

The Dayton Peace Agreement: Human Rights Guarantees and their Implementation

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I. Introduction

In the aftermath of the signing of the Dayton Peace Agreement, the Secretary-General of the United Nations stated prophetically 'this is a time of hope.'¹ However, before rosy projections are made, it is necessary to consider whether the Dayton Peace agreement is likely to succeed in improving the human condition in the Republic of Bosnia and Herzegovina ('Bosnia and Herzegovina').² For surely to encourage hope for improvement among the beleaguered citizens of Bosnia and Herzegovina without a realistic expectation that such an improvement may occur, is careless if not cruel. The objective in the following discussion is to consider how successful the Dayton Peace Agreement is likely to be in ameliorating the human rights situation in Bosnia and Herzegovina and whether this is indeed a time of hope.

The Agreement consists of the General Framework Agreement for Peace in Bosnia and Herzegovina (the 'General Framework Agreement') and its twelve annexes (1-A, 1-B and 2-11) (collectively the 'Peace Agreement'). I begin by briefly considering the human rights guarantees provided in the Peace Agreement; they are numerous and sweeping. Indeed, it would be difficult to construct an international treaty in which more human rights are guaranteed in more ways. I then proceed to analyze the methods contained in the Peace Agreement for the implementation of these guarantees. It is undeniable that the means for effective implementation are as important as the guarantee of the rights themselves. In fact implementation is, arguably, more important in view of the many 'guaranteed' rights which have been violated with impunity over the past several years in Bosnia and Herzegovina. I shall then briefly consider the success of the Peace Agreement in the protection of human

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1 Report of the Secretary-General Pursuant to Security Council Resolution 1026 (1995) of 13 December 1995 (S/1995/1031) at paragraph 46.

2 According to Article I(1) of the new Constitution (provided at Annex 4 of the Dayton Peace Agreement), the official name of the Republic of Bosnia and Herzegovina shall become 'Bosnia and Herzegovina'; in this discussion, 'Bosnia and Herzegovina' is meant to refer to the State of Bosnia and Herzegovina both before and after the name change.

rights to date by looking at a recent case of interference with certain human rights in Bosnia and Herzegovina and at how that situation was resolved.

It would be premature to attempt to offer a conclusion as to the success of the Peace Agreement in human rights terms at this early stage; however it is hoped that this discussion may assist readers in arriving at tentative conclusions on the Peace Agreement's potential to improve the human rights situation in Bosnia and Herzegovina. Does the Peace Agreement represent a sea change in the human rights situation in Bosnia and Herzegovina after a long period where violent and far-reaching human rights abuses were common-place and should the citizens of Bosnia and Herzegovina allow themselves to be hopeful? Or is it an agreement containing hollow promises which have little chance of being implemented, made under duress by parties with clear track records of untrustworthiness?

II. Human Rights Guarantees under the Peace Agreement

A. Generally

That the safeguarding of human rights is a major focus of the Peace Agreement becomes clear on a reading of the document: the term 'human rights' appears in it no fewer than seventy times. The Peace Agreement was signed on 14 December 1995, by the Republic of Bosnia and Herzegovina, the Federal Republic of Yugoslavia ('FRY') and the Republic of Croatia (collectively the 'Parties'). In general terms, it divides the territory of Bosnia and Herzegovina into two entities, the Federation of Bosnia and Herzegovina³ and the Republika Srpska (collectively the 'Entities'), while preserving the federal State under the name of Bosnia and Herzegovina. Governmental powers are divided between the Entities and Bosnia and Herzegovina.

The Annexes deal with various matters relating to the implementation of the peace settlement, including protection of human rights. One annex deals broadly with a wide range of specific human rights (Annex 6); another provides the revised Constitution of Bosnia and Herzegovina and contains many guarantees of human rights (Annex 4); still other annexes deal with specific human rights in a functional context, for example, the right to participate in the democratic process (Annex 3) and the right to freedom of movement of refugees and displaced persons (Annex 7).

3 This Entity is not to be confused with the State, known before the Peace Agreement as 'the Republic of Bosnia and Herzegovina' and after it as 'Bosnia and Herzegovina.'

B. Annex 6: Agreement on Human Rights

Annex 6, entitled 'Agreement on Human Rights,' provides at Chapter One that Bosnia and Herzegovina and the Entities shall secure to all persons within their jurisdiction the highest level of internationally recognized human rights and fundamental freedoms, as detailed in the European Convention for the Protection of Human Rights and Fundamental Freedoms (the 'European Convention') and its Protocols and various international agreements⁴ listed in an appendix (the 'listed International Agreements'). Thirteen rights⁵ are set out in Article 1 of Annex 6 (and again in Article II (3) of the Constitution) and are to be enjoyed without discrimination.

Annex 6 states that the thirteen listed rights are included among the rights provided by the European Convention and the listed International Agreements. These rights roughly correspond to the rights provided in Articles 2-12 of the European Convention and in its First and Fourth Protocols. It is not clear why these thirteen rights are singled out. This may lead to the unintended perception that these thirteen rights are somehow of a higher status than those guaranteed but not enumerated, thereby weakening the guarantee of the non-listed rights. Furthermore, since only the rights themselves are mentioned and not the limitations provided alongside the rights in the European Convention,⁶ the interpretation that the limitations contained in the European Convention are not applicable may result. A further limitation contained in the European Convention is found at Article 15, which provides that certain rights are derogable in times of war or certain other public emergency situa-

