Human Rights Questions: Human Rights Questions, Including Alternative Approaches for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms*, U.N. GAOR, 46th Sess., Agenda Item 98(b), at 3, U.N. Doc. A/46/616 (1991) [hereinafter *Human Rights Questions*].

225. *Id.* at 3. China emphasized that political, social, legal and electoral systems are the internal affairs of a country. Consequently, "the United Nations does not have the mandate and authority to intervene in the internal matters, including electoral matters, of its Member States." *Id.* at 5. Mexico stated a similar view by contending that elections are a subject within the sole competence

Support for U.N. election monitoring rests on the principle that "authority to govern shall be based on the will of the people"²²⁶ and that "determining the will of the people requires an electoral process."²²⁷ Japan, representing the industrialized states' view on this issue, stated that it "regards such assistance as essential in promoting and encouraging respect for human rights and fundamental freedoms for all."²²⁸

B. *The OSCE View*

Debate continues within the U.N. concerning the proper application of election-monitoring policies. The OSCE has also dealt with the sovereignty issue as it pertained to OSCE policies. The most forceful declaration of the OSCE's view took place at the Moscow Meeting of the Conference on the Human Dimension of the OSCE in 1991:

The participating States emphasize that the issues relating to human rights, fundamental freedoms, and democracy and the rule of law are of international concern, as respect for those rights and freedoms constitutes one of the foundations of the international order. They categorically and irrevocably declare that the commitments undertaken in the field of the human dimension of the [OSCE] are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned.²²⁹

Thus, the OSCE did not view state sovereignty as an impediment to the promotion of human rights and democratic institutions.

of the citizens of each country and that each country must solve the problems involved in a democratic government without outside interference. *Id.* at 9.

226. Ebersole, *supra* note 222, at 97 (citing *Periodic and Genuine Elections*, *supra* note 190, ¶ 1).

227. *Id.* (citing *Periodic and Genuine Elections*, *supra* note 181, ¶ 3).

228. *Periodic and Genuine Elections*, *supra* note 181, Addendum 1, at 24. The EC echoed an even stronger view:

[T]he Twelve [Nations of the EC] endorse the right and the moral obligation of the international community to intervene for the protection and promotion of all human rights. They stress the prime importance of the right to vote and to be elected, at genuine periodic elections, for the full affirmation of human dignity

. . . [T]he protection of human rights and fundamental freedoms should not be construed by any person as interference in the internal affairs of a State

The Twelve [Nations of the EC] attach great importance to the principle of free and periodic elections as the expression of the right of peoples to self-determination enshrined in the Charter. *Id.* at 25.

229. BEIGBEDER, *supra* note 158, at 258.

C. Chapter VII of the U.N. Charter

The debates within the U.N. regarding election monitoring and Article 2(7) of the U.N. Charter and its non-interventionist policy apply only to intervention when the scope of the affair is domestic. Once the scope becomes international, the U.N. Charter allows intervention. Article 2(7) states this exception to non-intervention: "[T]his principle [of non-intervention] shall not prejudice the application of enforcement measures under Chapter VII."²³⁰ Chapter VII, through Article 39, allows the U.N. Security Council to take action to "maintain or restore international peace and security" when it determines that "any threat to the peace, breach of the peace, or act of aggression" exists.²³¹ Therefore, objections to election monitoring as a violation of non-intervention and state sovereignty are overcome, because Article 2(7) does not supersede actions by the Security Council under Chapter VII.²³² Enforcement actions taken pursuant to Chapter VII are thus legal, and the use of force for such reasons is also legal.²³³

In theory, this framework should be easily applied in different situations. If the affair is domestic, intervention is prohibited; if the affair is international, intervention is allowed. In practice, however, what begins as a domestic affair may escalate and involve surrounding states.²³⁴ Such a conflict, while physically within one state, will impact the rest of the world.²³⁵ Therefore, the question for the U.N. Security Council became whether the conflict in Bosnia was domestic in nature or whether it posed a threat to "international peace and security," permitting U.N. intervention and election monitoring.

The election-monitoring efforts in Bosnia, specifically authorized in the GFA, are legitimate Chapter VII actions. The Bosnian conflict was properly classified as an international affair. The U.N. Security Council stated that the "continuation of this situation constitutes a threat to international peace and

230. U.N. CHARTER art. 2, para. 7.

231. U.N. CHARTER art. 39. Article 39 states: "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken . . . to maintain or restore international peace and security."

