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**CORRECTING DAYTON'S OVERSIGHT:
UNDERPINNING BOSNIA'S DEMOCRACY
WITH THE RULE OF LAW**

BY

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USAWC STRATEGIC RESEARCH PROJECT

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Underpinning Bosnia's Democracy
With The Rule of Law**

by

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ABSTRACT

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Dayton's civilian implementation tasks, designed to construct a democratic state in Bosnia and Herzegovina, may be grouped into four strategic categories, or pillars: political reconstruction, economic reconstruction, the return of refugees and displaced persons, and police reform. But Dayton's architects overlooked a critical element in development of the strategy — comprehensive legal reform. The evidence is clear that the rule of law must underpin the construction of democracy, that the path to the rule of law is comprehensive legal reform, and that the police in a formerly authoritarian state cannot be successfully reformed independently from the other components of the criminal justice system.

The new High Representative has recently elevated legal reform's priority, but it still lags behind Dayton's "strategic pillars." The HR must elevate its priority and resources to a level commensurate with that of the other strategic pillars, or risk Dayton's failure.

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"An understanding of and adherence to the rule of law is crucial to a healthy system of social organization, . . .and any effort to create and maintain such a system must itself rest on the rule of law."¹

— The Carnegie Commission on
Preventing Deadly Conflict

A democracy *must* be based upon the rule of law. The rule of law underpins all aspects of everyday life in a democracy. It is the means through which the common citizen is enfranchised, and the source of confidence that the state has the will and power to protect citizens' constitutionally guaranteed rights to life, liberty, and property. Confidence in the state and its ability and willingness to enforce the constitution and the rule of law is absolutely essential to citizen participation, which is in turn essential to democracy.

Without the rule of law, political opposition, one of the key means of enabling citizens to express their differences in a nonviolent way, is suppressed by threats and the use of violence.² Where as authoritarian systems must either crush dissent or be destroyed by it, democracy gains strength from it. An amazing concept when one pauses to contemplate its dynamics, democracy balances the powerful opposing political forces that crush other forms of government.

A fundamental characteristic of a democracy that distinguishes it from authoritarian regimes is democracy's

insistence upon the rights of the individual citizen. Those rights are enshrined in a democratic constitution, the mandate for the rule of law. However, without the means and will to enforce its provisions, a constitution is a collection of meaningless passages with no independent ability to protect the rights it promises. Democracy vests the responsibility for the constitution's enforcement — the protection of individual rights and the rule of law — in an independent, impartial legal system. Without the protection of the legal system, individual rights and the rule of law in an emerging democracy will be trampled under the boots of authoritarian political and criminal elements, along with any hope of democracy's survival.

The Constitution of the Republic of Bosnia and Herzegovina, (Annex 4 to the Dayton Agreement), contains the blueprint for a democratic state based on the rule of law. The objective of this paper is to demonstrate that: 1) comprehensive legal reform must be the foundation of any effort to establish the rule of law and democracy in a failed authoritarian state; 2) the Dayton Agreement failed to establish comprehensive legal reform and the rule of law as the foundation of its plan for constructing democracy in Bosnia; and consequently that 3) the accomplishments in Bosnia to date lack the foundation essential to long term durability and are subject to collapse as soon as NATO's military forces are withdrawn.

AN EMERGING INTERVENTION DOCTRINE

Frequently in this century the international community has stood helplessly on the sidelines while genocidal madmen like Pol Pot and the Hutu leadership in Rwanda slaughtered millions. Unable to muster the collective courage or political will to intervene, the world community instead restricted itself to *permissive* peacekeeping and humanitarian aid operations. With the fall of the Soviet Union came the end of the Cold War's political gridlock and the recognition by the United States that as the leader of the free world, it could no longer afford to sit safely at home while crises abroad turned into regional or global conflicts. With US leadership and support, the United Nations and the international community began to demonstrate a cautious, conditional willingness to step into the quagmire of failed or failing states in an effort to end large scale violence and suffering, restore order, and even to rebuild the state itself.

But the question of how to undertake such operations frustrated and challenged military planners. Their experience lay in planning and training for combat operations against a clear and measurable threat, and in *permissive* peacekeeping operations, where the threat of violence was low. Peace enforcement operations lay in the gray zone between the two, and had no definable boundaries, rules, or enemy:

"Contemporary peace enforcers are yoked to a massive paradox. They deploy to defend a system — the international legal system and the values it promotes

— which never anticipated and consequently makes no allowance for their work. There is a poor fit between the operational realities of peace enforcement and the uncertain powers vested in commanders of such operations."³

The results of operations in Somalia and Haiti began to provide answers to the questions of how to undertake enforced humanitarian assistance and enforced peacekeeping operations. Those answers in turn contributed to the development of the Dayton Agreement — the strategy for restoring order and building democracy in Bosnia and Herzegovina.

The lessons learned from Somalia, Haiti, and Bosnia are coalescing into a doctrine for enforced humanitarian and peacekeeping operations, offering the international community a viable alternative to inaction in the most horrid or internationally volatile situations. If it survives the Bosnia experiment, this new-found means of dealing with failing or failed states may in the final analysis prove far less costly politically, militarily, and financially than its more violent alternatives. Successful implementation of Dayton will also provide the world with direct evidence that conflict resolution through the construction of democracy is an effective means of establishing durable peace, political stability, and resolving human suffering in some situations. However, it will not happen without the rule of law as the foundation for democracy in Bosnia.