- 4 The International Agreements listed in the Agreement on Human Rights are as follows: (1) 1948 Convention on the Prevention and Punishment of the Crime of Genocide; (2) 1949 Geneva Conventions I-IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I-II thereto; (3) 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Protocols thereto; (4) 1951 Convention Relating to the Status of Refugees and the 1966 Protocol thereto; (5) 1957 Convention on the Nationality of Married Women; (6) 1961 Convention on the Reduction of Statelessness; (7) 1965 International Convention on the Elimination of All Forms of Racial Discrimination; (8) 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto; (9) 1966 Covenant on Economic, Social and Cultural Rights; (10) 1979 Convention on the Elimination of All Forms of Discrimination Against Women; (11) 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; (12) 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; (13) 1989 Convention on the Rights of the Child; (14) 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; (15) 1992 European Charter for Regional or Minority Languages; (16) 1994 Framework Convention for the Protection of National Minorities.
- 5 The following are the 13 listed rights: (1) the right to life; (2) the right not to be subjected to torture or to inhuman or degrading treatment or punishment; (3) the right not to be held in slavery or servitude or to perform forced or compulsory labour; (4) the right to liberty and security of person; (5) the right to a fair hearing in civil and criminal matters, and other rights relating to criminal proceedings; (6) the right to private and family life, home and correspondence; (7) freedom of thought, conscience and religion; (8) freedom of expression; (9) freedom of peaceful assembly and freedom of association with others; (10) the right to marry and to found a family; (11) the right to property; (12) the right to education; (13) the right to liberty of movement and residence.
- 6 For example limitations on the right to private life under the European Convention are permitted so long as the limitations are i) in accordance with the law, ii) necessary in a democratic society and iii) for the protection of health or morals.

tions. In view of the fact that the thirteen rights alone are set out in the Annex on Human Rights, and again in the Constitution, an arguably logical—though presumably unintended—interpretation would be that all of the listed rights are non-derogable.

At Chapter 3 of Annex 6, Bosnia and Herzegovina and the Entities agree, in very broad terms, to promote the activities of non-governmental and international organizations for the protection and promotion of human rights. They agree to give full access to such organizations to monitor the human rights situation in Bosnia and Herzegovina without hindrance. In addition, it is agreed that all competent authorities in Bosnia and Herzegovina will cooperate with ‘organizations established in this Agreement’, any relevant human rights monitoring mechanisms, the supervisory bodies established by any of the listed International Agreements, the International Criminal Tribunal for the former Yugoslavia⁷ and any other organization authorized by the United Nations Security Council with a mandate concerning human rights or humanitarian law.

C. Annex 4: Constitution⁸

Article I(2) of Annex 4 provides that Bosnia and Herzegovina ‘shall be a democratic state, which shall operate under the rule of law and with free and democratic elections.’ Article II(1) provides that ‘Bosnian and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms.’

Article II(2) of the Constitution provides that ‘[t]he rights and freedoms set forth in the European Convention ... and its Protocols *shall apply directly* in Bosnia and Herzegovina. These *shall have priority over all other law.*’ (emphasis added) The importance of this provision cannot be overemphasized. It provides not only for direct applicability of the European Convention and its Protocols (without any specific act of incorporation) but also for their primacy over the legislative system of Bosnia and Herzegovina.

At Article II(3) the same thirteen rights specified in Annex 6,⁹ are enumerated. As noted above in the discussion of Annex 6, the enumeration of these thirteen rights may lead to unintended interpretations of Annex 6; the same may occur with the Constitution. Article II(4) is of crucial importance. According to it, all the rights and freedoms provided for in Article II, including the thirteen enumerated rights and

7 A discussion by John Jones of the interplay between the Peace Agreement and the International Criminal Tribunal for the former Yugoslavia can be found elsewhere in this issue.

8 Attached to Annex 4 is a Declaration of each of the Entities and Bosnia and Herzegovina to the effect that they approve the Constitution of Bosnia and Herzegovina. At Article V of the General Framework Agreement, the Parties endorse the Constitution and agree to fully respect and promote fulfilment of the commitments made in it.

9 See footnote 5.

the rights contained in the listed International Agreements, are to be enjoyed without discrimination on a number of listed grounds.¹⁰

At Article II(5) the Constitution provides refugees and displaced persons with the right to return freely to their homes of origin. Article II(7) requires Bosnia and Herzegovina to become or remain party to the listed International Agreements (this list is identical to that in the appendix to Annex 6,¹¹ except it does not include the European Convention).¹² Additionally, according to Article II(8), competent authorities are required to cooperate with and provide unrestricted access to certain human rights monitoring mechanisms, any supervisory body established by any of the listed International Agreements, the International Criminal Tribunal for the former Yugoslavia and any other organization authorized by the United Nations Security Council with a mandate concerning human rights or humanitarian law.

Furthermore, according to Article III(2)(c), the Entities are required to provide a safe and secure environment for all persons in their respective jurisdictions by maintaining civilian law enforcement agencies operating in accordance with internationally recognized standards and respecting the internationally recognized human rights and fundamental freedoms referred to in Article II. Article III(5)(a) requires Bosnia and Herzegovina to assume responsibility for certain matters relating to human rights, including those provided for in Annex 6 (Human Rights) and Annex 7 (Refugees and Displaced Persons).

D. Annex 3: Agreement on Elections

Bosnia and Herzegovina and the Entities agree to ensure that conditions exist for free and fair elections, to protect the right to vote in secret without intimidation and agree to ensure freedom of expression, freedom of the press, freedom of association (including political parties) and freedom of movement. They further agree to guarantee universal and equal suffrage to adult citizens, the right to seek political and public office without discrimination, and a number of other rights¹³ intended to ensure that 'the will of the people serves as the basis of the authority of government.'