232. Hodgson, *supra* note 189, at 149.

233. Jon E. Fink, *From Peacekeeping to Peace Enforcement: The Blurring of the Mandate for the Use of Force in Maintaining International Peace and Security*, 19 MD. J. INT'L. & TRADE 1, 40 (1995).

234. Yoshiko Inoue, *United Nations' Peace-Keeping Role in the Post-Cold War Era: The Conflict in Bosnia-Herzegovina*, 16 LOY. L.A. INT'L & COMP. L.J. 245, 248 (1993).

235. *Id.*

security.”²³⁶ This determination was necessary to trigger Article 39 and Chapter VII authorization for intervention. Admittedly, the conflict was originally domestic in nature and was a fight for self-determination in a newly established state;²³⁷ however, as the conflict escalated, threats to international peace and security emerged. In a series of resolutions, the Security Council articulated the precise threats. These included:

- 1) the transboundary effects of the refugee situation,
- 2) the inability to deliver humanitarian aid due to the civil war,
- 3) ethnic cleansing, and
- 4) other violations of international law.²³⁸

These findings are based on the recognition that the refugee problem and the internal “grave and systematic” human rights violations warranted Chapter VII action.²³⁹ Although using human rights violations as the sole basis for Chapter VII actions has not been formally recognized, it is emerging customary law.²⁴⁰

Because the human rights situation was such a significant motivating factor behind the Chapter VII authorization, election monitoring should be the first step toward a final solution. As previously discussed, an individual’s right to participate in government is an essential human right.²⁴¹ This right is properly exercised through periodic free and fair elections. Through these elections, individuals empanel the popularly elected government. This process results in the legitimization of the government. Legitimization of the government is essential for a lasting democracy.

A legitimate government will be less likely to commit human rights violations because it must answer to the populace at the elections. This, of course, assumes the elections are periodic, free, and fair. This process will not totally prevent the human rights problem, the most significant issue in the Bosnian conflict, but it will make such problems less likely to occur.

236. See U.N. SCOR, Res. 721, 3018th mtg., at 44 (1993).

237. Inoue, *supra* note 234, at 251.

238. Fink, *supra* note 233, at 41. See S.C. Res. 757, 47th Sess., 3082d mtg., U.N. Doc. S/INF/48 (1992), reprinted in 1992 U.N.Y.B. 352-54, U.N. Sales No. E.93.I.1; S.C. Res. 770, 47th Sess., 3106th mtg., U.N. Doc. S/INF/48 (1992), reprinted in 1992 U.N.Y.B. 365-66; S.C. Res. 771, 47th Sess., 3106th mtg., U.N. Doc. S/INF/48 (1992) reprinted in 1992 U.N.Y.B. at 366 (detailing the threats to international peace in Bosnia and Herzegovina and calling for an end to the violence).

239. Fink, *supra* note 233, at 41.

240. *Id.* at 42.

241. See *supra* Part V.A.

Enhanced "nation-building" U.N. election-monitoring missions help to produce legitimate governments. They help to establish democratic institutions and norms that, if successful, will result in long-lasting democratic government. Therefore, in a situation like the Bosnian conflict where human rights violations pose the most significant threat to international peace and security, election monitoring is both lawful and appropriate.

VII. THE ELECTIONS IN BOSNIA

As a result of Annex 3 of the GFA, elections in Bosnia were held on September 14, 1996. At this time, Serbs, Croats, and Muslims were to vote in the election for the presidency of Bosnia and the presidency and parliament in the RS. Elections were also scheduled for a federal parliament and a parliament in the BH Federation. Of these elections, the most anticipated were the Bosnian presidency and the RS presidency.

