The Quest for a Bosnian Constitution: Legal Aspects of Constitutional Proposals Relating to Bosnia

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Abstract

The analogue in international politics is the three-party conflict in Bosnia-Herzegovina, a quagmire in which first Europe and then the entire world have become stuck. The complexity of the problem reflects not only the intensity of the hatreds that have been fanned between the parties and must now be accounted for in any solution, but that two of the primary parties have immediate support in neighboring countries that also have their own bilateral problems to resolve; furthermore, each of these actors has, for historical or other motives, its own important patrons among the leading powers of the world. This Essay is divided into two principal parts: first, a brisk chronological survey of the successive structural proposals that have been advanced over the past four years; second, an analysis of the principal legal features of these proposals.
THE QUEST FOR A BOSNIAN CONSTITUTION: LEGAL ASPECTS OF CONSTITUTIONAL PROPOSALS RELATING TO BOSNIA

Paul C. Szasz*

INTRODUCTION

The general three-body problem, that is the calculation of the relative motions of three bodies interacting in normal four-dimensional space, still defies mathematicians in spite of all our modern tools of calculation. The analogue in international politics is the three-party conflict in Bosnia-Herzegovina, a quagmire in which first Europe and then the entire world have become stuck. The complexity of the problem reflects not only the intensity of the hatreds that have been fanned between the parties and must now be accounted for in any solution, but that two of the primary parties have immediate support in neighboring countries that also have their own bilateral problems to resolve; furthermore, each of these actors has, for historical or other motives, its own important patrons among the leading powers of the world.

Any resolution of these conflicts, whether admittedly tem-

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1. The following terms and abbreviations are used in this Essay for the various legal personalities described herein:

1. "Republic of Bosnia and Herzegovina" or "BH Republic" for the state that was admitted to the United Nations in 1992 and that existed under that name until the signature of the Dayton/Paris Peace Agreement;
2. "Bosnia and Herzegovina" for the new name of the state as set out in the new Constitution included in the Dayton/Paris Peace Agreement, which is a continuation of the "BH Republic."
5. "Entity" is used for the BH Federation and the Republika Srpska as constituent parts of the new "Bosnia and Herzegovina" or as proposed parts of previous "union" proposals.
6. "Bosnia-Herzegovina" or "Bosnia" are used to refer generally to the geographic entity, without specifically referring to a particular political structure.
porary or designed to be long-term, must address both the legal, constitutional aspect of the relations between the parties: the Bosnian Muslims, the Bosnian Serbs and the Bosnian Croats, as well as their geographic relationship. This Essay will address the former aspect, taking into account geographic factors only to the extent strictly necessary. The other important ingredients of a solution: the shifting military situation, the political conflicts among the potential mediating powers, the "sticks and carrots" available to them for motivating the immediate parties to accept proposed solutions, the humanitarian activities, and how to deal with war crimes will not be addressed here, even though it must be understood that the achievement of any constitutional settlement and the nature of that settlement is dependent on all these considerations.

This Essay is divided into two principal parts: first, a brisk chronological survey of the successive structural proposals that have been advanced over the past four years; second, an analysis of the principal legal features of these proposals.

I. PHASES OF THE NEGOTIATIONS

A. The Carrington Conference


In September 1991, the Committee of Ministers of the European Community ("EC") convened the EC Peace Conference on Yugoslavia, also referred to as the "Carrington Conference" after its chairman, the "Brussels Conference" after its headquarters, or the "Hague Conference" after its usual venue. The original task of the Conference was to keep the Socialist Federal Republic of Yugoslavia ("SFRY") together as a state, albeit a much looser one than designed by President Tito in 1974. Following extensive consultations and negotiations, Lord Carrington in early November 1991 presented a text titled "Treaty Provisions for the Convention," 2 which was designed to accomplish that goal. Though the leaders of five of the six Yugoslav Republics accepted the text in principle, President Slobodan Milošević of Serbia refused to do so. This ended that phase of the Conference. The proposed

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text was, in effect, abandoned though its extensive human rights provisions became the basis of the corresponding parts of all the later constitutional proposals in respect of Bosnia and Herzegovina.

2. The Badinter Commission Opinions

During and at the end of this phase of the Conference, its Arbitration Commission (known as the "Badinter Commission" after its President) handed down a number of advisory opinions. Three of these were of particular significance to the then emerging Republic of Bosnia and Herzegovina, in that they held that: (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 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.3

3. The Cutileiro Principles

When the failure of the original purpose of the Carrington Conference became clear at the end of 1991, its charge was redirected to providing for an orderly dissolution of the SFRY, and, later, also to prevent the threatened disintegration of Bosnia-Herzegovina when that Republic achieved independence. Just before independence became irrevocable, the Conference initiated a "Round of Talks on Bosnian Constitutional Arrangements," chaired by Portuguese Ambassador José Cutileiro, which culminated on March 18, 1992, in a "Statement of Principles for new constitutional arrangements for Bosnia and Herzegovina" (supplemented on March 31st by some additional human rights principles).4 According to this Statement, Bosnia would have

been divided into three substantially autonomous and largely ethnically defined entities, whose precise borders remained to be defined; these would only loosely be held together by a weak central government. Though informally agreed to by the leaders of what were then technically the three political parties representing the three major ethnic groups, this solution was almost immediately denounced. Thereupon independence was declared, international recognition was obtained (soon followed by U.N. membership\(^5\)), and the war started, enabling the better prepared and equipped Serbs, initially with the assistance of the Yugoslav Army, to occupy quickly well over half of the country.

B. The London Conference

The failure of the EC Conference to prevent the disintegration of Yugoslavia led to the convening, jointly by the United Nations and the EC, of the London International Conference on the Former Yugoslavia, which met on August 26-27, 1992.\(^6\) The Conference, inter alia, adopted a Statement on Bosnia, which affirmed "respect for the integrity of the present frontiers" of that country, meaning that it should not be broken up. The Statement also called for the implementation of strong human rights provisions and, particularly, for the reversal of what had come to be known as "ethnic cleansing."

The London Conference established the International Conference on the Former Yugoslavia ("ICFY"), then referred to as the "Vance-Owen Negotiations" after the first Co-Chairmen of its Steering Committee, or the "Geneva Conference" after its headquarters in the Palais des Nations. One of the six Working Groups of that Conference was the group on Bosnia-Herzegovina.

C. International Conference on the Former Yugoslavia

1. Consideration of 5 Alternatives

Soon after the initial rounds of consultations with the three Bosnian parties within the ICFY Working Group On Bosnia-Herzegovina, the Co-Chairmen of the ICFY Steering Committee, Cy-
rus Vance and Lord Owen, considered five alternative approaches to the constitutional quandary:

(i) A centralized state, logical for a country of only 4.5 million and desired by the Muslims who with 45% of the population had a solid plurality and with a higher birthrate could soon hope for an absolute majority — but for this reason quite unacceptable to the Serbs and the Croats;

(ii) A federal state of 7 to 14 “provinces,” each with a marked ethnic character but also containing minorities from the other groups;

(iii) Three ethnically characterized “republics” loosely confederated in a “union” — in effect, the Cutileiro solution;

(iv) Three ethnically characterized independent states, with only normal neighborly ties — the solution ostensibly sought by the Serbs and also by the Croats;

(v) Absorption of the Serb areas of Bosnia into Serbia and of the Croat areas into the Republic of Croatia, hopefully leaving a viable Muslim state as the remaining Bosnia.

Of these, the Co-Chairmen considered options (iv) and (v) beyond their mandate, because these would not preserve the territorial integrity of Bosnia-Herzegovina as required, inter alia, by the London Declaration. Solution (iii) was considered unstable, as a mere prelude to (iv) (as (iv) would be to (v)). Solution (i), on the other hand, was unacceptable to the representatives of about half the population.

2. Precursor to the Vance-Owen Plan

Consequently, after some further consultations with the three Bosnian parties within the ICFY Working Group, the Co-Chairmen, at the end of October 1992, presented to the U.N. Security Council, the ICFY Steering Committee, and to the parties themselves, a relatively detailed “Proposed Constitutional Structure for Bosnia and Herzegovina” (“Precursor to VOP”) based on ICFY option (ii) above.7 However, the Co-Chairmen did not at that time specify into precisely how many provinces Bosnia was to be divided, nor did they give any indication of which areas they would propose to allocate to each of the three parties. The latter, thereupon, announced that they could not

discuss the Constitutional Proposals in the abstract and attempts made in the Working Group to elicit constructive reactions were largely unsuccessful.

3. The Vance-Owen Plan

On January 2, 1993, the ICFY for the first time convened a meeting at which the three Bosnian parties sat at the same table — with the Bosnian Serb leader, Radovan Karadžić, supported by the Presidents of the Federal Republic of Yugoslavia ("FRY"), Serbia, and Montenegro and the Bosnian Croat leader, Mate Boban, supported by the President of Croatia. The Co-Chairmen presented a package of three proposals, which in the course of negotiations during the following months (first continuing in Geneva and then in New York) was expanded to include a fourth:

(i) A draft "Agreement Relating to Bosnia and Herzegovina," the core of which consisted of 10 (later reduced to 9 by combining two) briefly expressed Constitutional Principles, largely derived from the earlier Constitutional Proposals;
(ii) A proposed map dividing the country into 10 "Provinces," three each with a predominantly, but not exclusively, Muslim, Serb, or Croat ethnic character plus a multiethnic Sarajevo;
(iii) 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 United Nations Protection Force ("UNPROFOR") Commander, specifying detailed arrangements for the cessation of hostilities and the withdrawal of forces under UNPROFOR supervision;
(iv) An "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.