10 The listed grounds are: 'any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'

11 See footnote 4.

12 The absence of the European Convention from this list does not mean it is of lesser importance; indeed, as noted, according to Article II(2) of the Constitution, it is to have priority over all other law.

13 As provided in paragraphs 7 and 8 of the Copenhagen Document of the Organization for Security and Cooperation in Europe.

E. Annex 7: Agreement on Refugees and Displaced Persons

Bosnia and Herzegovina and the Entities guarantee the right of all refugees and displaced persons freely to return to their homes of origin in safety and without discrimination or harassment. In addition they guarantee the right of refugees and displaced persons to have property restored to them and to be compensated for any property that cannot be restored.

F. Annex 11: Agreement on International Police Task Force

At Article I(1) the Entities and Bosnia and Herzegovina agree to maintain 'civilian law enforcement agencies operating in accordance with ... respect for internationally recognized human rights and fundamental freedoms ...'. At Article III(3) Bosnia and Herzegovina and the Entities confirm their 'particular responsibility to ensure the existence of social conditions for free and fair elections ...'.

III. Implementation of Human Rights Guarantees

A. Under the Peace Agreement

1. The General Framework Agreement

In the General Framework Agreement the Parties¹⁴ agree to differing levels of observation of the undertakings provided in the Annexes. Although the Parties 'welcome and endorse' the arrangements made in all the Annexes, their obligations in regard to these arrangements appear to vary depending on the Annex in which the obligations are contained. The Parties must '*fully respect and promote fulfilment of the commitments*' (emphasis added) contained in all the Annexes; however the only commitments to which the Parties agree to '*comply fully*' (emphasis added) are those set forth in Annex 1-B (Agreement on Regional Stabilization) and Chapters One of each of Annexes 6 (Agreement on Human Rights) and 7 (Agreement on Refugees and Displaced Persons). In each case Chapter One sets out certain human rights which are to be respected; however in each case the implementation mechanism (the Commission on Human Rights under Annex 6 and the Commission for Displaced Persons and Refugees under Annex 7) is contained in another Chapter

14 For clarity, readers should recall that the term 'Parties' as used herein refers to the Parties to the General Framework Agreement, i.e. the Republic of Croatia, the FRY and Bosnia and Herzegovina. It does not refer to the parties to the annexes, which are, for the most part, the Entities and Bosnia and Herzegovina. Exceptions include Annex 1-B (Agreement on Regional Stabilization) and Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) which are signed by the Entities, Bosnia and Herzegovina, FRY and the Republic of Croatia.

and, apparently, therefore subject to the lower ‘fully respect and promote fulfilment of’ standard.¹⁵

2. Annex 6: Agreement on Human Rights

Chapter 2 of Annex 6 sets up the Commission on Human Rights. The Commission is to consist of the Office of the Ombudsman (the ‘Ombudsman’) and the Human Rights Chamber (the ‘Chamber’), each of which is to consider alleged violations of a) human rights as provided in the European Convention and its Protocols and b) alleged discrimination on any of a number of listed grounds¹⁶ in the enjoyment of any of the rights provided in the listed International Agreements (including the European Convention), where such violation is alleged to have been committed by Bosnia and Herzegovina or one of the Entities, or individuals or organs acting under the authority of Bosnia and Herzegovina or one of the Entities.

(a) Ombudsman

Complaints to the Commission will generally be referred to the Ombudsman. At his or her discretion, the Ombudsman¹⁷ may investigate an application. He or she is to give particular priority to allegations of ‘especially severe or systematic violations and those founded on alleged discrimination on prohibited grounds.’¹⁸ The Ombudsman is to have access to all official documents and can require any person to provide relevant information. At the conclusion of an investigation, the Ombudsman is required to issue findings and conclusions. A Party identified by the Ombudsman as violating human rights shall explain in writing how it will comply with the conclusions. The Ombudsman may also present special reports to any competent government organ or official and that organ or official must provide specific responses to any conclusions of the Ombudsman.

In the event that a person or entity does not comply with the conclusions and recommendations of the Ombudsman, the Ombudsman’s report will be forwarded to the High Representative.¹⁹ The report will also be referred for further action to the Presidency of the appropriate Entity. The Ombudsman may also initiate proceedings before the Chamber based on the report and may intervene in any proceedings before the Chamber.

15 This is somewhat puzzling: clearly obligations of the Entities and Bosnia and Herzegovina should be different than those of outside States such as the Republic of Croatia and the FRY (even though they are Parties to the General Framework Agreement); but it is not clear why the Republic of Croatia or FRY is obligated, for example, to ‘comply fully’ with the provisions contained in Annex 6, which require the Entities and Bosnia and Herzegovina to secure certain human rights to all persons within their jurisdiction, while they have no obligation to ‘comply fully’ with the enforcement mechanism.

16 For the listed grounds see footnote 10.

17 Article IV (2) provides that the Ombudsman is to be appointed by the Chairman-in-Office of the OSCE, after consultation with Bosnia and Herzegovina and the Entities.

18 Article V (3).

19 The post of High Representative is outlined below in the discussion of Annex 10.

(b) Human Rights Chamber

Applications are to come before the Human Rights Chamber where referred by the Ombudsman or directly, where the applicant so specifies. Eight of the Chamber's fourteen members will be appointed by the Committee of Ministers of the Council of Europe, after consultation with Bosnia and Herzegovina and the Entities; the other six are to be appointed by the Entities. The Chamber may decide which applications to accept and in what priority.²⁰ The Chamber may attempt to facilitate an amicable resolution. The Chamber, which will normally sit in panels of seven, is to receive written pleadings and, if the Chamber so determines, hear oral argument and the presentation of evidence. Hearings will normally be held in public and applicants may be represented by counsel. On the conclusion of a proceeding, the Chamber is to issue a decision which indicates whether there was a breach by a Party of its obligations under the Agreement on Human Rights and, if so, what steps the Party must take to remedy the breach. A review of a decision of a panel may be undertaken by the full Chamber upon motion of the Ombudsman or a party to the case.