After a review of the total votes, the OSCE confirmed that incumbent Muslim Alija Izetbegovic won the Bosnian federal presidency and would serve as chairman of the new three-man federal presidency.²⁴² Izetbegovic was followed by Serb candidate Momcilo Krajisnik and Croat candidate Kresimir Zubak.²⁴³ The three men will serve together in the three-man presidency.²⁴⁴ Biljana Plavsic, a close associate of Krajisnik, won the presidential election for the RS.²⁴⁵

Although the elections produced quantified results, they were marred by significant problems.²⁴⁶ At the time of the elections, serious problems remained regarding freedom of movement, association, expression, and the establishment of a politically neutral environment.²⁴⁷ All of these are required by Article I of

242. *Izetbegovic, Plavsic Confirmed as Poll Winners*, Deutsche Presse-Agentur, Sept. 23, 1996, available in LEXIS, News Library, DPA File. He received 731,024 votes, about 34,000 more than the closest candidate. *Id.*

243. *Bosnia's Muslim President Elected Chairman in Elections*, Dow Jones News Serv., Sept. 18, 1996, available in WESTLAW, DJNSPLUS Database.

244. *Id.*

245. *Bosnia Election/Certified-2: Izetbegovic May Have "Edge,"* Dow Jones Int'l News Serv., Sept. 29, 1996, available in WESTLAW, DJNSPLUS Database.

246. Colin Soloway, *UN Cites Vote Fraud in Bosnia*, CHI. TRIB., Sept. 26, 1996, at 13N. One Western diplomat stated, "It's hard to think of an internationally supervised election which has been so obviously cooked . . . And never in the field of international diplomacy have so many people tried to cover it up." *Id.*

247. After the election, the United States learned that Iran had secretly delivered \$500,000 to then-presidential candidate Izetbegovic. Steven L. Myers, *Iran Contributed \$500,000 to Bosnian President's Election Effort, U.S. Says*, N.Y. TIMES, Jan. 1, 1997, at A4. Izetbegovic admitted the payments, but denied the

Annex 3,²⁴⁸ which specified the conditions that were to exist before elections took place:

The Parties shall ensure that conditions exist for the organization of free and fair elections, in particular a politically neutral environment; shall protect and enforce the right to vote in secret without fear or intimidation; shall ensure freedom of expression and of the press; shall allow and encourage freedom of association (including political parties); and shall ensure freedom of movement.²⁴⁹

These conditions, however, did not exist and the voting procedures contained multiple problems. In addition, other civilian portions of the GFA remained unenforced.²⁵⁰

Voter turnout was one obvious problem. Prior to the election, Robert Frowick, chairman of the OSCE mission, and Jeff Fischer, OSCE general elections director, declared that the Bosnian electorate consisted of 2.9 million people.²⁵¹ These figures had been used in both public statements and internal planning documents.²⁵² Voter turnout was estimated at sixty to seventy percent.²⁵³ Taking this into account, the International Crisis Group, an independent monitoring organization, decreased the electorate by a conservative number of 600,000 people who certainly did not vote.²⁵⁴ This resulted in a potential electorate of approximately 2.34 million people.²⁵⁵ The problem became dramatically evident when it was revealed that 2.43 million votes were cast,²⁵⁶ suggesting that voter turnout was an impossible 103.9%.²⁵⁷ This painted a picture of wide-scale voter fraud.

money had gone to his campaign. He stated the money had funded more than one thousand scholarships. *Muslim Leaders Deny Funds from Iran Used in President's Campaign*, CHI. TRIB., Jan. 5, 1997, at C6. Although the payment did not expressly violate the GFA, it raised questions about a politically neutral environment.

248. Anna Husarska, *Bosnian Elections: The 103.9% Solution*, WALL ST. J. (Europe), Oct. 4, 1996, available in 1996 WL-WSJE 10751891.

249. GFA, *supra* note 104, annex 3, art. I, at 115.

250. Patrick Moore, *What Dayton Wrought*, WALL ST. J. (Europe), Sept. 18, 1996, available in 1996 WL-WSJE 10750851.

251. See Colin Soloway, *Fair or Not, Results of Bosnia Elections Are Now Certified Multi-Ethnic Government Given Go-Ahead*, CHI. TRIB., Sept. 30, 1996, at 3 [hereinafter Soloway, *Fair or Not*]; Husarska, *supra* note 248.

252. Soloway, *supra* note 246.

253. *Bosnia-Herzegovina Ethnic Leaders Win in Internationally Supervised Election*, FACTS ON FILE WORLD NEWS DIG., Sept. 19, 1996, at 673 available in LEXIS, News Library, FACTS File.