Although the Bosnian Croats rapidly and repeatedly accepted all parts of the so-called Vance-Owen Plan ("VOP"), the

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proposed map being particularly favorable to them, the Muslims only reluctantly acceded to all the elements, towards the end of March. The Bosnian Serbs held out until May, when under great pressure from the Serb leadership in Serbia and the FRY, they signed subject to ratification by their Assembly; the latter quickly forbade ratification and then organized a referendum that overwhelmingly confirmed that decision.

4. A Muslim-Croat Interlude

In the wake of the Serb rejection of the VOP, which coincided with the departure of Cyrus Vance and his replacement by Thorvald Stoltenberg, the Co-Chairmen tried to encourage the Bosnian Muslims and Croats (both of whom were then still nominally participating in the government of the BH Republic) to establish joint arrangements along the lines of the VOP to govern at least the territories that they then controlled. Legal experts of the two groups met under the chairmanship of the ICFY Legal Adviser on May 31 and June 1, 1993 and reached substantial agreement on draft instruments, designed to be promulgated either as legislative decrees of the existing BH Assembly or as agreements between the leaders of the two parties, on the following subjects:

(i) Ombudsmen;
(ii) A Human Rights Court;
(iii) A list of international human rights instruments to be incorporated into any constitutional or legislative arrangements;
(iv) An International Human Rights Monitoring Mission;
(v) A Military Committee; and
(vi) The Establishment and Governance of the Provinces.11

Although this initiative was quickly abandoned, draft instruments (i), (ii), and (iii) became the bases of corresponding provisions that appeared in most later constitutional proposals.

10. Former Foreign Minister of Norway and also, briefly, U.N. High Commissioner for Refugees ("UNHCR").

11. These drafts have not been published. They are on file with the Fordham International Law Journal.
5. The Invincible Plan

In late July and early August 1993, intensive tripartite negotiations in Geneva under the Co-Chairmen produced by far the most detailed and consequently complex peace package, which took its name from the British carrier HMS Invincible on which the final details were negotiated on September 20th. At its heart was a proposed Constitutional Agreement, largely reverting to the Cutileiro Principles and to ICFY option (iii) that in October 1992 had been rejected by the Co-Chairmen: three largely ethnic “Republics” loosely held together in a weak “Union.” The proposed map allocated about 30% of Bosnian territory to the Muslim Republic, compared with some 36% allocated to the Muslim majority provinces under the VOP, and there were complex arrangements for protected routes largely through Serb territory connecting various separated areas of the Muslim and Croat Republics, as well as provisions for access to the Adriatic at Neum and Ploce (in Croatia). Though, in principle, all the constitutional and related arrangements were agreed upon, the Invincible Plan was quickly rejected by the Muslims as offering them insufficient territory.

6. The European Union Plan

Soon after the entry into force of the Maastricht Treaty in November 1993, the foreign ministers of the new European Union (“EU”) launched an initiative to revive the Invincible Plan: they offered the FRY a relaxation of the severe sanctions regime that had been imposed because of its complicity in the start of the Bosnian war, if the Bosnian Serbs would agree to allocate at least one-third of Bosnian territory to the Muslims. This proposal led to several rounds of intensive negotiations in Geneva and Brussels, at the conclusion of which the Serbs, who were then holding about 70% of Bosnia, tentatively agreed that the Muslims should have about 33.3% and the Croats 17.5%.

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12. The final Invincible Plan has not been published in any document, but a slightly earlier version was set out in a Letter Dated 20 August 1993 From the Secretary-General Addressed to the President of the Security Council, U.N. Secretary-General, U.N. Doc. S/26337/Add.1 (1993). This letter does not, however, include some of the texts negotiated immediately before or at the Invincible meeting on September 20, 1993. Some of these texts are set out in a Letter Dated 23 September 1993 From the Secretary-General Addressed to the President of the Security Council, U.N. Secretary-General, Annex, Appendix at 2, 6, U.N. Doc. S/26486 (1993).
There was, however, no agreement as to the precise adjustments to be made to the Invincible map, and, meanwhile, other parts of that package began to unravel — in particular the provisions relating to a possible dissolution of the Union and the territorial consequences that would flow from such an event. About mid-January 1994, the attempt to rescue the Invincible Plan was abandoned.

7. Muslim-Croat Negotiations

Even before the demise of the Invincible Plan, a series of inconclusive meetings took place between Bosnian Muslim, Bosnian Croat, and Republic of Croatia representatives, in early January 1994, in Vienna and Bonn, under the sponsorship of the ICFY and the German Government (which at that time held the EU Presidency). At the last of these meetings, the President of Croatia proposed to the Bosnian President the possibility of establishing a Muslim-Croat entity within Bosnia, which would maintain strong ties to the Republic of Croatia. At that time, however, President Izetbegović was not interested in President Tudjman’s proposal.

D. Under U.S. Auspices: Establishment of the Federation of Bosnia and Herzegovina

After the effective abandonment of all the above-mentioned initiatives, and as a consequence of the public shock created by a shell that killed 68 persons in a Sarajevo market\(^\text{13}\) and the subsequent spate of UNPROFOR/NATO activity that resulted in the temporary removal of Serbian heavy weapons from the hills surrounding Sarajevo, the United States sponsored a new round of negotiations among the Bosnian Muslims (who now denominated themselves as “Bosniacs” to emphasize their allegedly non-ethnic, non-religious character), the Bosnian Croats, and the Republic of Croatia. Following the rough outline of the earlier Tudjman proposal, rapid negotiations in Washington first resulted in a “Framework Agreement for the Federation” and an “Outline of a Preliminary Agreement on the Principles and Foundations for the Establishment of a Confederation between

the Republic of Croatia and the Federation," which were signed on March 1, 1994, in Washington. The venue then shifted to the U.S. Embassy in Vienna, where the parties agreed on a "Proposed Constitution of the Federation of Bosnia and Herzegovina" and a "Preliminary Agreement Concerning the Establishment of a Confederation Between the Federation of Bosnia and Herzegovina and the Republic of Croatia," which were signed at the White House on March 18th. On March 30th, the Federation Constitution was adopted by a specially constructed Constitutional Assembly and thereby immediately entered into force even though the boundaries of the eight "Cantons" into which the Federation of Bosnia and Herzegovina ("BH Federation") was to be divided had not yet been defined. By May 11, 1994, these cantonal boundaries and a constitutional amendment to resolve a particular difficulty about two of the cantons were agreed upon. The constitutional amendment was formally adopted by the Constituent Assembly some weeks later.

The Federation Constitution, in effect, constitutes a reversion to the VOP (an ICFY option (ii) approach), but limited to just two ethnic parties, in that it divides the Federation into eight Cantons: four Bosniac (Muslim), two Croat, and two mixed. The relationship between the Cantons and the central government, and the governmental organs of the latter, are similar to those foreseen in the Proposed Constitutional Structure for Bosnia and Herzegovina that constituted the Precursor to the VOP.

Actual implementation of the Federation Constitution proved to be much more difficult than its negotiation. Even though the six-month transitional period provided for in that instrument expired on September 30, 1994, and no constitutional amendment could be agreed upon to formally extend this period, few steps to establish the Federation were taken until early 1995, when a series of meetings of the two parties' leaders took place under German and U.S. auspices. Though agree-

17. Id. at 781.
ments were reached on a number of details and particularly on schedules, at the time of this writing, the Federation has not yet really started operating. The difficulties are evident: aside from the continuing hostility, particularly at the local level, between the Muslims and the Croats, who are united principally by their conflict with the Bosnian Serbs, the problem is an unprecedented one (which would also have had to be faced by the VOP): how to create a federal structure where the subordinate entities (i.e. the Cantons) have no historical basis and must themselves be constructed as a first step in achieving the Federation.

E. The Contact Group

1. The Leaderless Period

With the Bosnian Muslims and Croats, in principle, united in the BH Federation, it remained to reach some sort of accommodation between the new Federation and the Bosnian Serbs, who until recently occupied some 70% of Bosnian territory. Such an accommodation had to have at least two aspects to relate the two entities in some acceptable way: a territorial division and a constitutional structure. To help resolve these issues, a Contact Group of the United States, Russia, France, Germany, and the United Kingdom was established in May 1994 in association with ICFY. The Group, which could only act by consensus, decided to concentrate first on the territorial issue; basing itself on a 51/49 division, the Contact Group, after extensive consultations and consideration, on July 6, 1994, presented to the parties a proposed map dividing the country. The Federation leadership unenthusiastically accepted this proposal while the Bosnian Serbs in effect rejected it — objecting not so much to the quantity of land but to its strategic placement and quality.

With respect to the constitutional issue, the Contact Group made little progress. Though it informally consulted with both parties at one early session, it never formally agreed on any text. In July 1994, a provisional set of principles was informally passed to the parties and, late in the year, brief consideration was given to a full text of a Union Constitution. That text again constituted an ICFY option (iii) approach, though now limited to two

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18. This ratio derived from two separate and reluctant Serb concessions in January 1994 to allow 39.3% of Bosnian territory for the Muslims and 17.5% for the Croats, which together amounted to 50.8%.
participants: the Muslim-Croat BH Federation (itself an ICFY option (ii) construct) and the Bosnian Serb Republika Srpska.\textsuperscript{19} Because of the Bosnian Serb unwillingness to accept the Contact Group map even as a basis for negotiations, the Group's efforts to achieve a full agreement were aborted and the constitutional proposals were not further developed or ever formally presented to or discussed with the parties.