DAYTON' S FOUR PILLARS

The Dayton Agreement was initialed on 21 November, 1995 in Dayton, Ohio and signed on 14 December, 1995 in Paris. It brought together the representatives of the Republic of Bosnia and Herzegovina and its two entities, The Federation and Republika Srpska, with the Federal Republic of Croatia, and the Federal Republic of Yugoslavia (FRY). The Agreement ended the fighting in Bosnia, created the state of Bosnia and Herzegovina and defined its political framework, and set forth the military and civilian implementation tasks intended to construct a durable peace.

The military tasks were: to ensure continued compliance with the cessation of hostilities agreement; to ensure the withdrawal of forces from the Agreed Cease-Fire Zone of Separation; to ensure the separation of forces from the Inter-Entity Boundary Line; and to help create secure conditions for the conduct of the Agreement's civilian (reconstruction) tasks.⁴ The civilian tasks collectively identify the key activities for constructing a democratic state in Bosnia, supported by NATO's continued maintenance of the peace. Those key activities can be categorized into four core objectives, or strategic pillars: political reconstruction (political and constitutional institutions, free elections, human rights, etc.), economic reconstruction (including infrastructure rehabilitation and humanitarian aid), the return of refugees and displaced persons, and police reform (the establishment of a UN International Police Task Force

(IPTF)). The Agreement provides a constitution as the blueprint for the political system (Annex 4), and asks for a NATO Implementation Force (IFOR) to execute the military (enforcement) tasks.

DAYTON'S OVERSIGHT

Although Dayton recognized the connection between the rule of law and democracy in the constitution⁵, it failed to identify the means of establishing the rule of law — comprehensive legal reform — as one of its core objectives. Dayton's only reference to legal reform is a brief clause tasking the IPTF with: "... monitoring, observing, and inspecting law enforcement activities and facilities, including associated judicial organizations, structures, and proceedings."⁶ First, "monitoring, observing, and inspecting ..." is not a plan for judicial reform. Second, the judiciary is only one of several components which together operate as an inseparable criminal justice system, and which is in turn a part of the larger legal system. Third, the IPTF are *policemen*, not lawyers, prosecutors, and judges, and consequently lack the skill (and resources) to conduct the reform of Bosnia's legal system.

Instead of providing Bosnia's legal institutions with a comprehensive, integrated legal reform program, Dayton's emphasis on police reform actually undermines the emplacement of the rule of law in two ways. First, it overlooks the need for reforming the remainder of the legal system, and second, by doing so, it sets up police reform to take place as an independent reform activity:

"Although GFAP⁷ contained provisions related to the Constitution, Human Rights, and Policing, insufficient

attention was, in our view, given to the administration of justice and the development of a system of laws which not only comply with Human Rights but also and more importantly ensure they are protected . . . While breaches of Human Rights will almost certainly be identified by this system, they will be difficult to rectify unless a properly functioning, independent system of justice, at all levels is developed to protect them . . . It must also be emphasized that control of the police is something which can only [be] effectively done on a daily basis by a properly working legal system . . ."⁸

— Allied Command Europe Rapid Reaction Corps,
*ACE RRC Report on the Legal System in Bosnia
and Herzegovina*, 8 October 1996

A concept for the construction of a democratic state from a failed authoritarian state cannot afford to overlook the role of legal system reform in producing the rule of law, essential to the establishment of democracy. *"The judicial system of any developing country or emerging democracy is a key element in establishing democracy, the rule of law, and the protection of human rights, yet it is often ignored in favor of issues relating to the executive and legislative branches."*⁹ Dayton's architects failed to underpin their plan with the backbone of democracy — the rule of law. The consequences have been working against Dayton in the other reconstruction areas for over two years, and may ultimately undermine the entire reconstruction program unless corrected immediately.

DEMOCRATIC REFORM OF AUTHORITARIAN POLICE
MUST BE ACCOMPLISHED IN CONJUNCTION WITH
REFORM OF THE COURTS AND PRISONS

"...enforcement of law and order must be connected to a legitimate judiciary and penal system. There is little use in detaining perpetrators, for instance, if there is no court to take them to or no prison in which to put them. A legitimate and impartial police force . . . can just be one of the three parts of a triangle, the other two being an impartial judiciary and an impartial prison system."¹⁰

— Espen Barth Eide & Thorstein Bratteland
Norwegian Institute of International Affairs, from
Norwegian Experiences with UN Police Operations

In democracies, the police are not separate, independent activities, but rather are an inextricable link in the chain of justice. The police, along with the prosecutors, courts, and the penal system, comprise the criminal justice system, which is in turn part of the law enforcement component of the legal system (the other component being the law-making institutions). The rule of law depends upon each component of the criminal justice system working effectively with the others. Therefore, effective and lasting police reform must be carried out in concert with reform of the prosecutors, courts, and prisons, and those reforms must be supported by reform of the law-making bodies, legal education institutions, and other components of the legal system — comprehensive legal reform.

Dayton addresses the police, judicial reform, and the rule of law in an almost incongruous manner, as if police reform were a higher order task and judicial reform its component. An entire annex of the Agreement is devoted to the International Police Task Force, whose experience with police reform in Haiti made it a prime candidate for tackling the transition of Bosnia's police from authoritarian to democratic policing. However, also tucked into the IPTF's mission at Article III. para 1(a) of the IPTF annex is the task of *"monitoring, observing, and inspecting law enforcement activities and facilities, including associated judicial organizations, structures, and procedures."*¹¹

These seven words constitute Dayton's address of the reconstruction of Bosnia's legal system, from which the rule of law must emerge. Further, Dayton assigned the task to an organization (the IPTF) that was neither trained, manned, nor funded to undertake comprehensive legal system reform. US Army Lieutenant Colonel Steve Eckar, who worked with the IPTF while assigned to IFOR headquarters from June through December, 1996 reported that the IPTF's 2-3 staff attorneys were assigned to provide administrative support to the IPTF, not to undertake judicial reform tasks.¹²