254. Husarska, *supra* note 248.

255. *Id.*

256. *Id.*

257. *Id.* A separate U.N. analysis calculated a turnout close to 120%. Soloway, *Fair or Not*, *supra* note 251.

The OSCE responded by disavowing its own public and internal estimates of 2.9 million voters, stating that the electorate was actually 3.2 million people.²⁵⁸ However, the OSCE presented no evidence to support the 3.2 million figure.²⁵⁹ The OSCE Election Appeals Sub-Commission called for a full ballot recount after the Crisis Group filed a complaint.²⁶⁰ The Provisional Election Commission rejected a recount.²⁶¹ Frowick stated it was "neither practical nor a necessary response to the concerns reported."²⁶²

In addition to voter turnout fraud, several irregularities in the voting and monitoring procedures arose. Jeff Fischer, OSCE general elections director, stated the Bosnian elections were "the most closely monitored elections in history."²⁶³ This broad claim is not supported by the evidence. The OSCE admitted that thirty percent of the 4600 polling stations were never visited by election monitors.²⁶⁴ Others were monitored for only a few hours at a time.²⁶⁵

Problems in voting procedures were also evident. As previously discussed, one important provision in Annex 3 of the GFA allowed refugees to vote in their original homeland.²⁶⁶ However, despite expectations of 150,000 refugee voters, only 20,000 crossed the ethnic boundary from the BH Federation to the RS, and only 4000 went from the RS to the BH Federation.²⁶⁷ This resulted from a lack of safety measures for refugee transportation.²⁶⁸ Furthermore, refugees who attempted to vote

258. Soloway, *supra* note 246; Soloway, *Fair or Not*, *supra* note 251.

259. Soloway, *Fair or Not*, *supra* note 251. Christian Christensen, director of voter registration for the OSCE, stated he knew of no statistical models analyzing the population that support the 3.2 million figure. Soloway, *supra* note 246. He stated, "Frankly, I doubt there is any such model." *Id.*

260. Husarska, *supra* note 248.

261. *Id.*; Soloway, *Fair or Not*, *supra* note 251.

262. Husarska, *supra* note 248.

263. Soloway, *supra* note 246; Soloway, *Fair or Not*, *supra* note 251.

264. Soloway, *supra* note 246; Soloway, *Fair or Not*, *supra* note 251. "The ratio of international observer teams to polling stations (one to eight) and the former's general unfamiliarity with the local language inspires only modest confidence in the observer mission." Nigel Purvis, *Observations on the Bosnian Elections From Prijedor, Republika Srpska*, 21 FLETCHER F. WORLD AFF., Winter-Spring 1997, at 15, 23-24.

265. Soloway, *Fair or Not*, *supra* note 251.

266. See GFA, *supra* note 104, annex 3, art. IV, at 116.

267. Tracy Wilkinson, *EV Monitors Say Bosnia Vote Was Not "Free, Fair,"* L.A. TIMES, Sept. 15, 1996, at A1 [hereinafter Wilkinson, *EV Monitors*].

268. "A large part of the problem is they were simply afraid," stated Kris Janowski, spokesman for the Office of the U.N. High Commissioner for Refugees. *Id.* In one case, U.S. Army officers stopped two buses of refugees traveling to a distant polling station because the refugees' safety could not be guaranteed. The buses turned around, and the refugees did not vote. *Id.* International election

were not guaranteed access to the polls. At one location, international police admitted they had turned away private cars carrying refugee voters on strict orders to deny passage to cars.²⁶⁹ One of the main purposes of the international monitoring effort, and the OSCE's responsibility under the GFA, was to facilitate the return of refugees to their former villages. Therefore, the election procedures effectively legitimized the boundaries achieved through ethnic cleansing.

In addition, overt and subtle intimidation existed at many of the polling stations. Depending on the location of the polling station, certain ethnic groups were given favorable treatment when problems arose. Voters' movements were constrained to certain areas. Presumably, the threat of possible violence led to the limited number of refugees who returned to their homelands to vote. The refugees did not possess the same rights as non-displaced persons, and freedom of movement was not a reality. Surely a one-sixth voter turnout among the most obvious victims of the civil war cannot constitute part of a free and fair election.