2. With U.S. Leadership: The September 1995 Preliminary Agreements

In the summer of 1995, with the Contact Group effectively stymied, another particularly murderous shell hit Sarajevo and again NATO sprung into action, though this time more sustainedly than in February 1994.\textsuperscript{20} Once more the United States took the lead in a fresh set of negotiations: this time, between the Governments of the BH Republic and the BH Federation on the one hand, and of the Republika Srpska (now formally represented by Serbian President Milošević) on the other. Intensive shuttle diplomacy, largely by U.S. Assistant Secretary of State, Richard Holbrooke, achieved two very partial constitutional agreements: one reached in Geneva on September 8th and the other in New York on September 26th.\textsuperscript{21} These fragments followed the general outlines of the tentative Contact Group paper — i.e. the replacement of the existing BH Republic by an ICFY option (iii) construct with two entities: the BH Federation and the Republika Srpska, with most of the details of their relationship to be agreed later.

3. With U.S. Leadership: The Dayton/Paris Peace Agreement

From November 1st to the 21st, 1995, the “Bosnia Proximity Peace Talks” were held at the Wright-Patterson Air Force Base near Dayton, Ohio, nominally under the auspices of the Contact


Group but effectively under the management of the U.S. State Department. The Republic of Bosnia and Herzegovina was represented by President Izetbegović, Prime Minister Silajdžić, and Foreign Minister Sacirbey, the Republic of Croatia by a delegation headed at the beginning and end by President Tudjman and otherwise by Deputy Prime Minister and Minister for Foreign Affairs Granic, the Federal Republic of Yugoslavia by President Milošević of Serbia, who also represented the Republika Srpska though some of its senior officials were present, and the BH Federation by President Kresimir Zubak; the Contact Group states were generally represented at the level of Political Director of the respective Foreign Offices, except that Secretary of State Christopher and Assistant Secretary Holbrooke represented the United States.

The principal product of this session was a General Framework Agreement for Peace in Bosnia and Herzegovina ("GFA") to be concluded between the Republic of Bosnia and Herzegovina, the Republic of Croatia, and the Federal Republic of Yugoslavia and to be witnessed by representatives of the five Contact Group states and the Special Negotiator for the European Union. Texts of the following eleven agreements are annexed to the GFA, to be concluded between various combinations of parties and to be supplemented by some subsidiary agreements and side-letters: (1A) Military Aspects of the Peace Settlement, plus Status-of-Forces Agreements between NATO and Bosnia and NATO and Croatia, and a Transit Agreement between NATO and the FRY; (1B) Agreement on Regional Stabilization; (2) Inter-Entity Boundaries; (3) Elections; (4) BH Constitution; (5) Arbitration; (6) Human Rights; (7) Refugees and Displaced Persons; (8) Commission to Preserve National Monuments; (9) BH Public Corporations; (10) Civilian Implementation; and (11) International Police Task Force. In addition, there were nearly a score of additional side-letters, a Concluding Statement in the

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23. The "Constitution of Bosnia and Herzegovina" is, unlike the other Annexes to the GFA, not in the form of an agreement, but sets out the text of the Constitution with the indicated title. However, it is supported by three identically worded Declarations by respectively: the BH Republic, the BH Federation, and the Republika Srpska, stating that these "approve" the Constitution.
nature of a Final Act, and even an Agreement on Initialling the GFA. All of these were appropriately initialled on November 21st — except that initials for the Republika Srpska were only added three days later in Pale. Earlier by-products of the session were a November 10th “Dayton Agreement on Implementing the Federation of Bosnia and Herzegovina”\(^2\) and a November 12th “Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium” — a text relating to Croatia rather than to Bosnia, but constituting an important political precondition for the Bosnian settlement. It should be noted that the BH Constitution and the related texts agreed to in Dayton, in addition to being far more detailed than the above-mentioned preliminary understandings achieved in September, differ from these in some important respects, which will be pointed out in the following section.

As they undertook in the above-mentioned Agreement on Initialling, the respective parties to the several agreements signed these at the Paris Peace Conference on December 14, thus putting the GFA and all the other agreements into force on that day. On December 8-9, a Peace Implementation Conference took place in London and other related conferences on pledging and on military arrangements are scheduled to be held in various European capitals.

II. CONSTITUTIONAL ISSUES

Throughout these extended and multiple rounds of negotiations, numerous issues kept recurring, for the most part directly related to the central question of the future political character of Bosnia: the Muslims desire a unitary, centralized state in which they would enjoy a large plurality and probably soon a majority because of their higher birthrate and the likelihood that some Serbs and Croats would voluntarily depart for the greater congeniality of Serbia and Croatia; the Serbs and Croats do not want to live in a Muslim-dominated state and therefore strive for as complete independence for their areas as they can attain. The following sections briefly present, separately as far as possible, each

of these intertwined issues, indicating their development over the past 40 months.

A. The Structure of Bosnia-Herzegovina

Although, as illustrated above, the ICFY theoretical options concerning the structure of Bosnia range widely from a centralized state to complete dissolution and substantial absorption into neighboring countries, the variants that have received serious consideration have almost exclusively centered around two of the five ICFY options discussed: a more or less centralized federal state of roughly ten quasi-ethnic provinces (ICFY option (ii)) and a more or less loose union of three ethnic entities (ICFY option (iii)). In effect, the differences between the various models can best be characterized by two parameters: the distribution of governmental powers between the central state and the subsidiary entities; and the potential effectiveness of the central government.

The Vance-Owen Plan, its Precursor, and the BH Federation, albeit encompassing only two of the three ethnic groups, illustrate ICFY option (ii) approaches. The Cutileiro Principles and the Invincible Plan in all its variants, as well as the proposed Union between the Federation and the Republika Srpska considered by the Contact Group and in a considerably altered form the state of “Bosnia and Herzegovina” created by the Dayton/Paris Peace Agreement, all constitute ICFY option (iii) approaches: the first two in trilateral forms and the latter in bilateral form.

B. Continuity of Bosnia-Herzegovina

1. The Issue of Legal Continuity

During the negotiations leading to the Invincible Plan, a somewhat “theological” issue surfaced: whether the Bosnia that emerges from these travails should be considered a legal continuation of the present Republic of Bosnia and Herzegovina or as a completely new state. The Muslims insist on the former, in part for emotional reasons and in part for practical ones, such as continuity of membership in international organizations and of other treaty relations, and of status as the complaining party
before the ICJ in the action filed against the FRY\textsuperscript{25} for allegedly abetting genocide in Bosnia.\textsuperscript{26} The Serbs on the other hand did not wish to accept the legality of the establishment of the BH Republic, as they contested the propriety of its separation from the SFRY without Serb consent, or alternatively insisted that upon such separation two or three states had been created: their own Republika Srpska and either a Muslim-Croat entity or separate Muslim and Croat ones.

In the “Constitutional Agreement of the Union of Republics of Bosnia and Herzegovina” at the heart of the Invincible Plan, this problem was finessed by the statement in Article I.1, that “[t]he Union of Republics of Bosnia and Herzegovina will be a member state of the United Nations,“ thus implying, without explicitly stating, that the Union is a legal continuation of the Republic, which already had such membership. On the other hand, the very first point agreed during the September 1995 rounds of negotiations was that: “Bosnia and Herzegovina will continue its legal existence with its present borders and continuing international recognition” — which resolved this matter in favor of the Muslim position. The new BH Constitution contains an expanded form of essentially the same provision, reinforced by the phrase that “[Bosnia and Herzegovina] shall remain a Member State of the United Nations.”\textsuperscript{27}

Always related to the resolution of this issue was the question of whether a new BH constitution was to attain legal status by an amendment of the present Constitution of the Republic — thus implying continuity — or would instead attain force as an agreement between the parties, perhaps subject to ratification by their respective legislatures or by referenda — which would imply a new start for the State; conceivably this point could have been bridged by using both approaches simultaneously. The new BH Constitution provides that:

This Constitution shall enter into force upon signature of the

\begin{footnotes}
\item[27] BOSNIA AND HERZEGOVINA CONST. art. I.1 [hereinafter BH CONST.].
\end{footnotes}
General Framework Agreement as a constitutional act amending and superseding the Constitution of the Republic of Bosnia and Herzegovina.\footnote{28}

As in one of the side-letters to Annex 4 to the GFA, the BH Republic “approves of the [new BH] Constitution,” the Republic is presumably bound to adopt the necessary amendment to its Constitution to implement the above provision. Technically, however, the legal force of the Constitution might also be considered as deriving from the approval of the text by the three authorities that, collectively, arguably represent all Bosnians, i.e. the BH Republic, the BH Federation, and the Republika Srpska, which is internationally reinforced by GFA Article V:

The Parties [i.e. the BH Republic, the Republic of Croatia and the FRY] welcome and endorse the arrangements that have been made concerning the Constitution of Bosnia and Herzegovina, as set forth in Annex 4. The Parties shall fully respect and promote fulfillment of the commitments made therein.\footnote{29}

As to the continuity of BH membership in the United Nations, this is a matter for the General Assembly, acting on a recommendation of the Security Council. As continuity is desired by the Muslim party and, thus, by the Government that currently represents Bosnia in the United Nations and enjoys majority support in both the political organs, it is likely to be accepted.