Decisions of the Chamber are to be published and forwarded to the parties concerned, the High Representative, the Secretary-General of the Council of Europe and the Organization for Security and Cooperation in Europe ('OSCE'). Paragraph 6 of Article XI provides: '[Bosnia and Herzegovina and the Entities] shall implement fully decisions of the Chamber.'

3. Annex 4: Constitution

(a) Generally

Article II(6), entitled 'Implementation,' provides that 'Bosnia and Herzegovina, and all courts, agencies, governmental organs, and instrumentalities operated by or within the Entities, shall apply and conform to the human rights and fundamental freedoms referred to in paragraph 2 of Article II.'²¹

Article III, where the responsibilities of and relations between the institutions of Bosnia and Herzegovina and the Entities are discussed, provides that each Entity must maintain civilian law enforcement agencies operating in accordance with 'respect for the internationally recognized human rights and fundamental freedoms referred to in Article II...'²²

20 Article VIII (2)(e) does, however, provide: 'In principle, the Chamber shall endeavor to accept and to give particular priority to allegations of especially severe or systematic violations and those founded on alleged discrimination on prohibited grounds.'

21 See the above discussion of the rights set out in Article II(2) of the Constitution.

22 Article III(2)(c).

(b) Constitutional Court

Article VI of Annex 4 sets up a Constitutional Court the task of which will be to uphold the Constitution. Three of its nine members will be selected by the President of the European Court of Human Rights, after consultation with the Presidency;²³ the other six shall be selected by the Entities. Its mandate includes the making of a determination of whether a provision of an Entity's constitution or law is consistent with the Constitution; this includes the human rights provisions in the Constitution. The Constitutional Court will also have appellate jurisdiction over issues under the Constitution arising out of a judgement of any other court in Bosnia and Herzegovina²⁴ and over issues referred by any court in Bosnia and Herzegovina concerning whether a law, on whose validity its decision depends, is compatible with the Constitution or with the European Convention and its Protocols. Decisions of the Constitutional Court will be final and binding.

4. Annex 1-A: Agreement on the Military Aspects of the Peace Settlement

In this agreement Bosnia and Herzegovina and the Entities agree that NATO may establish a multinational military Implementation Force ('IFOR'), agree to facilitate its operations and undertake to comply fully with all obligations in the agreement.²⁵ At Article VI(3), Bosnia and Herzegovina and the Entities agree that IFOR has the right to perform certain 'supporting tasks' including helping to 'create secure conditions for the conduct by others of other tasks associated with the peace settlement, including free and fair elections ...'. Although the right to free and fair elections is the only human right mentioned, the wording appears broad enough to allow IFOR to create secure conditions for any of the human rights in the Peace Agreement. The supporting tasks are also said to include assisting 'the UNHCR and other international organizations in their humanitarian missions,' preventing 'interference with the movement of civilian populations, refugees, and displaced persons' and responding 'appropriately to deliberate violence to life and person ...'.²⁶ This language could be relied on by a willing IFOR to enforce other human rights guaranteed by the Peace Agreement.

Bosnia and Herzegovina and the Entities also agree that the IFOR Commander has the authority 'to do all that [he] judges necessary and proper, including the use of military force, to protect the IFOR and to carry out the [certain] responsibili-

23 According to Article V of the Constitution: 'The Presidency of Bosnia and Herzegovina shall consist of three Members: one Bosniac and one Croat, each directly elected from the territory of the Federation [of Bosnia and Herzegovina], and one Serb directly elected from the territory of the Republika Srpska.'

24 It is not clear if the word 'court' will be interpreted to cover the Human Rights Chamber or the Ombudsman.

25 As noted above, in the General Framework Agreement, the Republic of Croatia and FRY agree to 'fully respect and promote fulfilment of' their commitments in Annex 1-A.

26 Article VI(3).

ties',²⁷ including the supporting tasks described above. Appropriate liaison arrangements are to be established between the IFOR Commander and the High Representative²⁸ to facilitate the discharge of their respective responsibilities.

5. Annex 3: Agreement on Elections

In Article II(1) of Annex 3, Bosnia and Herzegovina and the Entities request the OSCE to establish a Provisional Election Commission to supervise the preparation and conduct of elections. Part of this Commission's mandate will be to ensure that action is taken to remedy any violation of any provision of the Agreement on Elections.²⁹

6. Annex 7: Agreement on Refugees and Displaced Persons

In an effort to ensure respect for human rights and fundamental freedoms and the safe and voluntary return of refugees and displaced persons, Bosnia and Herzegovina and the Entities agree to certain measures.³⁰ Bosnia and Herzegovina and the Entities also agree to give unrestricted access to organizations such as the United Nations High Commission on Refugees ('UNHCR'), the International Committee of the Red Cross ('ICRC') and the United Nations Development Programme ('UNDP') to assist with implementation.³¹

At Chapter Two, Bosnia and Herzegovina and the Entities establish a Commission for Displaced Persons and Refugees to decide any claims for the return of certain real property in Bosnia and Herzegovina, or for compensation in lieu of return. The Commission is given broad powers to sell, transfer and otherwise deal with property. Its decisions are final.