Furthermore, some polling stations were located in sub-standard areas. One, for example, was in a rock quarry, and another was on the edge of a live minefield.²⁷⁰ A third was located next to a destroyed mosque and a fourth next to a former torture site which contained traces of its past activities.²⁷¹ Moreover, ballot boxes at one location were inscribed in the Cyrillic alphabet used by the Serbs while a Serbian flag briefly flew outside.²⁷² In the city of Blatna in the RS, a war-torn schoolhouse was used as a polling station where Muslim refugees could vote.²⁷³ Bullet marks and blood stains scarred the school's walls.²⁷⁴

Other election violations included stoning and turning back some refugee buses and attacking an election official with hand

organizers, in some instances, prevented Muslim refugees from voting in their homeland and shuttled them to polling stations away from their villages. Tracy Wilkinson, *Bosnia Elections Reaffirm Massive Ethnic Divisions*, L.A. TIMES, Sept. 15, 1996, at A1 [hereinafter Wilkinson, *Bosnian Elections*].

269. Purvis, *supra* note 264, at 25.

270. Wilkinson, *EV Monitors*, *supra* note 267.

271. OSCE Confirms Bosnian Election Results After Review of Complaints, Deutsche Presse-Agentur, Sept. 29, 1996, available in LEXIS, News Library, DPA File.

272. Wilkinson, *Bosnian Elections*, *supra* note 268.

273. Purvis, *supra* note 264, at 22.

274. *Id.* "Inside the school, more bullet marks scar the walls. Faded, but unmistakable, blood stains one wall. Burnt crimson hand prints, shoulder width apart, streak dramatically toward the floor from about chest height." *Id.*

grenades in a Muslim town. In addition, Serbs refused to open a polling station near the Muslim enclave of Gorazde.²⁷⁵

The most significant technical problem was that voters could not locate their names on the voter lists.²⁷⁶ At certain locations, an estimated five to ten percent of long-time residents were not on the final OSCE voter lists.²⁷⁷ Local Election Committee members and political party election observers were also missing from some lists,²⁷⁸ creating waits of up to ten hours for some voters.²⁷⁹ These delays created problems, especially for Muslim refugees in the RS. Whereas Serbs unable to locate their names on voter lists could consult a master list in Election Committee offices, Muslim refugees had no such recourse because their movement was restricted by the Bosnian Serb and NATO police.²⁸⁰

Problems with voter lists and other procedures increased the likelihood of fraud. At one location, people who did not appear on voter lists came back from the Election Committee offices with forms printed in Bosnian stating that they could vote.²⁸¹ A confused observer telephoned his headquarters, which told him to honor the forms; however, the observer was notified two hours later that the same forms were invalid.²⁸² In addition, certain Serbs from Yugoslavia and refugees of Croatia were allowed to vote illicitly on behalf of other refugees, displaced citizens, the missing, and the infirm.²⁸³ Such persons needed only "two reputable individuals" to confirm their identity.²⁸⁴ The possibility of fraud increased because the OSCE allowed RS authorities to appoint their members to all the positions on the election commissions and polling station committees in the RS.²⁸⁵

The procedure for transporting and processing the actual ballots also became problematic. The ballots were supposed to be transferred into tamper-proof plastic bags in the presence of an

275. *Id.*

276. *See id.* at 23; Wilkinson, *EV Monitors*, *supra* note 267.

277. Purvis, *supra* note 264, at 23. These rural residents could not vote without a special form obtained in a nearby city to which travel was impracticable. Thus, most of them ultimately unable to vote. *Id.*

278. Michael Miller, *Ballots Not Bullets: One Attorney's Experience as an Election Supervisor in Bosnia*, 69 N.Y. St. B.J. 8, 11 (1997).