Finally, Annex II to the Constitution on “Transitional Arrangements” provides for the continuation, subject to a few conditions, of all laws, regulations, and judicial rules (para. 2), of all pending judicial and administrative proceedings (para. 3), and of governmental bodies (para. 4) in force or operating “within the territory of Bosnia and Herzegovina.” This would seem to include laws and institutions of the BH Republic, the BH Federation (including possibly the Croatian Herzog-Bosna), and the Republika Srpska.

2. The Eventual Dissolution of the State

A somewhat related and far more important issue is whether and under what conditions Bosnia and Herzegovina might even-

\footnotesize{28. Id. art. XII.1.}
tually be dissolved. This matter first arose in last-minute Muslim-Serb negotiations that preceded the Invincible meeting and was reflected in that package through provisions that would have allowed the people of any of the three Constituent Republics to opt by referendum, to be held within two years of the creation of the proposed Union and after all territorial issues had been resolved (an inducement to the Serbs to agree to a resolution), to choose to leave the Union — in which event international legal continuity of the Union would vest in the Muslim Republic. Incidentally, another earlier and somewhat inconsistent provision still remained in the draft Constitutional Agreement under which any party that objected to the withdrawal of another could appeal to the Security Council, whose decision would be binding.

In the later EU-sponsored negotiations to rescue the Invincible Plan, this dissolution provision created an unanticipated difficulty. If the Union were to be dissolved — most likely on Serb initiative — then the Muslims wished to preserve for themselves the benefits of the access-to-the-sea provisions that constituted an important part of the Invincible Plan. Such access, however, could only be attained through the proposed Bosnian Croat Republic and, in part, through the Republic of Croatia itself — and these were naturally reluctant to meet the Muslim concerns for the eventuality that the Serbs might cause the Union to dissolve. The failure to resolve these issues contributed, at least to some extent, to the eventual abandonment of the Invincible Plan.

The Federation Constitution, to which the Serbs are not parties, has no dissolution provision.

Though the geographic issues thus in effect disappeared, the Contact Group, in tentatively exploring constitutional principles with the leaders of the BH Federation and the Republika Srpska, discovered that the very issue of dissolution constituted one of the major and seemingly unbridgeable differences between the parties. The new BH Constitution is entirely silent as to the possibility of dissolution, which, of course, was the Muslim objective.

C. Geography-Related Questions

This Essay does not address the arguments about or the res-
olution of the boundaries between the areas controlled by the
three ethnic groups, or between the Muslim-Croat areas on the
one hand and the Serb areas on the other, except to recall that,
from the beginning, this constituted one of the two basic
problems (the other being the constitutional one) that would
have to be resolved. The 51/49 territorial ratio that grew out of
the EU Action Plan was formalized by the Contact Group and
constituted an agreed basis of the final negotiations. Though
this ratio is not mentioned explicitly in the Peace Agreement, it
is in effect embodied in the maps appended to the Agreement
on Inter-Entity Boundary Line and Related Issues that consti-
tutes Annex 2 to the GFA. But, though the ratio was strictly
maintained, the actual territorial division differs considerably
from that proposed by the Contact Group, largely but not exclu-
sively by reflecting the military developments during the summer
of 1995.30

1. Legal Nature of Internal Boundaries

From the beginning it was recognized that it was important
to specify the nature of any boundaries that would be drawn
within Bosnia. For one thing, if the state would not constitute a
customs union — which was a natural consequence of any ICFY
option (ii) construct but not necessarily of an ICFY option (iii)
one — then some inter-entity boundary controls would be neces-
sary.

The Precursor to the VOP provided that “There are to be
no border controls at inter-provincial boundaries, and full free-
dom of movement be allowed throughout the entire country.”31
The Invincible Plan was similar, also providing for the “free
movement of persons, goods and services throughout the terri-

30. It should be noted that the Peace Agreement left unsettled the status of the
Brcko area, which is to be determined within one year by arbitration. GFA, supra note
29, Annex 2, Art. V.
31. Report of the Secretary-General on the International Conference on the Former Yugoslav-
ia, supra note 7, Annex VII, I.B.4, at 45.
32. Letter Dated 20 August 1993 From the Secretary-General Addressed to the President of
the Security Council, supra note 12, Appendix I, art. II.1(d), at 6.
intra-Federation Bosniac/Croat borders constituted a real problem, the November 10th Dayton Federation Implementation Agreement provides that by December 10, 1995 “all internal customs checkpoints in the Federation will be eliminated and full freedom of movement shall be established.”

The new BH Constitution provides:

**Movement of Goods, Services, Capital and Persons.** There shall be freedom of movement throughout Bosnia and Herzegovina. Bosnia and Herzegovina and the Entities shall not impede full freedom of movement of persons, goods, services, and capital throughout Bosnia and Herzegovina. Neither Entity shall establish controls at the boundary between the Entities.\(^3\)

However, armed forces of either Entity may not enter into the territory of the other without due permission.\(^3\)

2. Status of Sarajevo and Mostar

The VOP would have made Sarajevo one of the ten “provinces” of Bosnia — the one truly multi-ethnic one — and also the capital of the country. With the abandonment of that Plan, it became necessary to resolve to which of the ethnic “Republics” Sarajevo would be assigned or how it would be divided between the Serb and the Muslim, or the Muslim-Croat entities.

In part to temporize on the resolution of this issue, the Invincible Plan would have placed Sarajevo under U.N. administration for about two years. This was also proposed by the Contact Group — though in the map that it formulated it foresaw the eventual division of Sarajevo on a 2:1 basis between the BH Federation and the Republika Srpska, unless the Serbs could be induced to surrender that claim in return for territorial concessions elsewhere. The Federation Constitution itself, while designating Sarajevo as its capital, does not indicate whether and how it is to fit into the cantonal scheme into which the rest of the Federation territory is divided — presumably tacitly accepting that for some time the Sarajevo District would be under international administration.

The maps adopted as part of the Peace Agreement assign all

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34. BH CONST. art. 1.4.
35. *Id.* art. V.5.(a).
of Sarajevo, including a number of Serb suburbs, unconditionally to the Federation, without any period of international administration.

As to Mostar, bitterly contested between the Muslims and the Croats, the BH Federation, once legally established, promptly arranged for that city to be administered for two years by the European Union. That arrangement was unchanged by the Peace Agreement.

3. Protected Routes

Because it was considered impossible to divide Bosnia in such a way that all areas of like ethnicity would be contiguous, substantial effort was expended on devising solutions that would permit isolated areas to be at least connected to each other. Evidently, to the extent that one party would be permitted to connect its territory by the use of corridors over which it would have sovereign control (and whose width would be a matter of strategic importance), the areas of the other party, on either side of such corridors, could not be similarly connected. If the constitution provided for relatively open boundaries and for mutual demilitarization (see H below), then this situation would not constitute a serious problem; however in the event of controlled borders and, especially, if either party wished to maintain the right to move military forces, then practical solutions must be found.

The Invincible Plan provided for the establishment of a jointly controlled Access Authority "to guarantee full freedom of movement in certain essential areas between and within the Constituent Republics, and also to and from these Republics to the Republic of Croatia and the Republic of Serbia." Thirteen roads and railroads were to be controlled by the Authority.

When it was not immediately clear how many isolated enclaves would be foreseen by the definitive Contact Group proposal, the Group considered a complex system of protected routes, protected transport centres (i.e. points where two areas of one entity and two of another would meet at a point), cross-overs (where one entity would have a right to construct a tunnel under or a bridge over a narrow sovereign corridor of the other), and fly-over rights. Each of these arrangements would have been

governed by complex rules as to types of traffic allowed, controls that the two parties could enforce, and at least a transitional international presence. As the ultimate map proposed was relatively simpler, these options were, at that point, not explored further, though some arrangements for connecting at least Bihac to the main body of the BH Federation would have been necessary.

Because of military developments shortly before the final negotiations, it was ultimately almost possible to separate the Federation and the Republika Srpska through a single — if quite convoluted — line, so that potentially only one protected route may be necessary: to connect two small enclaves north of the Posavina Corridor with the main territory of the Federation. In respect of the corridor connecting Sarajevo and Gorazde it was considered prudent to provide in the Agreement on the Military Aspect of the Peace Settlement that until a two-lane all-weather road can be constructed within the Gorazde Corridor, two interim routes were designated to be used by both Entities, subject to specified conditions.

4. Access to Sea

Bosnia is basically a landlocked country. Its one contact point with the Adriatic is at the fishing village of Neum on the Dalmatian coast, but that area lies behind a massive Croat peninsula. Consequently, Bosnia could only claim a minimal territorial sea of its own and, in any event, could not reach the sea without passing through Croatian territorial waters. Moreover, technical investigations of Neum have shown that it would be completely impractical to establish a harbor there.

These issues became important during the Invincible Plan negotiations, which ultimately contained a series of complex provisions relating to:

(a) Access of the Muslim Republic to Neum, through the Bosnian Croat Republic;
(b) Access of Bosnia and Herzegovina to the Croatian port of Ploce (which had originally been built to serve as the natural harbor for Bosnia), by an agreement to be concluded with the Republic of Croatia.
(c) An agreement with Croatia for the application by Croatia

37. GFA, supra note 29, Annex 1A, art. IV.2(c) (Goradze).
to Bosnia of the Landlocked States Convention,\textsuperscript{38} in return for transit rights for Croatia from the northern part of its territory through Bosnia to the Dalmatian coast.

As mentioned above, the interaction of these access-to-sea provisions with those relating to the potential dissolution of Bosnia ultimately made it difficult to salvage the Invincible Plan.