There were lessons learned about reforming the police in isolation from the rest of the justice system from at least one earlier UN operation that never made their way into the strategy for Bosnia. In the keynote address to the joint Department of

Justice/Department of State workshop *Policing in Emerging Democracies*, held in Washington DC in December, 1995, Raymond W. Kelly, who had recently returned from overseeing the international policing operation in Haiti, warned:

"We quickly learned that police monitoring is inevitably linked to prison and judicial reform. A prison cannot be reformed without a drastic change in the judiciary. If a corrupt judiciary is left in place, it will quickly undermine all the hard work that went into reforming the police in the first place. It is an issue the United States should be prepared to deal with in other emerging democracies..."¹³

Time has confirmed the wisdom of Mr. Kelly's insight. Rachel M. Neild of the Washington Office on Latin America, in a January 1998 report *Can Haiti's Police Reform Be Sustained?* found serious problems with Haitian police reform as a consequence of its having been undertaken as an independent reform program:

"... Every analysis of police reform in Haiti has noted the dangers posed by the lack of progress in judicial reform.... A single institution cannot maintain a reform process in isolation within a larger contest of institutional paralysis."¹⁴ Not only did Mr. Kelly recognize the tenuous nature of Haiti's isolated police reform, but he warned that future democracy-building efforts should take note of the lessons from Haiti. Ironically, as Mr. Kelly concluded his remarks, the Bosnia operation was just beginning.

THE ABSENCE OF THE RULE OF LAW AND ITS IMPACT ON DAYTON

The consequence of Dayton's failure to establish legal reform as a top priority is for Bosnia a self-defeating circle. Throughout Bosnia, the courts are underfunded¹⁵ because of a lack of tax revenue to fund public programs. The lack of tax revenue is a direct consequence of the absence of lawful economic activity, which is in turn hindered in multiple ways by the lack of legal reform. Donors are unwilling to provide aid in areas demonstrating an unwillingness to comply with Dayton's provisions.¹⁶ Ethnic and religious discrimination and political corruption of government and criminal justice systems results in the withholding of donor aid that is desperately needed for housing, public services, and to start new businesses. New businesses would in turn generate tax revenue for the government, which would enable the government to fund improvements to the criminal justice system.

Instead, the Bosnian criminal justice system continues to operate under the 1977 Code of Criminal Procedure¹⁷ of the former communist Yugoslavia with judges who have to accept salaries from political bosses to make ends meet. The system continues to operate with judges and prosecutors who are members of the local political power structure, and with inadequately staffed courts. The system cannot obtain the financial assistance that would help

it bridge the gap between corruption and independence, between authoritarianism and democracy, because the government of Bosnia and Herzegovina cannot fund the reform programs, because of inadequate tax revenue. So the circle continues.

THE IMPACT ON POLITICAL CONSTRUCTION

(BUILDING DEMOCRACY)

Bosnia's constitution provides the blueprint for establishing the political institutions of a democratic state, and the High Representative is charged with carrying out those provisions. However, as is clearly evident in Bosnia today, the establishment of the Presidency, the Parliamentary Assembly, the Council of Ministers, and the Constitutional Court — the key democratic institutions — does not independently produce democracy. The architects of Bosnia's democracy must create the pre-conditions for the development of social trust, from which the citizenry develop the confidence that both the institutions of democracy and the participants will abide by the pact¹⁸ that binds the state — the constitution. Demonstrating this point in "Political Foundations of Democracy and the Rule of Law," Stanford's Barry Weingast cites Gabriel A. Almond and Sidney Verba's argument that: "*Social trust facilitates political cooperation among the citizens in [stable democracies], and without it democratic politics is impossible.*"¹⁹

When the participants in a democracy are willing to comply with the rules of the pact because a bond of social trust has formed, the participants themselves enforce the democracy by controlling the political elite through democratic processes, and thereby establish a self-enforcing democracy.²⁰ However, when some of the participants refuse to comply with the pact's (constitution's) provisions and resort to authoritarian methods of gaining power or advantage, a means of enforcement is essential to ensure compliance. Without compliance, the bond of social trust that holds democracy together is broken, or in Bosnia's case, never forms. Through its enforcement role, the justice system is the guardian of the bond of social trust.

In this role the legal (justice) system underpins the construction and preservation of democracy. If the justice system is too weak to fulfill its obligations to the democratic state and widespread injustice prevails, abrogating citizens' constitutional rights, the state runs the serious risk of losing their support as they turn to emerging authoritarian political powers for the security that the state cannot provide.

The role of protecting those rights and enfranchising democracy's citizens is vested in the legal system. Without comprehensive legal reform underpinning the construction of democratic political institutions, a new state ends up with an authoritarian-based legal system assigned the role of protecting citizens' individual rights. Consequently, those rights are never

realized, social trust never develops, and the citizens never muster or sustain the courage to participate in the democratic process, without which, there can be no democracy.

Early signs of limited citizen participation under the protection of NATO's Stabilization Force (SFOR) should not be mistaken for the empowerment of Bosnia's citizens. That participation will vanish instantly the moment SFOR withdraws from Bosnia as long as Bosnia's legal system continues to operate under the strong influence of authoritarian political and criminal organizations. An unbiased, independent legal system based on a democratic constitution must underpin the development of the political institutions for democracy to have a chance to survive.