279. Wilkinson, *EV Monitors*, *supra* note 267.

280. *Id.*

281. Miller, *supra* note 278, at 11.

282. *Id.*

283. Purvis, *supra* note 264, at 23.

284. *Id.* All voters had their right index finger marked with ink detectable under a black light. However, only one polling station worker checked the ink, and one worker checked identification papers. Dishonesty by either worker could result in double voting or voting under a false identity. *Id.*

285. *Id.*

election observer.²⁸⁶ However, many local station workers did not wait for election observers and transferred the ballots without supervision.²⁸⁷ Counting centers experienced similar problems. The OSCE had not devised a system to process the ballots from the polling stations and failed to instruct the international election observers how to assist in such a task.²⁸⁸ The counting of ballots in Tuzla was out of control because the lack of security allowed intoxicated Bosnian election workers to angrily shout and threaten abandonment of their unprocessed ballot bags while an understaffed observer team worked furiously to properly account for the ballots.²⁸⁹ When the counting finally ended at Tuzla, no authorized OSCE official was present to properly certify the results; the certification was conducted by a lower-level international observer.²⁹⁰

Despite these reported gross and widespread election violations, the OSCE certified the election results on September 29, 1996.²⁹¹ Frowick declared that the election "was a reasonably democratic process and produced a reasonably democratic result," but he never declared it "free and fair."²⁹²

The decision to certify the results may have been made for political reasons. Some international officials believe the OSCE was reluctant to scrutinize voter fraud allegations for fear that the annulment of some results would cost Izetbegovic the chairmanship of the presidency. In such a case, Kajisnik would assume the chairmanship, a situation some American and European policymakers described as a "nightmare."²⁹³ Another explanation is based on U.S. President Bill Clinton's intense desire to install the new members of government to present a picture of a united Bosnia so as not to delay the homecoming of American troops in an election year.²⁹⁴ Finally, a determination

286. Miller, *supra* note 278, at 11.

287. *Id.*

288. *Id.* at 12. One international election observer, Fred Cowan, the former Attorney General of Kentucky, was attempting to record incoming ballots while tired and half-drunk Bosnians yelled at him to hurry and process their ballot bags so they could leave. The situation was so raucous, Cowan was quoted as stating, "There's going to be a riot if we don't get this thing under control." *Id.*

289. *Id.* The situation was not fully under control until American troops arrived with ballots from the absentee polling stations. *Id.*

290. *Id.*

291. OSCE Confirms Bosnian Election Results After Review of Complaints, *supra* note 271.

292. Husarska, *supra* note 248.

293. Soloway, *Fair or Not*, *supra* note 251.

294. One Western official noted the Clinton Administration's "desperation to sweep Bosnia's elections under the rug and get on with the peace process." *Recount Rejected in Bosnia Election Despite the Discovery of Irregularities; Peace Plan Takes Priority as Nation Seeks Fresh Start*, STAR TRIB., Sept. 28, 1996, at 7A.

that free and fair elections had been conducted allowed the U.N. Security Council to lift economic sanctions originally imposed against Yugoslavia in 1992.²⁹⁵

VIII. ELECTION ANALYSIS

The main purpose of the Bosnian elections under Annex 3 of the GFA was "to promote free, fair, and democratic elections and to lay the foundation for representative government and ensure the progressive achievement of democratic goals"²⁹⁶ Therefore, an analysis of the elections must address this purpose and determine whether it was satisfied. At the same time, it is necessary to understand that one-time free and fair elections do not simply transform a country into a stable democracy.²⁹⁷ "Countries in transition to democracy must be given time to evolve progressively towards people's participation in political governance, for democratic values to grow roots among the leaders and the people."²⁹⁸ Nevertheless, "elections are the building block of all democratization: no elections, no democracy."²⁹⁹ However, the failure of the initial elections may slow down rather than accelerate democratization.³⁰⁰

Furthermore, the legitimacy of a state like Bosnia rests in the free participation of people in the creation and maintenance of the state's government.³⁰¹ The OSCE recognized this when it declared that "the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government."³⁰² Thus, the legitimacy of the Bosnian government is based on the validity of the elections. This in turn is derivative of the success or failure of

available in 1996 WL 6930398 [hereinafter *Recount Rejected*]. Other commentator, contended that Clinton's political calendar and the upcoming U.S. presidential elections were a contributing factor. Stephen S. Rosenfeld, Editorial, *Sticking to the Dayton Accords*, WASH. POST, June 14, 1996, at A25; Holger Jensen, Editorial, *Bosnia's Dead Cast Their Vote for Partition of the Nation*, SACRAMENTO BEE, Sept. 18, 1996, at B7, available in 1996 WL 3316891.