As also mentioned above, parallel to the negotiation of the Federation Constitution, it was also agreed that there be a Confederation between the BH Federation and Croatia, potentially including a customs and monetary union. Nevertheless, it was also decided to annex to the planned Confederation Agreement the Ploce access agreement mentioned in (b) above, coupled with another agreement that would guarantee to Croatia undisturbed road traffic through Neum, to connect the north-western with the south-eastern parts of the Dalmatian coast.\textsuperscript{39} Later, when the idea of an early Confederation was abandoned and even the eventual conclusion of such an arrangement became doubtful, these two transit agreements were concluded separately between the Bosnian and the Croatian Governments in September 1994.

Because of the above-mentioned arrangements concerning the BH Federation and the freedom-of-movement provisions in the new BH Constitution\textsuperscript{40} no access-to-sea issues had to be dealt with in the Peace Agreement.

D. Distribution of Governmental Powers

One of the two principal factors that can be adjusted in designing a compromise governmental structure to meet, as far as possible, the divergent views of the Bosnian parties, is the allocation of powers between the Central Government and that of the "constituent entities," be these "states," "republics," "provinces," or "cantons." The Muslims naturally wished for the central powers to be as broad as possible, while the Serbs and, to an extent,


\textsuperscript{39} Agreement Granting the Federation of Bosnia and Herzegovina Access to the Adriatic Through the Territory of the Republic of Croatia, Mar. 18, 1994, 33 I.L.M. 613; Agreement Between the Federation of Bosnia and Herzegovina and the Republic of Croatia Granting Croatia Transit Through the Federation, Mar. 18, 1994, 33 I.L.M. 616.

\textsuperscript{40} BH CONST. art. I.4.
the Croats preferred to allocate at most minimal powers to the center.

This issue was already addressed, albeit only tacitly, in the Cutileiro Principles, which would have allocated only the following powers to the central government: "Central Bank and monetary policy, foreign relations, defence . . . , general economic policy, economic relations, including where any of the following affect more than one constituent unit, transport, energy supplies, pipelines and water management, and other matters to be decided." 41 A considerably longer list of functions was assigned to the constituent units, with no clear indication of where any residual powers would reside.

The Precursor to the VOP explicitly stated the philosophy on which its allocation was based: that as far as possible, citizens should only have to deal with authorities of their own ethnicity. Thus, education, culture, licensing of professions and trades, use of natural resources, health care, control of financial institutions, police, and taxation for all the above would be local responsibilities. For the rest, certain powers were allocated respectively either to the central government, to proposed "independent authorities," or to be shared between the central and the provincial authorities. No explicit statement about residual powers was included.

The Constitutional Principles set out in the actual VOP, peculiarly enough, did not address this issue at all, though from the circumstances of its presentation it was implied that it was based on the precursor proposal whose details would apply where the Principles were silent.

The Invincible Plan, on the other hand, restricted itself to a mere statement of the residual rule (Art. II.3): "All governmental functions and powers, except those assigned by this Constitutional Agreement to the Union . . . or to any of its institutions, shall be those of the Constituent Republics." Actually, the Constitutional Agreement would have vested very few functions in the Union, mostly responsibility, though not exclusive (see F below), for foreign relations and the maintenance of three central courts: the Supreme Court, the Constitutional Court, and the Human Rights Court, each of which could review appropriate

decisions of the Republic courts while also exercising certain original jurisdiction.

In the BH Federation Constitution, one of the most closely negotiated and, consequently, elaborate provisions is Chapter III on "Division of Responsibilities Between the Federation Government and the Cantons," which assigns some ten areas exclusively to the Federation, specifies nine for which both the Federation Government and the Cantons have responsibility (with an elaborate set of rules for how these joint responsibilities are to be exercised), and lists twelve exclusively for the Cantons, to which it also assigns "all responsibility not expressly granted to the Federation Government." Finally, there are also requirements that the Cantons delegate some of their powers to their municipalities, especially where such municipalities are of an ethnicity different from the majority of the Canton.

The tentative Contact Group draft would have provided that: "All governmental functions and powers, except those assigned by this Constitutional Agreement to the Union or to any of its institutions, or such as may be required to carry out by the Union in order to fulfill its international obligations, shall be those of the [two] Constituent Entities."

The September 1995 Preliminary Agreements assigned "foreign policy" to "Bosnia and Herzegovina" (the then tentative name for the central state) with additional matters to be agreed later, and all residual powers to the two "Entities."

The new BH Constitution assigns responsibility for the following to the central government: foreign policy; foreign trade policy; customs policy; monetary policy (to be implemented through a Central Bank); finances for the institutions of the central government and for international obligations; immigration, refugee matters, and asylum; international and inter-Entity criminal law enforcement; common and international communication facilities; inter-Entity transportation; and air traffic control.42 "All governmental functions and powers not expressly assigned by th[e] Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities."43 It should be noted that several other Annexes to the GFA, which in form at least have coequal status with the Constitution and are referred to in

42. BH CONST. art. III.1(a)-(j).
43. Id. art. III.3(a).
its Article. III.5(a), make special arrangements concerning Human Rights (Annex 6), Refugees and Displaced Persons (Annex 7), the establishment of a Commission to Preserve National Monuments (Annex 8), and the establishment of “Bosnia and Herzegovina Public Corporations,” including especially a “Transportation Corporation” (Annex 9). All of these arrangements assign specified additional responsibilities to the two Entities and/or to the central government, but especially to the latter. Furthermore, the Constitution foresees that the Entities will agree to assign other responsibilities to the central government “including utilization of energy resources and cooperative economic projects.”

E. Effectiveness of the Central Government

The other principal factor to be adjusted to achieve a balance between the demands of the parties relating to the structure of Bosnia is the degree to which the central government will be able to function if one of the parties is intent on stopping some action, or perhaps all actions — ostensibly to protect itself from a majority created by the other ethnic party or parties, but with the possible goal of bringing the state itself to a halt. In this respect, various factors must be considered.

The initial point to be decided is the composition of the organs of the central government, in particular the legislature, the executive (invariably a multi-person “Presidency” and a Cabinet), and even the highest courts. In particular, should these organs reflect the actual numbers of the various “constituent peoples” (the Muslims, the Serbs, the Croats, and possibly a group of “Others”), or be divided mostly on a strict 1:1:1 basis (to reflect the three constituent entities or parties or principal constituent peoples), or perhaps be divided on a 1:1 basis in those instances in which, nominally, only two entities participate.

The Cutileiro Principles foresaw a bicameral central legislature with a directly elected Chamber of Citizens and a Chamber of Constituent Units in which each of the three “units” would be equally represented; on specified important matters the latter

44. The Dayton version of that provision actually refers to “Annexes 5 through 8 to the General Framework Agreement,” but, presumably, this is a misprint, as Annex 5 is irrelevant while Annex 9 is relevant.

45. BH Const. art. III.5(b).
Chamber would decide by a majority of four-fifths, which would mean that if the representatives of any unit were united they could block a decision. The makeup of the executive was not defined, though it was provided that the “composition of the civil service and the judiciary . . . would reflect proportionally the national composition of Bosnia and Herzegovina.”

Constitutional questions would be resolved by a special Tribunal, on which each of the constituent units would have one member, while for a period of no less than five years, there would be four “impartial elements drawn from outside Bosnia and Herzegovina and its neighbouring states;” thus at least the Tribunal could not become deadlocked.

The Precursor to the VOP would have provided for a bicameral legislature, with a lower house elected on a proportional representation basis from the country as a whole and the upper house to be appointed by and from the provincial governments — without any indication as to whether each of the 7-10 provinces would be equally represented. The provincial governors would, collectively, have constituted the Presidency, a principally ceremonial organ except for its strictly circumscribed appointing functions, with a powerless President presiding; there would have been no unanimity or consensus requirement “to avoid the possibility of paralysis.”

The Prime Minister would be chosen by the lower house, and Ministers appointed by the PM with the approval of the Presidency and with “due account for Group balance.” As to the courts, there would not have been (here or in any of the later proposals) a parallel system of provincial and central courts, but the courts of first instance and initial appeal would have been provincial, while the highest courts would have been central with the judges reflecting “group balance.” On these bases, the Central Government could have been potentially effective under all except perhaps the most extreme circumstances. Again, the Constitutional Principles in the VOP did not give any useful guidance on any of these details.

Under the Invincible Plan, the unicameral Parliament would have consisted of 120 representatives, 40 elected by each of the Constituent Republic legislatures. It could adopt laws by a


simple majority of the members from each Republic and, thus, the members from any Republic could block an adoption. The Presidency would consist of the President of, or an appointee of the legislature of each of the three Constituent Republics, the chairmanship rotating among these every four months; its decisions would have required a consensus. There would have been a Council of Ministers, with the Prime Minister appointed and, possibly, removed by the Presidency (acting by consensus) with the post rotating on an annual basis among the nominees of the Presidents of the three Republics. The Supreme Court would have had four judges appointed by the Presidency, with no two from the same constituent peoples. The Constitutional Court would have judges from the three principal constituent peoples and would have been required to act by consensus — but, if paralyzed, decisions would have been referred to a standing 5-member arbitral tribunal of ICJ judges or members of the Permanent Court of Arbitration. The Human Rights Court would have been established under the Council of Europe arrangement discussed in section G.2 below. In other words, practically all the governmental organs could easily have been blocked from acting, except for the Constitutional and Human Rights Courts in which, ultimately, foreign judges could decide.