7. Annex 10: Agreement on Civilian Implementation of the Peace Settlement

Article 2 of Annex 10 provides for the appointment of a High Representative³² whose functions are to include monitoring the implementation of the peace settlement, reporting periodically on progress in implementation of the peace agree-

27 Article VI(5).

28 The post of High Representative is outlined below in the discussion of Annex 10.

29 Article III(2)(d).

30 These are provided in Article I(3) and include the repeal of any legislation with discriminatory intent, the prevention of incitement on religious grounds, the dissemination through the media of warnings against acts of retribution, the protection of ethnic or minority populations and the punishment of public (including military) employees for serious violations of the basic rights of persons belonging to ethnic or minority groups.

31 Article III(2).

32 The appointment of Mr. Carl Bildt as High Representative was endorsed by the United Nations Security Council in resolution 1031 of 15 December 1995. This resolution also confirms that the High Representative is the 'final authority in theatre' regarding the interpretation of Annex 10.

ment,³³ and providing guidance to and receiving reports from the Commissioner of the International Police Task Force ('IPTF').³⁴ The High Representative is required to convene and chair the Joint Civilian Commission and to exchange information and maintain liaison on a regular basis with IFOR through the Joint Civilian Commission.³⁵

8. Annex 11: Agreement on International Police Task Force

Article I(1) repeats the requirement set out in the Constitution that Bosnia and Herzegovina and the Entities maintain civilian law enforcement agencies operating with 'respect for internationally recognized human rights and fundamental freedoms ...'. At Article I(2), Bosnia and Herzegovina and the Entities request that the Security Council establish the IPTF to carry out, throughout Bosnia and Herzegovina, a program of assistance,³⁶ certain elements of which would operate to safeguard the protection of human rights.³⁷ At paragraph 3 of Article III, Bosnia and Herzegovina and the Entities confirm their particular responsibility to ensure free and fair elections.

Article II provides that the IPTF is to be headed by a Commissioner, who will be appointed by the Secretary-General of the United Nations in consultation with the Security Council, and who shall receive guidance from the High Representative.³⁸ In addition, the IPTF Commissioner is required to report periodically on matters within his responsibility to the High Representative, the Secretary-General of the United Nations, and to provide information to the IFOR Commander and other institutions.

Article V provides that any obstruction of IPTF activities or refusal to comply with an IPTF request or other failure to meet the responsibilities of Bosnia and Herzegovina and the Entities under the Agreement will result in the IPTF Commissioner

33 Reports are to be submitted to the United Nations, the European Union, the United States, the Russian Federation and other interested governments or organizations. In addition, the Security Council by its resolution 1031, at paragraph 32, requests the Secretary-General to submit the High Representative's reports to it.

34 The International Police Task Force is considered below in the discussion of Annex 11.

35 The Joint Civilian Commission will comprise senior political representatives of Bosnia and Herzegovina and the Entities, the IFOR Commander and representatives of civilian organizations where the High Representative deems it necessary.

36 In its resolution 1035 (21 December 1995) the Security Council established IPTF for a period of one year from the transfer of authority from the United Nations Protection Force to IFOR.

37 These include various elements discussed at Article III(1), such as monitoring law enforcement activities and facilities, training and advising law enforcement personnel, advising the governmental authorities on the organization of effective civilian law enforcement agencies and, if appropriate, assisting by accompanying the law enforcement personnel as they carry out their responsibilities.

38 In the Secretary-General's Report pursuant to Security Council resolution 1026, at paragraph 12, the Secretary-General notes his intention to appoint a United Nations official to serve in Sarajevo as the United Nations Coordinator. This Coordinator 'will be the channel by which the [IPTF] Commissioner will receive advice and guidance from the High Representative.'

notifying the High Representative and the IFOR Commander.³⁹ Article VI provides that when IPTF personnel learn of credible information concerning violations of internationally recognised human rights or fundamental freedoms or of the role of law enforcement officials or forces in such violations, they are to provide this information to the Human Rights Commission, the International Criminal Tribunal for the former Yugoslavia or other appropriate organizations.

B. Outside the Peace Agreement

1. Monitoring Mechanisms, Supervisory Bodies under International Agreements, the ICTY and other Organizations of the Security Council

Article II(8) of the Constitution provides that all competent authorities in Bosnia and Herzegovina are required to:

cooperate with and provide unrestricted access to any international human rights monitoring mechanisms established for Bosnia and Herzegovina, the supervisory bodies established by any of the [listed International Agreements]; the International Tribunal for the Former Yugoslavia ...; and any other organization authorized by the United Nations Security Council with a mandate concerning human rights or humanitarian law.

A provision in a similar form appears at Chapter 3 of Annex 6, the Agreement on Human Rights. The above-described provision in Annex 7, relating to access to certain organizations, is in a similar vein.⁴⁰

Important mechanisms for enforcement are found in the listed International Human Rights Agreements, some of which have supervisory bodies the function of which is to assist in ensuring implementation. A common implementation mechanism in International Human Rights Agreements is the requirement that Member States file periodic reports to satisfy treaty bodies that they are implementing (or taking steps to implement) the rights guaranteed in the International Agreement.⁴¹ A further means of implementation under International Human Rights Agreements includes allowing state parties or individuals to contact a supervisory body where there is an allegation that a state party is not fulfilling its obligations under the Inter-

39 Article V(2) provides that the IPTF Commissioner may request that the High Representative 'take appropriate steps' upon receiving such a notification, including 'calling such failures to the attention of [Bosnia and Herzegovina and the Entities], convening the Joint Civilian Commission, and consulting with the United Nations, relevant states, and international organizations on further responses.'