THE IMPACT ON ECONOMIC RECONSTRUCTION

"Business can flourish only where there is a predictable and independent legal system invested with the power to enforce rules. Like civil and political rights, the rights to enforce contracts, safeguard commercial agreements, and protect property can only be secured by the rule of law."²¹

— The Lawyers' Committee for Human Rights

The absence of reform of contract and liability law on Dayton's economic reconstruction has been devastating, particularly in the Republika Srpska. The viability of trade and commerce in a free enterprise system is directly linked to business' ability to make binding, enforceable agreements to

support investments in property and equipment, hiring and training of workers, and provision of goods and services. The presence of a legal system that will enforce contracts generates investment in the economy, producing companies, jobs, goods, and services. Contract law is one of business' fundamental operating constructs, and is a function of the legal system.

When contracts are not enforceable in the courts, the only recourse for business is the system of informal agreements²² of the kind that underpin black markets. They are often enforceable only through intimidation or violence, and fall outside the ability of the state to collect taxes. Bosnia is already crippled by the informal system, and desperately needs the installation of a formal, dependable legal underpinning for the growth of a free market economy.

Liability law works hand-in-hand with contract law in a free market economy. The absence of liability law reform means that businesses have no protection against the possibility of losing their entire investment, and therefore will often not make the investment under such conditions:

"Another example of the importance of effective law to the development of an economy is liability law. The absence of liability law renders nearly impossible creating contracts or making long-term arrangements. The formal sector takes liability law for granted. However, without such protection, the risks that fall on an entrepreneur are exorbitant. ...Many business ventures are not begun because the risks are too high."²³

— Hernando de Soto
"The Informals Pose an Answer to Marx"

IMPACT ON DAYTON'S REFUGEE RETURN PROGRAM

The effect of inadequate legal reform of private property rights dramatically impacts Dayton's third strategic pillar — the return of refugees and displaced persons. The High Representative's January 1998 report to the UN Secretary General stated: *"Property and housing laws which block the return of hundreds of thousands are still in force, making full implementation of Annex 7 of the Peace Agreement impossible."*²⁴

When refugees try to return to their homes in areas that were subjected to ethnic cleansing, only to find that claims to property or occupancy are no longer protected by the law, their means of becoming "enfranchised," of gaining a participatory role in the reconstruction, evaporates. They remain displaced, generating political and economic consequences for their host states, and another of Dayton's strategic pillars is undermined.

Underscoring the full impact on Dayton's refugee return program by the lack of property reform, in a reference to the UN's 1998 Cluster Area Objective for refugee returns, the High Representative's December 1997 Refugee Return Task Force reported:

*"... the international community has no possibility of delivering on these targets in the context of continued non-compliant, corrupt and irresponsible leadership at the highest levels within the common institutions and within the entities ... The chief requirement among the latter are proper adoption and enforcement of compliant property legislation and housing allocation mechanisms and, transition to a market economy."*²⁵

THE ECONOMIC COST OF CORRUPTION

Corruption at community level perpetuates criminal activities that deprive families of economic aid that could generate community recovery. The situation in Teslic (RS) is an excellent example. On September 5, 1997 members of the High Representative's office, OSCE, UNHCR, IPTF, and SFOR, traveled to Teslic (RS) to meet with the Mayor, the Chief of Police, and the head of the Civil Protection Unit (CPU). The authorities in Teslic were continuing to lead and support illegal and unconstitutional activities targeting returning Bosniak citizens and resident Serbs who were attempting to mount political opposition against authoritarian abuse. Specific injustices included threats, violence, and burning or confiscation of Bosniak property. The head of the CPU was warned directly concerning his organization's connection to the local police and to these events. The UN delegation told Teslic's Mayor that donors would continue to withhold aid from Teslic until authorities demonstrate the willingness to comply with Dayton.¹⁸

The obstruction of Dayton and the absence of the rule of law are not just Republika Srpska problems. Croat political extremists in Una Sana canton (The Federation) are more than capable of balancing Bosnia's ethnic hatred scale deed-for-deed. Human Rights Watch/Helsinki reported in August 1997 that in Una Sana canton, where Alija Izetbegovic's Party of Democratic Action

(SDA) controls almost all functions of the government, including the police, officials systematically target the political opposition for persecution: *"The local police ... commit frequent acts of abuse, including the beating of individuals at the time of arrest and torture and ill-treatment during interrogation, and police frequently target individuals based upon their political opinions."*²⁶

In Jajce (The Federation), from January to July 1997, returning Bosniak citizens faced repeated house burnings and other violent incidents, to which the local police turned their backs. During August 1-3, 1997, Jajce locals conducted roadblocks in search of Bosniaks. The local police refused to intervene even though the IPTF asked them directly to do so. During those three days, approximately 500 Bosniaks were run out of town, forced to leave their homes because of threats, assaults, arson, and murder.²⁷

If homes and businesses in Teslic (RS) and Jajce (The Federation) were being built instead of burned, the construction would generate the need for electricians, plumbers, carpenters, building supply and hardware stores, furniture makers, machinists, heavy machinery operators, etc. The growth would in turn generate tax revenue for state and local governments, and investment income for private enterprise. But substantial World Bank funds available to fuel such growth²⁸ for many areas lie fallow because the political elite refuse to relinquish their

authoritarian grip. A strong legal system would hold them accountable to the constitution. The absence of comprehensive legal reform in Bosnia will sustain authoritarian political control at the "grass roots" level until Dayton's opponents are stripped of their authoritarian-based, criminally-enforced power.