The Federation Constitution, the first genuinely negotiated text among those here considered, adopted a much more sophisticated and nuanced approach to these questions. The BH Federation Legislature consists of two Houses. The House of Representatives has 140 members elected by proportional representation from the country as a whole, subject to a normal “5% clause.”48 The House of Peoples has 30 Bosniac (i.e. principally Muslim) members and an equal number of Croats (even though they represent only about 20-30% of the population), plus a number of delegates representing “Others” depending on the ratio of such representatives in the cantonal legislatures (which, therefore, could range from very few to potentially a far larger number than the specified number of Bosniac and Croat members). In the House of Peoples, decisions would normally be

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48. BH Constr. art. IV.A.3(1). This clause, as developed in post-World War II European constitutional practice, means that any party receiving less than 5% of the votes cast is not represented in the legislature — even if those votes would mathematically entitle it to some seats. The purpose of this rule is to reduce the number of splinter parties.
taken by a simple majority, but on matters "that concern the vital interest of any of the constituent peoples" adoption of a decision requires a majority of both the Bosniac and of the Croat delegates (i.e. permitting half of either group to block). Whether a question is, however, indeed of vital interest, can be appealed to the Constitutional Court, which during a transitional five-year period will have a number of foreign members to prevent a deadlock. The executive consists, first of all, of a President and a Vice-President, from different constituent peoples and elected by both Houses, with the requirement in the House of Peoples for a majority of both the Bosniac and the Croat delegations. Most important decisions of the President, such as the appointment of the Prime Minister, require the concurrence of the Vice-President. As to the Cabinet, its decisions that concern a "vital interest" require consensus, with elaborate provisions for breaking impasses by referring matters to the Constitutional Court and to the President or Vice-President (the choice depending on an elaborate rule). Altogether, during at least the initial 5-year period when the Constitutional Court has three foreign judges among its nine members, it should be possible to avoid catastrophic deadlocks in the Federation Government.

The tentative Contact Group "Union" constitution on these points rather resembled the Invincible constitutional agreement. However, the new BH Constitution, as already somewhat foreshadowed in the September 1995 Preliminary Agreements, relies on quite different devices to ensure the effectiveness of the central government:

1. The legislature consists of a bicameral Parliamentary Assembly (Art. IV): a House of Peoples comprising 15 Delegates, 10 from the Federation (5 Muslims and 5 Croats) selected by the respective groups in the House of Peoples of the Federation and 5 from the Republika Srpska selected by its National Assembly; a House of Representatives comprising 42 Representatives, 28 from the Federation and 14 from the Republika Srpska, to be directly elected from these respective Entities in accordance with an election law to be adopted by the Parliamentary Assembly — except that the first election is to take place in accordance with Annex 3 to the GFA.

All legislative decisions of the Parliamentary Assembly require the approval of both chambers. In each, decisions are
normally taken by a majority of those present and voting, provided that:

(a) Either the majority includes at least one-third of the votes of the members from each Entity or, if that is not possible, the dissenting votes do not include two-thirds of the members from either Entity. (In other words, a solid block of just over two-thirds of the members of either Entity in either chamber can block any legislation.)

(b) If 3 or more Bosniac, Serb, or Croat members of the House of Peoples declare a proposed decision “to be destructive of a vital interest of [its] people,” then the decision requires a majority of the members of each such group present and voting, unless 3 or more Bosniac, Serb, or Croat members object to the invocation of the vital interest provision, in which case this issue is to be resolved within five days by a tripartite joint commission or otherwise by the Constitutional Court through an expedited procedure (which, however, may only review “procedural regularity”).

2. The executive consists of a Presidency and a Council of Ministers (Art. V):

(a) The 3-member Presidency consists of one Bosniac and one Croat member elected directly by the voters of the Federation and one Serb elected directly by the voters of the Republika Srpska for four-year terms. The Presidency is to endeavor to reach all its decisions by consensus, but decisions can be adopted by two members unless within three days the dissenting member declares the proposed decision “to be destructive of a vital interest of the Entity . . . from which he was elected,” and such objection is confirmed within ten days by a two-thirds vote of the Republika Srpska National Assembly if the objection was made by the Serb member of the Presidency or of the Bosniac or Croat members of the House of Peoples of the Federation if the objection was made by the Bosniac or Croat member of the Presidency. (In other words, any member of the Presidency, if supported by an appropriate two-thirds vote in his Entity’s Legislature, can block Presidency decisions.) The Constitution does not provide for review by the Constitutional Court.

(b) The Council of Ministers consists of a Chair appointed by the Presidency and approved by the House of Representatives, and of a Foreign Minister, a Foreign Trade Minister, and other Ministers appointed by the Chair and approved by the House of Representatives. No more than two-thirds of the Ministers may be from the Federation and Dep-
uty Ministers may not "be of the same constituent people as their Ministers." The Council must resign on a vote of no-confidence by the Parliamentary Assembly.

3. The judicature of the central government consists solely of a Constitutional Court of 9 members: 4 to be selected by the House of Representatives of the Federation, 2 by the National Assembly of the Republika Srpska, and 3 (who may not be citizens of Bosnia or of any neighboring state) by the President of the European Court of Human Rights after consultation with the BH Presidency, though after five years the Parliamentary Assembly may by law provide for a different way of selecting these 3 judges. The Constitutional Court has jurisdiction to decide disputes that arise under the Constitution between the Entities or between the central government and one or both Entities, or between institutions of the central government. It also has appellate jurisdiction over constitutional issues arising in any other court in Bosnia and Herzegovina or to respond to questions addressed to it by any such court as to the compatibility of any law with the Constitution or with the European Convention on Human Rights and Fundamental Freedoms.

It should be noted that aside from the Constitutional Court established by the Constitution, several Annexes to the GFA provide for other judicial or quasi-judicial bodies or disputes resolution mechanisms:

(a) For the arbitration of any dispute between the Entities (Annex 5);
(b) For the establishment of a Human Rights Chamber, as described further in section G.2 below (Annex 6);
(c) For the establishment of a Commission for Displaced Persons and Refugees, as described further in Section G.3 below (Annex 7).

F. Foreign Relations

The arrangements concerning the conduct of foreign relations, whether considered in only the classical narrow political sense or also encompassing foreign economic relations, became particularly convoluted and unusual in a number of the proposals. These reflected, on the one hand, the Muslim concept that the ability to conduct an effective foreign policy and to have a monopoly over this function is a principal indicium of a state

49. BH Const. art. VI.
under international law, and, on the other hand, the desire of the Bosnian Serbs to have their entity within any union wield foreign relations powers as extensively as possible, and, in particular, the power to establish close relations with Serbia or the FRY. As a result, some of the proposals described below attempt to assign unprecedentedly wide foreign relations powers to subsidiary parts of a "state."

In the Cutileiro Principles, "foreign relations" was one of the subjects as to which the central government organs could legislate, though "decisions concerning relations between Bosnia and Herzegovina and [neighboring states] . . . would be decided in the Chamber of Constituent Units [in which each of the three 'units' would be equally represented] by a majority of four-fifth of the total number of representatives in it."\(^5\)

In the Precursor to the VOP, the central government was explicitly assigned "exclusive responsibility" for "Foreign Affairs (including membership in international organizations)" and for "International commerce (customs duties; quotas)," and in a provision that appeared merely to state the obvious but that proved to be one of the most controversial of the entire draft (opposed by both the Serbs and the Croats), it was specified that: "The provinces are not to be allowed to entertain formal international or inter-provincial ties, except with the permission of the central government; they are to have no international legal personality."\(^5\)

In spite of this opposition, the VOP itself expressed, as its second Constitutional principle, that: "The provinces shall not have any international legal personality and may not enter into agreements with foreign states or with international organizations."\(^5\)

In the Invincible Constitutional Agreement, the distribution of "International Relations" functions became more complex. First of all, approval by the Security Council of continued membership in the United Nations became a condition for the entry into force of the Agreement. Except for the membership applications to other U.N. system organizations (which were directly

\(^5\) Cutiliero Principles, supra note 4, para. C.2.
\(^5\) Id. Annex II, art. I, Principle (2).
foreseen in the Constitutional Agreement), applications to other international organizations would have required a consensus decision of the Presidency; on the other hand, any of the three “Constituent Republics” could apply for membership in international organizations “if such membership would not be inconsistent with the interests of the [Union] or of either of the other Constituent Republics.” As to treaties, the Union would stay a party to those treaties to which the BH Republic had been a party, except for those entered into after November 18, 1990 (the date after which the Bosnian Serbs considered they no longer participated in the Republic) which would be denounced unless the Union Parliament decided otherwise. New treaties could be entered into by decision of the Parliament, but “[t]o the extent such participation would involve responsibilities to be carried out by the Constituent Republics, their advance approval must be secured, except in respect of [the human rights treaties listed in the Constitutional Agreement].” Moreover, the Constituent Republics could, if eligible, become parties to international treaties subject to the same restriction as mentioned above in respect to membership in international organizations.