40 See the above discussion of Annex 7, where Bosnia and Herzegovina and the Entities agree to give unrestricted access to organizations such as the UNHCR, the ICRC and the UNDP to assist with implementation

41 In these reports, state parties are typically required to detail the measures they have adopted which give effect to the rights guaranteed in the International Agreement and on the progress made in the enjoyment of the rights. The supervisory bodies study the reports and tend to make comments or suggestions.

national Human Rights Agreement.⁴² One of the more effective judicial implementation systems can be found under the European Convention on Human Rights; there compliance by Member States with decisions taken under its judicial system is remarkably high.⁴³

2. Implementation by the Security Council

(a) Resolution 1022 (1995)

Resolution 1022 was passed by the Security Council on 22 November 1995, one day following the conclusion of the talks at Dayton, Ohio which led to the Peace Agreement. With this resolution, the Security Council, acting under Chapter VII,⁴⁴ is attempting to ensure compliance—in the short term at any rate—with the obligations entered into under the Peace Agreement. This implementation mechanism is distinct from any discussed above, in that it only applies to one of the Parties to the Peace Agreement, the FRY, and the Bosnian Serb authorities.⁴⁵

By this resolution the previously established Security Council sanctions regime⁴⁶ against FRY is suspended with immediate effect⁴⁷ and suspended against the 'Bosnian Serb party' upon the Security Council receiving notification by the IFOR Commander that all Bosnian Serb forces have withdrawn behind zones of separation established by the Peace Agreement. The suspension, which includes the freezing of certain assets, is designed to be temporary initially: it can be reinstated five days after the Security Council receives notification by the High Representative or the

42 Most readers will be familiar with the system of individual petition under the first Optional Protocol of the International Covenant on Civil and Political Rights, or one of the listed International Agreements. There, certain states have recognized the competence of the Human Rights Committee (a supervisory body) to receive and consider communications from individuals subject to its jurisdiction who claim to be the victim of a violation by the state of any of the rights set forth in the International Covenant on Civil and Political Rights.

43 Again, the system in place under the European Convention on Human Rights is one with which most readers will be familiar. Where a person (or group) claims to be the victim of a violation by one of the states party to the Convention, he or she may petition the European Commission of Human Rights. If certain conditions exist, including the exhaustion of all domestic remedies, the Commission will accept a petition. If the Commission is unable to effect a friendly settlement, it will draw up a report, setting out its opinion as to whether the facts found disclosed a breach by the State concerned of its obligations under the Convention. The matter either then goes to the Council of Ministers or, on request, to the European Court of Human Rights, where there will be a decision as to whether there has been a violation of the Convention. State parties undertake to regard such decisions of the Committee of Ministers and decisions of the Court (in matters to which they are parties) as binding on them.

44 The Security Council determined that the situation in the region continues to constitute a threat to international peace and security.

45 It may be that the 'Bosnian Serb authorities' is to be considered equivalent to the Republica Srpska, one of the Entities.

46 Earlier, by resolution 1021 (22 November 1995), the Security Council had decided to gradually lift the arms embargo imposed against Yugoslavia by Security Council resolution 713, contingent upon the Parties signing the Dayton Agreement.

47 Conditional on FRY signing the Dayton Agreement at the formal signing ceremony at Paris.

IFOR Commander 'that the Federal Republic of Yugoslavia or the Bosnian Serb authorities are failing significantly to meet their obligations under the Peace Agreement ...'. It is interesting to note that the sanctions are reimposed without the need for a Security Council resolution, with the attendant veto right of the five permanent Member States of the Security Council. Indeed a resolution is required for the sanction regime *not* to be reimposed five days after receiving such notification.⁴⁸

The enforcement scheme put in place by resolution 1022 is temporary, however. It is to terminate once elections are held, 'provided that the Bosnian Serb forces have withdrawn from, and have continued to respect the zones of separation as provided in the Peace Agreement ...'. According to Annex 3, elections are to be held 14 June 1996, six months after the entry into force of the Peace Agreement.⁴⁹

(b) Resolution 1031 (1995)

Resolution 1031, adopted by the Security Council under Chapter VII⁵⁰ on 15 December 1995, welcomes the signing of the Peace Agreement and particular commitments made in it, including those relating to human rights, and calls upon the Parties to fulfil those commitments in good faith. At paragraph 5, it '[r]ecognizes that the parties shall cooperate fully with all involved in implementation of the peace settlement, as described in the Peace Agreement, or which are otherwise authorized by the Security Council ... and that [the Parties] have in particular authorized [IFOR] to take such actions as required, including the use of necessary force, to ensure compliance with Annex 1-A of the Peace Agreement ...'. At paragraph 15, the resolution authorizes Member States acting through or in cooperation with IFOR to 'take all necessary measures to effect the implementation of and to ensure compliance with Annex 1-A ...'. Paragraph 15 stresses that all Parties will be held equally responsible for compliance with Annex 1-A and equally subject to IFOR enforcement action.

As noted, IFOR has the right to 'create secure conditions for the conduct by others of other tasks associated with the peace settlement, including free and fair elections...'; assist 'the UNHCR and other international organizations in their humanitarian missions'; prevent 'interference with the movement of civilian populations, refugees, and displaced persons'; and respond 'appropriately to deliberate violence to life and person ...'.⁵¹ If IFOR were to rely on these provisions to guarantee human rights at some level, it would appear perfectly legal for United Nations Member States to take all measures necessary to ensure compliance.

48 Obviously, any of the five permanent Member States could veto such a resolution, thereby unilaterally requiring the reinstatement of sanctions.

49 Article II(4) of Annex 3 provides that, if the OSCE determines a delay to be necessary, the elections may take place no later than nine months after entry into force.

50 The Security Council determines that the situation in the region continues to constitute a threat to international peace and security.