CORRUPTION IN BOSNIA'S JUDICIARY

The American Bar Association/Central and Eastern European Law Initiative's (ABA/CEELI) January 1998 assessment of Bosnia's judiciary, while noting progress in some areas, found major challenges remaining throughout Bosnia, and particularly in the RS. The report characterizes the judiciary in the Republika Srpska as:

"... in no way a functioning democratic judiciary. Judges at every level have little or no independence from the political parties, suffer terrible working conditions, and are not familiar with the Dayton Constitution, its annexes, or new RS laws. Many judges have not been paid even their paltry salaries for months ... The judiciary is extremely politicized ..."²⁹

— American Bar Association/Central
and Eastern European Law Initiative

Inadequate judicial pay for judges throughout Bosnia was one of the more serious findings in the report. Judges salaries are so grossly inadequate that they must work second jobs to survive.³⁰ The ABA/CEELI report was not the first to highlight this problem. A report by Susan L. Somers (International Criminal Investigative Training and Assistance Program) and Lieutenant Colonel Thomas M. Reeves (Civil Military Cooperation Task Force) published in October 1996 noted:

"Adequate funding of the judiciary is a critical first step for the democratization of this society. The fiscal reality is such that a West Mostar Croat police officer is paid more than the Chief Justice of the Republika Srpska Supreme Court. This is not to suggest that a simple transfer of funds would enhance

democratization, but without providing judges and prosecutors with adequate salaries they will simply continue to leave the system for higher paying employment."³¹

Somers and Reeves identified the problem as critical in October 1996, and ABA/CEELI again identified and highlighted the problem in January 1998. How could something as fundamental to justice as the separation of judges from the influence of private salaries be permitted to continue uncontested for over two years while those implementing Dayton struggle daily against its effects?

The dependency of Bosnia's judges upon outside income has serious and obvious potential consequences for any attempt to separate the judiciary from the control of Dayton's opponents: *"In cases where a judge relies on other income, and ethical conflict of interest guidelines are vague and not strictly enforced, judges can be manipulated to hear and decide cases that affect those who control their livelihood."*³² Political parties continue to control the appointment of judges, just as they did in the communist days, behind closed doors,³³ *"... and political hacks are often put on the bench."*³⁴

LEGAL REFORM NEEDS THE KIND OF DONOR SUPPORT

RECEIVED BY DAYTON'S STRATEGIC PILLARS

The meager resources focused on the reform of Bosnia's legal system during Dayton's first two years came almost exclusively from independent sources not connected to the United Nations or the World Bank (which coordinates donor funding for the reconstruction). Consequently, funding for legal reform has been inadequate, and disproportionate to legal reform's relative importance to the reconstruction. For instance ABA/CEELI's program in Bosnia, funded by USAID, had a twelve month operating budget of about \$175,000 for mid-1995 to mid-1996; approximately \$500,000 for the following twelve months; and approximately \$615,000 for the period August 1997 to July 1998.³⁵ By comparison, the World Bank lender target for 1997-98 was US\$2.5 billion for Bosnia.³⁶ The Office of the High Representative estimates that as of January, 1998, a total of US\$1.5 billion has actually been expended.³⁷ (These figures do not include the budgets of myriad independent agencies working in Bosnia). When compared to funding available for the economic and political reconstruction and refugee return programs, initiatives such as USAID/ABA/CEELI's are too small to be measured on the same scale. The World Bank's assistance to the economic and refugee return programs is crucial. The Peace Implementation Council, which serves as the "Board of Directors" for Dayton's implementation,

should link the World Bank's donor/lender resources to the needs of the legal reform program as well.

RECOGNIZING PROGRESS TO DATE

"Since the signing of the . . . Dayton Accords in 1995, significant progress has been made in establishing a functional judicial system in BH . . . However, serious problems remain and severely limit the efficiency and independence of the court system. Material shortages, excessive political influence and the vestiges of the former communist system continue to impact all levels of the judiciary. Some state and entity level courts are not functioning effectively due to a total lack of funding from any source for international justices. During the next two years, the international community should dedicate financial resources, political pressure, and technical assistance to address these issues . . ."³⁸

— American Bar Association/ Central
and Eastern European Law Initiative
Sarajevo Office January 1998

Criticism of Dayton's failure to provide for reform of Bosnia's legal system should not overshadow the outstanding reform work carried out by a variety of governmental and nongovernmental organizations. Some have been quietly at work in Bosnia since before the signing of Dayton, but have not enjoyed the priority and resources available to Dayton's key programs:

*"Although the chief of CIMIC was named in January 1996, the peace agreement was silent on the judicial system. There were no civilian or military commissions to assess or revitalize this system..."*³⁹ Military lawyers from NATO's CIMIC (the Civil-Military Cooperation Task Force) have been at the cutting edge of legal reform efforts since before Dayton's signing, assisting the

Office of the High Representative's legal affairs department in Sarajevo since its formation.

Another organization at the cutting edge of legal reform in Bosnia since before Dayton is The American Bar Association/Central and Eastern European Law Initiative (ABA/CEELI), executing funding from the US Agency for International Development. CEELI pioneered many of the accomplishments to date, such as aiding the establishment of Bosnia's Constitutional Court and Bosnia's professional legal associations. Others conducting a variety of legal reform initiatives include the Organization for Security and Cooperation in Europe (OSCE), the Council of Europe, the Human Rights Chamber, the UN-Crime Prevention and Criminal Justice Division (UN-CPCJD), and the International Criminal Investigative Training and Assistance Program (ICITAP) of the US Department of Justice. Their accomplishments are too numerous to list here, but include providing assistance to the drafting of laws and supporting Sarajevo Law School's legal education program. ABA/CEELI, CIMIC, and others have conducted periodic assessments of Bosnia's legal system to determine its post-war condition and the requirements for converting it from an authoritarian system to a democratic system. The results of those assessments provide an excellent basis for determining the progress to date, and what must be done to put the construction of democracy in Bosnia on track.