In the Federation Constitution, relatively little is said on this subject. In the allocation of responsibilities between the Federation’s central and Cantonal Governments, “foreign affairs” is clearly assigned to the former. Indeed, as the Federation itself was conceived as only a subsidiary unit of the continuing BH Republic, which might eventually be replaced by the proposed BH Union, the Federation Constitution states that “[t]he international relations of the Federation are based on the international legal personality, territorial integrity, and continuity of the Republic of Bosnia and Herzegovina.” Nevertheless, it was foreseen that the BH Federation might enter into treaties, and there are constitutional provisions as to the responsibility therefor of several Federation organs. In particular, it was foreseen in an instrument signed simultaneously with the proposed Federation Constitution, that the Federation would enter into a Confederation with the Republic of Croatia that would not “change the international identity or legal personality of Croatia or of the Federation,” but could encompass, inter alia, a customs union, a

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common market, and a monetary union. In fact, after some months, the interest of both potential parties to the Confederation in that type of close relationship faded, and instead they entered into certain specific transit agreements that originally were meant to constitute part of the Confederal arrangements.

The Contact Group's tentative plan for a Union Constitution would, in respect of participation in international organizations and treaties, have tracked the Invincible Plan almost precisely, except to specify that disagreements concerning the restrictions on international participation by the Constituent Entities would be decided by the Constitutional Court. However, in deference to Serb insistence that the Serb entity be granted the same right to confederate (presumably with Serbia or the FRY) as had originally been foreseen for the Federation, it was to be provided that either "Constituent Entity may enter into cooperative arrangements and parallel special relationships with neighbouring countries," subject to certain restrictions that could also be interpreted by the Constitutional Court; the precise formulation of this entire provision was one of the most controversial aspects of the entire draft.

The new BH Constitution follows the conventional line of concentrating all foreign relations functions and powers in the organs of the central government, including the Presidency, the Council of Ministers, and the Parliamentary Assembly. The sole residues of the former, dubiously wide, foreign affairs functions proposed for the Entities in earlier drafts are that:

(a) The Entities shall have the right to establish special parallel relationships with neighboring states consistent with the sovereignty and territorial integrity of Bosnia and Herzegovina.

... 

(d) Each Entity may also enter into agreements with states and international organizations with the consent of the Parliamentary Assembly. The Parliamentary Assembly may also provide by law that certain types of agreements do not require such consent.

Evidently the background of these otherwise perhaps obscure


55. BH CONST. art. III.2 (a), (d).
provisions is to be found in the work of the Contact Group re-
cited above. The Constitutional Court is explicitly given jurisdicti-
on to determine:

Whether an Entity’s decision to establish a special parallel re-
relationship with a neighboring state is consistent with this Con-
stitution, including provisions concerning the sovereignty
and territorial integrity of Bosnia and Herzegovina.\footnote{56}{Id. art. VI.3(a), 1st sub-para.}

To the extent that the respective constitutions of the Federation
and of the Republika Srpska do purport to assign any
wider foreign relations powers to these Entities, such provisions
evidently become ineffective by the entry into force of the new
BH Constitution. In addition, within three months thereafter,
the Entities are required to amend their constitutions to con-
form with the BH Constitution.\footnote{57}{GFA, supra note 29, Annex 4, art. XII.2.}

Incidentally, paragraph 5 of Annex II to the Constitution on
"Transitional Arrangements" provides a special procedure for
denouncing treaties ratified by the BH Republic from January 1,
1992. Presumably, therefore, other treaties to which the BH Re-
public became a party by succession from the SFRY, or those it
ratified but that are not denounced, stay in force for Bosnia and
Herzegovina.

\textbf{G. Human Rights}

It can be argued that human rights violations, such as “eth-
nic cleansing,” are at the very heart of and indeed constitute the
real basis of the conflict in Bosnia, and that, consequently, any
stable resolution must include strong and effective provisions to
prevent further violations and to undo and/or punish, as far as
possible, those that have already occurred. As a result, all the
diverse proposals that the international community has made,
starting even before the current conflict was ignited, have heavily
emphasized the need to include in any new governmental ar-
rangements unusually powerful substantive and procedural pro-
visions for the protection of human rights in general, and those
of minorities in particular. As a matter of fact, these human
rights provisions have, generally, not been considered controver-
sial by any of the parties and at most minor adjustments have
been demanded. This, of course, does not signify that all the parties are devoted to human rights, but that on the one hand they see a tactical advantage in such a pretense and on the other that they are genuinely interested in seeing their own people protected in those situations where they live in territory controlled by another party.

These considerations have led to the development of a number of unusual or even unprecedented devices concerning both the substantive and the procedural protection of human rights. Because I recently analyzed these devices in some detail, the present study sets out only a general description.

In the Peace Agreement, almost all of these devices are used or at least reflected in three somewhat overlapping instruments:

(a) The Preamble and Article II of and Annex I to the new BH Constitution (GFA, Annex 4);
(b) The Agreement on Human Rights ("HR Agreement") (GFA, Annex 6);
(c) The Agreement on Refugees and Displaced Persons ("Refugee Agreement") (GFA, Annex 7).

1. Substantive Standards

Starting with the Carrington proposals, which of course referred not to Bosnia specifically but constituted an attempt to reconstruct all of the former Yugoslavia, two types of techniques have been used, one consistently and the other occasionally, to specify the human rights to be observed. The consistent technique has been to incorporate by reference a list of worldwide or European human rights instruments (mostly treaties, but also some declarations and agreed reports) whose provisions are to

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be observed, in most cases, as immediately applicable law binding on all governmental organs of the central state as well as of the constituent entities, and referable directly (i.e. self-executing without any need for legislative incorporation) in all courts. In addition, Bosnia would be required to become a party to these instruments wherever and as soon as possible, thus adding international obligations to the domestic strictures of the proposed

constitutional law and also ensuring international monitoring provided for in many of the instruments.

In the Carrington draft some 8 instruments or groups of instruments were cited specifically. In the Precursor to the VOP, 17 instruments were named and the same were also listed as applying in the interim period provided by the VOP; 19 appeared in the Invincible Plan and 21 in the Federation Constitution and in the Contact Group's tentative draft.

In addition, the Carrington draft also explicitly listed twelve fundamental rights, such as, "the right to life." No such listing appears in the subsequent proposals, until the Federation Constitution; in the course of negotiating that instrument, a list of 18 rights or bundles of rights agreed to as applying to all persons and 2 rights that only extend to citizens. The purpose of setting out these rights was not to strengthen the international list, which, of course, included instruments that are far more comprehensive and detailed (in particular the two 1966 International Covenants and the 1950 European Convention on Human Rights and Fundamental Freedoms with its Protocols), but optical and didactic; to show citizens the fundamental rights they can rely on without merely referring them to titles of international documents to which they were unlikely to have ready access.

Both the new BH Constitution and the HR Agreement utilize both these devices to establish the substantive human rights to be observed. Both rely primarily on the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto, which are referred to in the respective texts (BH Constitution, Art. II.2; HR Agreement, Ch. One, Art. I, chapeau), and supplement these with 15 other U.N. or Council of Europe treaties that are listed in Annex I to the BH Constitution and in an Appendix to the HR Agreement.62


62. These lists are identical to each other, except that the Appendix to the HR Agreement also lists the 1950 European Convention; they include all the treaties listed in the Annex to the BH Federation Constitution except for the 1961 European Social Charter and Protocol 1 thereto, but omit all the Declarations listed in that Annex and add the 1994 [Council of Europe] Framework Convention for the Protection of Na-
In addition, both the Constitution and the HR Agreement include an identical list of specified rights, ranging from "[t]he right to life" to freedom from discrimination.63

2. Procedural Devices

In addition to the requirement that all governmental organs and, in particular, the courts follow and enforce the applicable substantive human rights provisions, a variety of procedural devices were developed, most of which had, at least for an initial period, certain international elements.

The Carrington draft contained a proposal for the establishment of a Court of Human Rights, an idea that was preserved in the human rights provisions added to the Cutileiro Principles and in the Precursor to the VOP. In order to give greater authority to a such a prospective human rights court, ICFY proposed to the Council of Europe, and the latter then established a procedure whereby it could appoint a majority of European judges to an appropriate national "control body" established by a non-member of the Council.64 In all subsequently proposed or negotiated instruments, and in particular the Invincible Plan, the Federation Constitution, and the proposed Union Constitution, provisions were made for the establishment of such a Human Rights Court, to constitute the highest court of appeals on all human rights questions. Each of these instruments provided that the Court would have one judge from each "constituent people" (including the "others") and a suitable number of European judges equal to one more than the number of domestic judges. In each case, this Court was designed to function with its partly foreign composition until Bosnia becomes a member of the Council of Europe and, thus, subject directly to its human rights mechanisms.

In the Peace Agreement, this court has been transmuted by the HR Agreement (Ch. Two, Part C) into a "Human Rights Chamber," consisting of 14 members, acting either in two panels
of 7 or in plenary, of which the Federation (organ unspecified) is to appoint 4 members, the Republika Srpska 2 members, and the Committee of Ministers of the Council of Europe, acting under Resolution 93(6), 8 members who are not to be citizens of Bosnia or of any neighboring country — except that this latter arrangement is to cease after five years unless the parties to the HR Agreement (the BH Republic, the BH Federation, and the Republika Srpska) agree to prolong it. The Chamber is not, as previously conceived, to act as the highest appellate court on human rights questions, but instead is authorized to receive applications from a wide variety of sources (e.g. victims, NGOs). It has broad discretion as to whether or not to consider an application and, if it does so, whether first to try to reach a friendly settlement. In the absence of a settlement, it issues a decision determining the factual situation and the steps to be taken by any party to the HR Agreement, which the latter have undertaken to implement fully.