51 Article VI of Annex 1-A.

IV. Implementation to Date

One way to understand the Peace Agreement's potential for success or failure in human rights terms is to consider how it has worked in practice to date. While one must be cautious not to place too much emphasis on practice in view of the short time the Peace Agreement has been in existence, the reaction of the various implementation powers to a breach of human rights can be illustrative of how the system works and will work in the future. In the month or so that has elapsed between the Peace Agreement's 14 December 1995 signing and this discussion, one incident which appears to involve human rights abuses stands out. According to news reports,⁵² on or about 22 December 1995 sixteen Bosnian Moslems were detained while travelling through the Serb-controlled suburbs of Sarajevo. Some of the men were quoted as stating that they had decided to travel to Sarajevo from the nearby town of Fojnica based on NATO's assurance that it had taken control of the roads. The arrests were apparently conducted by uniformed men who were identified by some victims as police. Reports indicate at least some of the men were beaten. The sixteen men were released on 4 January 1996 after pressure from the United States and NATO.

Based on the reported facts, there appears little doubt that the arrest of the sixteen men violated the guarantee of freedom of movement throughout Bosnia and Herzegovina.⁵³ In addition, other human rights, such as the right not to be subjected to torture or to inhuman or degrading treatment or the right to liberty and security of person, may well have been violated. The alleged conduct of the Bosnian Serb authorities would appear to be in violation of the General Framework Agreement,⁵⁴ Annex 4 (the Constitution),⁵⁵ Annex 6 (Agreement on Human Rights),⁵⁶ Annex 7 (Agreement on Refugees and Displaced Persons)⁵⁷ and Annex 11 (Agreement on International Police Task Force).⁵⁸

52 *The Globe and Mail*, 5 January 1996, 'Bosnian Serbs release 16 civilians', A10; *The New York Times*, 5 January 1996, 'Under Pressure by NATO, Bosnian Serbs Free Captives' A1; *The Wall Street Journal Europe*, 5-6 January 1996 'Serbs Release 16 Civilians Held Captive Near Sarajevo' 2.

53 This is something which Bosnian and NATO officials reportedly acknowledged; see the *New York Times*, 5 January 1996, A3.

54 Which, at Article VII, requires Bosnia and Herzegovina to fully comply with the commitments in Chapter One of Annexes 6 and 7.

55 See the discussion of the application of the Constitution to this situation below.

56 See the discussion of the application of the Commission on Human Rights to this situation below.

57 The detention of the sixteen men would appear to be a violation of the commitment contained therein to ensure respect for human rights and fundamental freedoms and the safe and voluntary return of refugees and displaced persons.

58 The detention of the sixteen men would appear to be a violation of the commitment contained therein that civilian law enforcement agencies operate in accordance with internationally recognized standards and with respect for internationally recognized human rights and fundamental freedoms.

In order for the human rights guarantees of the Peace Agreement to be meaningful from the viewpoint of the sixteen detained men, implementation of the rights must be immediate: what is most important to them is their release and the cessation of any torture or inhuman treatment. Initially, none of the means of implementation of the rights under the Peace Agreement seemed to afford the immediate relief that was required. It is troubling that what led to the release of the sixteen detainees was none of the above-outlined methods to implement the human rights guarantees in the Peace agreement; rather the release came about due to political pressure.

Perhaps the most effective and the quickest means of dealing with a situation where there is interference with the right of freedom of movement would have been reliance on IFOR's right to use all force necessary (under Annex 1-A) to prevent 'interference with the movement of civilian populations, refugees, and displaced persons' and to respond 'appropriately to deliberate violence to life and person ...'. This language is certainly broad enough to cover the situation described above. Indeed, IFOR's right to use force would be given additional leverage where, as in this situation, the alleged transgressors are the Bosnian Serbs because the threat of force is coupled with the possibility of reinstatement of sanctions under Security Council resolution 1022.⁵⁹ However, the initial response of NATO officers was to decline to investigate the detentions. According to the *New York Times*, 'Throughout the confrontation with the Bosnian Serbs, NATO officers insisted they were not responsible for the safety of individual Bosnian citizens, saying that was the duty of [the] international police force ...'.⁶⁰

Immediate relief for the sixteen men could also have been effected by the intervention of the High Representative. As noted above, his mandate includes the monitoring of the implementation of the civilian aspects of the peace settlement. Again, the threat of reinstatement of sanctions under Security Council resolution 1022 would give the recommendations of the High Representative added weight. However, according to the same report in the *New York Times*,⁶¹ the High Representative, Mr. Bildt, appeared reticent about assuming responsibility for taking steps to remedy the human rights breach. In the case of the detention of the sixteen men, he reportedly had only a skeleton crew of officers in place at the time.⁶² However, this did not appear to be the only impediment to action by Mr. Bildt; according to the *New York Times* report, he did not forecast his role concerning implementation of the right to freedom of movement as significant. He reportedly stated that he doubted that the 1,700 IPTF officers he expected to eventually be available to cover the country 'could guarantee that Bosnian citizens would be safe if Bosnian Serb authori-

59 As noted above, the sanctions can be reimposed against the FRY or the Bosnian Serb authorities, upon the Security Council receiving notification by the IFOR Commander or the High Representative that the FRY or the Bosnian Serbs 'are failing significantly to meet their obligations under the Peace Agreement.'

60 *New York Times*, A3 *supra*, note 53.

61 *Ibid.* A3.