The High Representative's Legal Affairs office in Sarajevo received little attention during the first two years of Bosnia's reconstruction, when higher priorities captured the High Representative's attention. Today, the office remains small, consisting of 13 attorneys (5 of whom are local nationals) who reportedly work 10-12 hours a day, seven days a week trying to hammer justice out of Bosnia's authoritarian system.

Essentially, the first two years of the reconstruction effort in Bosnia (Dec 95 - Dec 97) represent critical lost time for the rule of law. Recently, however, legal reform has begun to receive more attention by the High Representative, perhaps owing to Mr. Westendorp's assumption of that position.

First, the head of OHR's Legal Affairs department has been *nominally* elevated to the position of Deputy High Representative in recognition of his longevity in the High Representative's Office. However, functionally he remains equivalent to other department heads within OHR⁴⁰ (e.g. Public Affairs, Political, etc.). The receipt of the title "Deputy High Representative" is a positive indicator, but for now it is chiefly symbolic.

Second and more important, in a May 26, 1998 Judicial Reform Coordination Meeting, key legal reform organizations in Bosnia met in the OHR's office to review a draft strategy for tackling Bosnia's legal reform challenge in a coordinated program. The strategy covers seven categories: monitoring of the court system; legislative reform; judicial system restructuring; training;

public information and legal assistance; technical assistance, financial support, and personnel; and civil and commercial law.

Comparing the strategy to the recommendations in ABA/CEELI's *Judicial Reform concept Paper* (January 1998), the draft plan appears to be a solid first step toward a true comprehensive legal reform program, and deserves encouragement and support. In particular, it still lacks funding for many of the requirements identified. For example, monitoring the courts, reform of Federation and RS criminal codes, judicial restructuring, judicial salaries, staff support, prison reform, civil and commercial law projects, lawyers and judges professional associations, training, distribution of legal materials, and legal advice and assistance projects were all identified as having either insufficient resources or no resources with which to execute the program. This strategy is a firm step in the right direction, and warrants the immediate attention of the Peace Implementation Council for both political and funding support.

There are other favorable indicators of increased attention to legal reform. According to the results of the 10 December 1997 Bonn Peace Implementation Conference, the HR has invited the Council of Europe and the Organization for Security and Cooperation in Europe (OSCE) to cooperate with OHR in a legal and judicial reform program.⁴¹ While all three have been involved in reform already in one manner or another, the proposed union would represent a long-needed unity of effort. The Bonn conference

lauded the initiative, and went on to recommend further action, to include the establishment of a Commission for Inter-Entity Judicial Cooperation and a Task Force to focus on assessing and monitoring the courts, developing and training legal professionals, and restructuring legal institutions.

These initiatives are encouraging, but the condition of Bosnia's justice system remains critical and requires intensive rehabilitation. The program essentially lost two years, in which the only measurable gains were made by the relatively small, independent initiatives mentioned earlier. In spite of those commendable and important efforts, the Bonn Peace Implementation Conference found in December 1997 that:

"...Few steps have been taken to ensure that the direct application of the rights and freedoms set forth in the European Convention on Human Rights is effectively implemented in Bosnia and Herzegovina and underlying structural problems have yet to be addressed. Until these problems are resolved, human rights violations threaten to remain endemic."⁴²

Thirty days later, ABA/CEELI's January 1998 assessment of Bosnia's judiciary reported that "*...Material shortages, political influence, and the vestiges of the former communist system continue to impact all levels of the judiciary.*"⁴³

To place legal reform's current priority within the reconstruction program into perspective, the High Representative himself chairs the Economic [Reconstruction] Task Force⁴⁴ (the second strategic pillar), while legal reform continues to be executed at departmental level. In this context, legal reform

continues to be less than a "strategic pillar" of Bosnia's reconstruction.

Despite the Bonn conference's support for legal reform, their support to date is for narrow, *specific activities* that leave others, such as funding for judicial salaries, unaddressed. The Peace Implementation Council (PIC) or its Steering Board should immediately articulate broad support for a high priority, comprehensive legal reform program rather than validating specific tasks. Moreover, it should ensure the requisite resources are identified to fuel the program. The next Peace Implementation Conference should validate the authority in its conference report. With that authority and resource support, and the draft strategy already in-hand, the High Representative should take one more step and elevate the position of his nominal Deputy High Representative for Legal Affairs to that of a true Deputy High Representative with the authority and priority that accompany that office. Finally, with the backing of the PIC, he should turn to the World Bank for donor assistance to provide adequate funding for a significantly strengthened program.

CONCLUSION

Given that the rule of law is essential to democracy, and that its enforcement can only be successfully accomplished by a democratic legal system, it follows that a plan for constructing democracy in a formerly authoritarian state *must* establish legal reform as a cornerstone objective of the highest priority. To do so recognizes the role of the legal system in converting formerly authoritarian laws and procedures into democratic laws and procedures. Those laws and procedures in turn underpin all other aspects of the construction and operation of democracy and a free market economy. Without the rule of law as the foundation for political and economic reconstruction and refugee return, efforts in those areas are not durable and will not survive.

A reformed legal system will introduce laws and procedures that are compliant with the constitution, and criminal justice officials who will arrest and prosecute violators. In turn, the state's enforcement of a democratic constitution and its human rights provisions builds citizen confidence in the government, which motivates the citizen participation so essential to the formation of democracy.