295. *Recount Rejected*, *supra* note 294. U.N. Security Council Resolution 1022 states that the economic sanctions would be lifted only after the first free and fair elections. *United Nations: Security Council Resolution 1022 Discussing the Suspending of Various Security Council Resolutions After Implementing the Bosnian Peace Agreement*, Nov. 22, 1995, 35 I.L.M. 259 (1996).

296. GFA, *supra* note 104, annex 3, art. I, at 115.

297. BEIGBEDER, *supra* note 158, at 297.

298. *Id.*

299. *Id.* at 299.

300. *Id.* at 298.

301. Asante, *supra* note 155, at 283.

302. Copenhagen Document, *supra* note 154, at 1309.

the U.N. election-monitoring effort. Therefore, as a prerequisite for a legitimate government, the critical requirement for the success of the U.N. election-monitoring mission is "above all, the essential moral and intellectual courage to formulate and publicize their assessments that an electoral process has been (or not) 'free and fair': after all is said, this last point is what international election observation is all about, within the framework of democratic development."³⁰³

The elections in Bosnia have, in effect, slowed the democratization process because the U.N. and the OSCE lacked the "essential moral and intellectual courage" to declare that the September 14, 1996, elections were not free and fair. Evidence of substantial voter fraud and voting irregularities has undermined the credibility of the elections, and consequently the legitimacy of the Bosnian government.

The progress report of the NATO secretary-general describing the result of U.N. involvement in the elections is an example of this lack of courage. Amid evidence of fraud and violations of Article I of Annex 3, the report stated:

The elections mark the initiation of a new phase in the effort to restore stability and normal conditions to Bosnia and Herzegovina through the establishment of governing institutions on a democratic basis. The political leadership now has the opportunity to ensure that, in particular through the functioning of common institutions at the national level, all three communities can work towards the consolidation of a sovereign and united Bosnia and Herzegovina based on the rule of law, respect for the human rights of all peoples and the development of a representative democracy.³⁰⁴

Remarkably, this assessment was given while the report acknowledged such clear violations of the electoral process.³⁰⁵ The above action does not comport with the statement in Article I that the parties "shall allow and encourage freedom of association (including of political parties)."³⁰⁶ How does a country establish "governing institutions on a democratic basis" while political

303. BEIGBEDER, *supra* note 158, at 300.

304. NATO: *Report of the Secretary-General Pursuant to Security Council Resolution 1035 (1995)*, M2 Presswire, Oct. 8, 1996, ¶ 37, available in 1996 WL 13546875.

305. The electoral campaign was marked by certain abuses of the law enforcement structures by the three ruling parties. In Serb and Croat areas, Bosniacs who tried to campaign were prevented from doing so, opposition parties were harassed, sometimes violently, and their supporters openly intimidated by local authorities and by the cadres of the ruling parties. In Bosniac areas harassment of political opponents by supporters of the ruling Bosniac party, the Party of Democratic Action, was reported on various occasions. *Id.* ¶ 7.

306. GFA, *supra* note 104, annex 3, art. I, at 115.

opponents are "openly intimidated by local authorities and the cadres of the ruling parties?" It is surely not a reasonable expectation. This open recognition by a powerful international organization such as NATO should have caused the leaders of the U.N. and the OSCE to decline to certify the elections as free and fair because of violations of Article I of Annex 3. Like NATO, the United States seemed to ignore the electoral violations. President Clinton declared the elections a "remarkable step forward."³⁰⁷

Despite these proclamations of success, the violations of Article I illustrate that the elections should not have been certified as free and fair. The election violations were too substantial and widespread.³⁰⁸

The apparent voter turnout figure of 103.9% clearly shows voter fraud. While this figure was being formed, many individuals could not locate their names on voter lists and did not vote. Consequently, it appears that multiple registration and voting occurred. All of these examples contravene Article I of Annex 3 of the GFA and the essence of free and fair elections.³⁰⁹

As previously mentioned, a significant purpose of free and fair elections is to build confidence in the democratic process, providing a basis for subsequent democratic institutions.³¹⁰ The U.N. acknowledged that free and fair elections "increase confidence in the electoral process, which should, in turn, result in increased voter participation and greater legitimacy for the process itself."³¹¹ The spokesman of the senior international envoy in Bosnia recognized this when he said, "There's been a war here and the best way to build trust is for the elections not only to be fair but to be seen to be fair by the former warring parties."³¹² This confidence and trust in the process is essential for the legitimacy of any Bosnian democratic government.