62 *Ibid.* A3.

ties wished to harass them.’⁶³ The report continues: ‘Instead of using soldiers or police to insure freedom of movement, [Mr. Bildt] said, diplomatic pressure and persuasion will be more effective.’⁶⁴

Other means to enforce human rights guaranteed by the Peace Agreement, such as the implementation mechanisms provided under the Commission on Human Rights⁶⁵ and the Constitution, tend to require more time. This is not unusual; indeed in the national setting, the remedy for violation of a guaranteed right can often take years, depending on the right allegedly violated and the remedy sought. This fact, however, would provide little comfort to someone who was being illegally detained and possibly tortured.

The human rights guarantees provided in Annex 6 appear to have been violated and the individuals may be entitled to a remedy as provided by the Commission on Human Rights (either the Ombudsman or the Chamber), but only if (a) the violations are ‘alleged to have been committed by [Bosnia and Herzegovina or the Entities], its organs or any individual acting under the authority of such an organ’ and (b) there was an allegation of a violation of i) the European Convention or its Protocols or ii) discrimination in the enjoyment of the rights in the listed International Agreements. In the scenario described above, both elements appear to be present.⁶⁶ Although, these implementation mechanisms appear to be slower than action by the High Representative or IFOR, they may provide relief in a situation such as the one described above; it may also be that they can be relied on for damages if a breach is found.⁶⁷

As noted, Article II(6) of the Constitution requires all courts, agencies, governmental organs and instrumentalities operated by or within the Entities to conform to the human rights standards set out therein. If the police force that captured the sixteen men was considered to be a ‘governmental organ’ operated by an Entity, and the above discussed rights were alleged to have been violated, then the parties could argue their constitutional rights had been violated. Similarly an allegation of breach of constitutional rights could be based on Article III, which requires that civilian law enforcement agencies operate in accordance with human rights standards. Assuming

63 Ibid. A3.

64 Ibid. A3.

65 Described in Annex 6 and discussed above.

66 The requirement at (b) would be met with allegations of violations of freedom of movement (Article 2(1) of the Fourth Protocol of the European Convention) or the right to freedom from torture or inhuman or degrading treatment or punishment (Article 3 of the European Convention).

67 It may be that an efficient Ombudsman could investigate a situation such as this one on a priority basis and negotiate a settlement or prepare a report within a relatively short time; however the reaction would likely not be immediate. Alternatively, the matter could go directly to the Chamber if requested., where with the Chamber, in view of the public nature of the hearing and the presence of counsel, it would appear that the process would also be time consuming—probably even more so than the process before the Ombudsman. A party would have the option of requesting a review of a decision of a panel, something which would further delay the implementation of the rights. Also, with the Ombudsman or the Chamber, there would inevitably be some delay as it would appear that an Entity or party would have to be given the opportunity to comply with the decision before the High Representative would become involved.

such a breach of the sixteen men's constitutional rights did occur, it is not clear what remedy would be open to them other than to request that their detention be declared illegal and they be released.⁶⁸

V. Conclusion

In considering how to view the human rights situation in Bosnia and Herzegovina in the aftermath of the Peace Agreement, the best approach may be one of cautious optimism. Several important advances stand out in the Peace Agreement. First, and perhaps most encouraging, the Peace Agreement makes the protection of human rights one of its primary focuses. Second, it provides for the use of force to implement human rights guarantees in certain circumstances. Finally, the Peace Agreement, when combined with Security Council resolutions allows (albeit to a limited extent) for the sanctioning of one non-performing party in a novel way—one which cannot be circumvented by a recalcitrant permanent Member State of the Security Council.

One must, however, temper one's optimism with caution. One reason for caution includes the incident discussed above involving the detention of sixteen men, where neither IFOR nor the High Representative, at least initially, evinced an intention to act to remedy the situation. Another reason for caution is the fact that certain listed International Agreements have been in place in the territory of Bosnia and Herzegovina throughout the period of the war; an agreement like the International Covenant on Civil and Political Rights appears to have done little to safeguard the human rights guarantees contained in it.⁶⁹ Also, with some of the institutions intended to implement the human rights guaranteed under the Peace Agreement, obtaining a remedy is likely to be a long process. Indeed, in the short run, there is likely to be little benefit from the Commission on Human Rights or the Constitutional Court.

A further reason for caution is the ephemeral nature of the system under Security Council resolution 1022 for the reinstatement of sanctions against FRY and the Bosnian Serb authorities, which expires (barring an exceptional delay) 14 June 1996. This fact, when coupled with the fact that IFOR is expected to be in the region

68 It may be that if a constitutional violation were to be found a remedy in damages would be available.

69 In 1992, the Human Rights Committee indicated its view that, despite the break up of Yugoslavia, successor States were still obligated to meet the obligations of Yugoslavia under the International Covenant on Civil and Political Rights. In its 'Decision on State Succession to the Obligations of the Former Yugoslavia Under the International Covenant on Civil and Political Rights', (see the records of the discussion of this topic on 19 October 1992, reproduced in 15 *European Human Rights Reports* 233) the Chairman of the Human Rights Committee noted, at paragraph 4, that despite the legal problems involved in the succession of States 'there was no reason to presume that successor States [of the former Yugoslavia] would not continue to apply human rights treaties.' The Human Rights Committee invited representatives of the Republic of Croatia, the FRY and Bosnia and Herzegovina to appear before it.

for a period of approximately one year only,⁷⁰ means that those individuals overseeing the enforcement mechanisms must show a willingness to act decisively and without delay. Otherwise, the Peace Agreement may become infamous for its irony: it may go down in history as an agreement with lavish human rights guarantees which had little or no effect on improving the human rights situation in Bosnia and Herzegovina.

70 See Security Council resolution 1031, (15 December 1995) at paragraph 13. Also the United States government, the main contributor of IFOR troops, has indicated its intention to limit its participation to a one year period.