The new High Representative has demonstrated the will to use the weight of his position on occasion to coerce compliance from resistant parties, as has his Deputy High Representative North, the Brcko Supervisor. That kind of determination will be essential to successfully implementing comprehensive legal

reform. Even with a finely tuned program supported by adequate personnel and financial resources, the challenges are formidable, and success will not be easy or painless. When reform begins to strike the nerve centers of authoritarian control and criminal activity at the local level, the most hard-core of Dayton's opponents may retaliate violently, as did Columbia's drug lords when that government attempted to break their hold on the country several years ago. If that happens, the determination and courage of the High Representative and the members of a reforming criminal justice system, particularly the police and judges, will be tested. But a sweeping, determined legal reform program (backed by the reinforcement of NATO's military when necessary) can break the back of Dayton's opponents in the coming year and institute the beginning of the rule of law in Bosnia and Herzegovina.

The alternative is unacceptable to NATO, the European Union, and the United States. Without comprehensive legal reform underpinning the reconstruction, short-term nation-building achievements in the political, economic, and refugee return areas will crumble as soon as the artificial support that braces them — SFOR — is removed. *In order for SFOR to be able to withdraw without risking Dayton's collapse, Bosnia's legal system must be strong enough to assume the power currently exercised by SFOR in protecting the UN-led construction of democracy.*

Dayton did not assign comprehensive legal reform a role in the construction of democracy in Bosnia. It is time for the Peace Implementation Council (PIC) to correct that oversight, and establish legal reform as the cornerstone of the international community's program in Bosnia. The PIC can refer to existing language on the rule of law at Annex 4 and the judiciary at Annex 11 of the Dayton Agreement, and to the legal reform work already underway, as the legal basis for strengthening the program without modifying Dayton. The PIC must move quickly. The conditions that permit the construction of democracy in Bosnia will not last indefinitely. Dayton's oversight must be corrected, while there is still time.

RECOMMENDATIONS

RECOMMENDATION ONE: The High Representative should elevate the position of Deputy High Representative for Legal Affairs to that of a true Deputy, and with the support of the Peace Implementation Council, empower him or her to oversee a strong, top priority comprehensive legal reform program. Other programs, such as the economic program (whose task force the High Representative personally chairs), continue to carry a higher priority. Because it underpins the success of Dayton's "strategic pillars," legal reform deserves the same priority as economic and political reform and refugee return.

RECOMMENDATION TWO: The Peace Implementation Council should immediately take up the issue of funding for the High Representative's Legal Reform program, and link World Bank donor efforts directly to the OHR's program. The Steering Board should provide political advice and support to the legal reform program, and ensure adequate resources are continually available. The High Representative's draft legal reform strategy is an excellent concept, but will never reach fruition without adequate funding.

RECOMMENDATION THREE: The UN should begin to address future intervention operations now by developing off-the-shelf plans designed to construct democracy in failed states that can be modified to fit the scenario. Building on lessons learned in

Haiti and Bosnia, they should ensure those plans are underpinned with a foundation of comprehensive legal reform from the outset. The US and UN should each identify organizations responsible for researching and drafting such plans.

ENDNOTES

¹ The Carnegie Commission on Preventing Deadly Conflict, *Preventing Deadly Conflict: Final Report* (Washington DC: The Carnegie Commission on Preventing Deadly Conflict, 1997), p.90.

² Larry Diamond, *A Report to the Carnegie Commission on Preventing Deadly Conflict*, (New York: Carnegie Corporation, 1995), p. 41.

³ Michael H. Hoffman, "War, Peace, and Interventional Armed Conflict: Solving the Peace Enforcer's Paradox," *Parameters*, Vol. XXV, No. 4, Winter 1995-96, p. 43.

⁴ "Conclusions of the Peace Implementation Conference Held at Lancaster House, London, 8-9 December 1995," paras 8-9 (<http://www.ohr.int/docu/d951208a.htm>); 29 April 1998.

⁵ The Constitution of Bosnia and Herzegovina found at Annex 4 of the General Framework Agreement for Peace, Article 1, Paragraph 2, Democratic Principles, establishes that Bosnia shall operate under the rule of law.

⁶ The General Framework Agreement for Peace in Bosnia and Herzegovina (The Dayton Accords), Annex 11, Article III, paragraph 1(a).

⁷ Ibid.

⁸ *ACE RRC Report on the Legal System in Bosnia and Herzegovina*, Office of the Legal Advisor, Allied Command Europe Rapid Reaction Corps, 8 October, 1996, p. 24.

⁹ Memo on Bosnia dated April 7, 1997 from James G. Apple, Chief of the Interjudicial Affairs Office of the US Federal Judicial Center, to George Huff of the Center's Administrative Office, Federal Judicial Center, Washington DC.

¹⁰ Espen Barth Eide and Thorstein Bratteland, "Norwegian Experiences with UN Police Operations," a paper prepared for the Institute of National Strategic Studies Workshop on Policing the New World Order, National Defense University, Washington DC, September, 1997.

¹¹ General Framework Agreement for Peace (Dayton Agreement), Annex 11, Article III, Para 1(a).

¹² Phone interview October 1, 1997 between Lieutenant Colonel Steve Eckar, US Army, Ft. McClellan, AL, and the author in Washington D.C.

¹³ Raymond W. Kelly, "Keynote Address: American Law Enforcement Perspectives on Policing in Emerging Democracies," from the workshop report, *Policing in Emerging Democracies: Workshop Papers and Highlights*, conducted December 14-15, 1995 in Washington DC by the US Departments of Justice and State (Washington DC: National Institute of Justice, 1997), p. 27.