Another device that has been uniformly provided for, starting with the Precursor to VOP, is relatively powerful Ombudsmen, whose initial and basic functions would be set out in the central Constitution. Again, each constituent people would be represented, and the initial appointments would be made by an appropriate international body, and subsequently by a domestic legislative organ. The Federation Ombudsmen have already begun to function.65 Again, in the Peace Agreement this idea has been somewhat transmuted and included in the HR Agreement (Ch. Two, Part B), which establishes the Office of the Human Rights Ombudsman — headed by a single individual to be initially appointed for a five-year term by the Chairman-in-Office of the Organization for Security and Cooperation in Europe (OSCE) and thereafter by the BH Presidency. The Office is to receive allegations of human rights violations, unless these are referred directly to the HR Chamber, and is to investigate such allegations — for which it has broad powers — and to issue reports, any disregard of which by a party may be referred to appropriate national or international authorities.

65. The "Regulations on the method of executing their functions and on their internal organization" adopted by the Federation Ombudsmen on January 21, 1995, are reprinted in Protecting Human and Minority Rights in Bosnia, supra note 58, Addendum 10, at 304-10.
Some of the proposals have also provided for the operation of mixed domestic and international, or wholly international, human rights monitoring missions for at least a transitional period. These missions would have supplemented the normal international monitoring provided for by several of the human rights treaties to which Bosnia would be required to become a party. The Peace Agreement does not establish any international organ specifically charged with monitoring human rights in Bosnia, though both the "High Representative," who is to coordinate all civilian aspects of the implementation of the Peace Agreement (GFA, Annex 10), and the International Police Task Force (GFA, Annex 11) have certain relevant competencies. The HR Agreement does require (Ch. Three, Article XIII.1-4) the Parties to variously encourage, promote, invite, allow access to, and to cooperate with human rights NGOs and IGOs, including "any international human rights monitoring mechanisms established for Bosnia and Hezegovina;" this, presumably leaves open the possibility that such mechanisms might be established, individually or jointly, by the United Nations, the European Union, the Council of Europe, and the OSCE.

Finally, every proposed constitutional instrument, as well as the BH Federation Constitution, provided that they may not be amended in such a way as to eliminate or diminish substantive or procedural human rights provisions. This is also true of the new BH Constitution, which specifies that:

*Human Rights and Fundamental Freedoms.* No amendment to this Constitution may eliminate or diminish any of the rights and freedoms referred to in Article II of this Constitution or the present paragraph.  

Technically, this protective device does not extend to the HR and Refugee Agreements, which in form are independent international treaties, whose possible denunciation may be governed by Article 56 of the 1969 Vienna Convention on the Law of Treaties.

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66. BH Const. art. X.2.
67. Vienna Convention on the Law of Treaties, May 23, 1969, art. 56, 1155 U.N.T.S. 331, 345, 8 I.L.M. 679, 699. It should be noted that, at the time of the initialling or signing, at least two of the three parties (i.e. the BH Federation and the Republika Srpska) did not have generally recognized international legal personalities as states, and after signing they became mere "Entities" within Bosnia and Herzegovina, the legal continuation of the third party to the HR Agreement (the BH Republic).
3. Reversal of Ethnic Cleansing

In addition to the normal human rights provisions, each of the proposals contained largely similar provisions designed to undo, as far as possible, the effects of ethnic cleansing, i.e., the forcible and generally brutal removal of ethnic groups from areas controlled by another, whether on the basis of long-established majorities or of recent conquest. These provisions reflect the demands in several General Assembly and Security Council resolutions.68

In particular, the proposals uniformly provided (and the Federation Constitution provides) that all refugees and displaced persons must be permitted (but not required) to return to their former homes. In addition, they are entitled to reclaim their former property and to be compensated for any that cannot be returned to them — normally because it has been destroyed. In this connection, the proposals declare invalid all statements or commitments made under duress. In the Peace Agreement, these principles are first stated briefly in the new BH Constitution,69 and then largely repeated in the Refugee Agreement;70 the latter, however, fleshes out these provisions and adds numerous details regarding their implementation.71

Some instruments provided for the creation of special domestic or semi-domestic organs to assist in this process and some assigned certain new organs, such as the Ombudsmen, tasks in this connection. In the Peace Agreement, the principal responsibility for implementing these provisions is assigned to a Commission for Displaced Persons and Refugees established by the Refugee Agreement (Ch. Two) and consisting of 4 members appointed by the Federation, 2 by the Republika Srpska, and 3, initially for five years, by the President of the European Court of Human Rights and thereafter by the BH Presidency; the Commission has extensive powers, in particular in deciding on claims for the restoration of property or compensation in lieu thereof.

68. See Protecting Human and Minority Rights in Bosnia, supra note 58, at 250 n.63 (listing General Assembly and Security Council resolutions condemning practice of "ethnic cleansing").
69. BH Const. art. II.4.
70. GFA, supra note 29, Annex 7, Ch. One, art. I.1.
71. Id. Annex 7, Ch. One, arts. I-VI.
4. Cooperation with the Yugoslav War Crimes Tribunal

In the Invincible Plan and in earlier constitutional proposals, no account was yet taken of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991, which had been established by the Security Council in May 1993 but which only became active in the course of 1994 and issued its first indictments in November of that year.

The Federation Constitution prohibits any person convicted of war crimes or against whom proceedings concerning such crimes have been initiated (without specifying the jurisdiction), from being elected to any public office within the Federation. The new BH Constitution provides that:

No person who is serving a sentence imposed by the International Tribunal for the Former Yugoslavia [sic], and no person who is under indictment by the Tribunal and who has failed to comply with an order to appear before the Tribunal, may stand as a candidate or hold any appointive, elective, or other public office in the territory of Bosnia and Herzegovina.

In addition, in the GFA itself, the parties thereto agree to “cooperate fully with all entities . . . authorized by the United Nations Security Council, pursuant to the obligation of all Parties to cooperate in the investigation and prosecution of war crimes and other violations of international humanitarian law.” There are also a few other scattered references to the obligation of various specified organs to cooperate with the War Crimes Tribunal.

H. Military Arrangements

The Cutileiro Principles cautiously set aside for later consideration both the maintenance of armed forces in the future and the fate of the then existing army. The Precursor to the VOP

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74. BH Const. art. IX.1.
75. GFA, supra note 29, art. IX.
would have required the military to be entirely under the control of the central government, with group rotation of the key command posts and both integration and ethnic balance in the force — to be initially supervised by ICFY; the police were to be entirely provincial and no other armed forces would be permitted. Because all parties doubted the practicability of integrating their armed forces, which by the fall of 1992 had been fighting each other viciously for almost half a year, the VOP itself provided for progressive demilitarization under U.N. and EC supervision. The Invincible Plan similarly provided that neither the Union nor the Constituent Republics could have armed forces and that the existing ones would be progressively disarmed and disbanded under U.N. and EC supervision.

The Federation Constitution assigned to the BH Federation Government exclusive responsibility for, "[o]rganizing and conducting the defense of the Federation and protecting its borders, including establishing a joint command of all military forces in the Federation." The Contact Group's tentative Union Constitution would have required the two Constituent Entities, the BH Federation and the Republika Srpska, to conclude agreements limiting their respective armed forces in conformity with established Conference for Security and Cooperation in Europe ("CSCE") and Treaty on Conventional Armed Forces in Europe ("CFE") documents and agreements and, in any event, would have prohibited them from threatening or using force against each other.

In the new BH Constitution, national defense is conspicuously missing from the responsibilities assigned to the central government, which implies (by Art. III.3(a)) that this is a function of the two Entities. This implication is reinforced by a somewhat obscure provision relating to the Presidency:

Standing Committee
(a) Each member of the Presidency shall, by virtue of the office, have civilian command authority over armed forces. . .

All armed forces in Bosnia and Herzegovina shall operate consistently with the sovereignty and territorial integrity of Bosnia and Herzegovina.

(b) The members of the Presidency shall select a standing

Committed on Military Matters to coordinate the activities of armed forces in Bosnia and Herzegovina. The members of the Presidency shall be members of the Standing Committee.\footnote{77. BH Const. art. V.5.}

In addition, the Agreement on the Military Aspects of the Peace Agreement (GFA, Annex IA) contains extensive, albeit essentially transitional, provisions regarding the redeployment of the existing national military forces in Bosnia\footnote{78. GFA, supra note 29, Annex 1A, art. IV.} and for the establishment of a Joint Military Commission.\footnote{79. Id. Annex 1A, art. VIII.} More importantly, the Agreement on Regional Stabilization (GFA, Annex IB) provides in its Article IV ("Measures for Sub-Regional Arms Control") for the establishment of numerical limits on the holdings of specified weapons (as defined in the CFE Treaty), of the FRY, Croatia, the BH Federation, and the Republika Srpska, roughly in the ratio of their respective populations.

\textbf{CONCLUSION}

The disintegration of Bosnia-Herzegovina was the almost inevitable consequence of the fragmentation of the carefully balanced mosaic of nationalities of the SFRY, not along any natural fault lines but along the somewhat artificial boundaries set in the 1974 SFRY Constitution. The proposed reconstruction of Bosnia is, therefore, a singularly complicated and delicate affair that must be designed both to stop the current military conflict and to substitute at least a potentially viable constitutional structure. The three-sided nature and bitterness of the conflict and the expressed unwillingness of a substantial fraction of the Bosnian population to live peacefully with other Bosnians have led to a plethora of unprecedented and necessarily experimental constitutional proposals. The prospects for success of those that were finally adopted unfortunately depends less on the ingenuity of their design than on the will of the international community to enforce any arrangement made by or imposed on the parties.