Is it possible that the elections, and the conditions under which they took place, had the effect of increasing confidence in the electoral and democratic processes? Does the international community's recognition of violations of the GFA, and the subsequent certification of the elections as nonetheless free and fair, give the Bosnian people assurance of the democratic rule of law and treaties? Do the voters who were unable to vote because

307. Moore, *supra* note 250.

308. See *supra* Part VII.

309. See Han, *supra* note 190, at 871 (discussing what rights and procedures must be upheld for elections to be considered free and fair).

310. *Periodic and Genuine Elections*, *supra* note 181, at 20-21; Han, *supra* note 190, at 871 n.179.

311. *Periodic and Genuine Elections*, *supra* note 181, at 20-21.

312. Chris Stephen, *OSCE's Biggest Headache Remains Bosnia Vote*, Agence Fr.-Presse, Dec. 1, 1996, available in 1996 WL 12191906.

they were wrongfully omitted from eligible voter lists have confidence in the democratic process and the right to vote? Do members of opposition parties who were unable to campaign possess confidence in the democratic process and the freedom of expression and association? Do the refugees who were too intimidated to return to their homelands and vote have confidence in any type of democratic institution in Bosnia?

It appears that doubt and insecurity, rather than confidence, exist in the minds of the Bosnian people after these elections. This doubt calls into question the legitimacy of the Bosnian government empaneled through these elections. The theory employed by the U.N. and the OSCE that it is better to have a government come to power through flawed elections rather than to wait until conditions are proper for free and fair elections will likely have adverse consequences in Bosnia. The precise consequences remain to be seen.

Perhaps the OSCE has learned a lesson. It appears to be taking much more caution in the municipal elections, also mandated by the GFA. These elections were initially scheduled to coincide with the national elections in September 1996.³¹³ However, accusations that parties were packing voter lists in certain towns, along with few improvements in freedom of movement and the press, forced the OSCE to postpone the elections three times.³¹⁴ At the time of this Note, the elections were scheduled for September 13 and 14, 1997.³¹⁵ Whether waiting for the proper election conditions results in voter confidence and trust in the overall democratic process remains to be seen.

An imperfect process may improve over time.³¹⁶ However, given the intense hatred and violence involved in the Bosnian conflict, a solid, legitimate basis for democracy was needed. The September 14, 1996, elections provided the ideal opportunity to establish that basis for future democratic institutions. Unfortunately, as a result of an unsuccessful U.N. and OSCE election-monitoring mission, that firm foundation rests on shaky ground.

313. *Urgent Bosnian Local Elections Postponed Again*, Agence Fr.-Presse, Mar. 6, 1997, available in LEXIS, News Library, AFP File.

314. *Bosnian Municipal Elections Postponed to September*, AP Pol. Serv., Mar. 6, 1997, available in 1997 WL 2506299.

315. *Id.*

316. BEIGBEDER, *supra* note 158, at 297.

IX. CONCLUSION

In 1996, Bosnia was ripe for a successful election-monitoring mission to instill in the Bosnian people confidence in the democratic process. After Dayton, the parties seemed at least outwardly ready to establish the foundations for democracy. The U.N.'s and the OSCE's evolving election-monitoring policies and capabilities appeared to be sufficient to assure free and fair elections in Bosnia. However, the intense hatred between the parties and the irreparable damage from the bloody civil war presented a unique challenge to these capabilities. Nonetheless, it was not an impossible task.

Unfortunately, because of international political pressure, internal abuses by the parties and a lack of resources, the elections were held under improper conditions. The GFA specified that elections were to be held only under proper conditions. While primarily the parties' responsibility to create proper conditions, it was ultimately the U.N.'s and the OSCE's responsibility to have the "essential moral and intellectual courage" to declare that the elections were not free and fair under the conditions, or to postpone the elections until such proper conditions existed. Regrettably, this courage was lacking.

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* J.D. Candidate, 1998, Vanderbilt University; B.S., Florida State University. The author would like to thank his parents and Scott and Erin for showing him the meaning of true happiness; their love and support inspire him to do his very best. *In hoc signo vinces.*