¹⁴ Rachel Neild, *Can Haiti's Police Reform Be Sustained?*, a report published jointly by the National Coalition for Haitian Rights and the Washington Office on Latin America (Washington DC: Washington Office on Latin America, 1998), pps. 3, 22-24.

¹⁵ ACE RRC Report on the Legal System in Bosnia Herzegovina," 8 October 1996, pps 13-16; "A Functional Review of the Criminal Justice System in Bosnia and Herzegovina," by Susan L. Somers and Lieutenant Colonel Thomas M. Reeves, 28 October 1996, pps. 10-11; American Bar Association/Central and Eastern European Law Initiative "Bosnia and Herzegovina Judicial Reform Concept Paper," January 1998; pps. 7-11. The ABA/CEELI report (Jan 98) notes the continuing need for funding support in almost every area of Bosnia's judiciary.

¹⁶ High Representative's Weekly Human Rights Update, 7-14 September 1997, (<http://www.ohr.int/hr.htm>); Dec 97, p. 1.

¹⁷ *A Report on the Legal System in Bosnia and Herzegovina*, Office of the Legal Advisor, Headquarters Allied Command Europe Rapid Reaction Corps (ACE RRC), 8 October, 1996, p.2, para 1.2.1.

¹⁸ Barry Weingast, "The Political Foundations of Democracy and the Rule of Law," *American Political Science Review* (Washington DC: American Political Science Review, 1997), Vol. 91, No. 2, June 1997, pps. 246, 251, 261. Weingast says that "Democratic stability requires that citizens agree on the limits on the state that they are to defend . . .," that the transition to stable democracy requires the construction of a pact that specifies those limits, and that a constitution is such a pact.

¹⁹ Gabriel A. Almond and Sidney Verba, [1963] 1989. *The Civic Culture: Political Attitudes and Democracy in Five Nations*. Newbury Park, CA: Sage as cited by Weingast, Barry, "The Political Foundations of Democracy and the Rule of Law," *American Political Science Review* (Washington DC: American Political Science Review, 1997), Vol. 91, No. 2, June 1997, p. 254.

²⁰ Weingast, pps. 245-262.

²¹ The Lawyers Committee for Human rights, *IN THE NATIONAL INTEREST*, 1996 Quadrennial Report on Human rights and US Foreign Policy (New York: Lawyers' Committee for Human Rights, 1996), p. xi.

²² Hernando de Soto, "The Informals Pose an Answer to Marx," *THE NEW DEMOCRACIES: Global Change and US Policy*, ed. by Brad Roberts, (Cambridge, MA: The MIT Press and the Center for Strategic and International Studies, 1990), first printed in *THE WASHINGTON QUARTERLY* 12, No. 1, (Winter 1989). pps. 92-96.

²³ Ibid. p. 92.

²⁴ Report of the UN High Representative for the Implementation of the Bosnian Peace Agreement to the Secretary General of the UN, 16 January 1998, para 66, (<http://www.ohr.int/reports/r980116a.htm>), 13 February 1998.

²⁵ Office of the High Representative, *Repatriation and Return Task Force Report*, December 1997, para 4.3.2 (<http://www.ohr.int/rrtf/9712-02.htm>); February 13, 1998.

²⁶ Human Rights Watch/Helsinki, "BOSNIA AND HERCEGOVINA, Politics of Revenge, The Misuse of Authority in Bihac', Cazin, and Velika Kladusa," (New York: Human Rights Watch/Helsinki, August 1997), Vol. 9, No. 9, p. 4.

²⁷ High Representative's Weekly Human Rights Update, 7-14 September 1997, pps.2-3.

²⁸ "Bosnia and Herzegovina and The World Bank," undated, (<http://www.worldbank.org/htm/extrdr/offrep/eca/bshcb.htm>); April 9, 1998. The World Bank has led coordination of lender and donor conferences for Bosnia's reconstruction, and has identified over \$5B in requirements ranging from infrastructure (utilities, hospitals, power, etc.) to economic programs to provide loans for business start-ups, house construction, etc.

²⁹ ABA/CEELI *Bosnia and Herzegovina Judicial Reform Concept Paper* (Sarajevo: American Bar Association/Central and Eastern European Law Initiative, January 1998), p. 10.

³⁰ Ibid., p.3.

³¹ *A Functional Review of the Criminal Justice System in Bosnia and Herzegovina*, Susan L. Somers and Lieutenant Colonel Thomas M. Reeves, 28 October 1996, Sarajevo, Bosnia. Ms. Somers is an attorney who, at the time of this report, was serving as a consultant to the US Justice Department's International Criminal Investigative Training and Assistance Program (ICITAP). LTC Reeves is also an attorney who was serving on NATO's Civil-Military Implementation Committee.

³² ABA/CEELI *Judicial Reform Concept Paper*, p. 8.

³³ *Ibid.*, pps. 7-8.

³⁴ *Ibid.*

³⁵ Interview with Nicolas Mansfield, American Bar Association/Central and Eastern European Law Initiative, Washington DC, January 28, 1998.

³⁶ "Bosnia and Herzegovina and The World Bank," undated, (<http://www.worldbank.org/htm/extrdr/offrep/eca/bshcb.htm>); April 9, 1998.

³⁷ "Report of the UN High Representative for the Implementation of the Bosnian Peace Agreement to the Secretary General of the UN," 16 January 1998, paragraph 72; (<http://www.ohr.int/reports/r980116a.htm>); 13 Feb 98.

³⁸ ABA/CEELI *Bosnia and Herzegovina Judicial Reform Concept Paper*.

³⁹ John Tuozzolo, "The Challenge of Civil-Military Operations," *Joint Forces Quarterly*, Summer 1997, p. 56.

⁴⁰ Email from Lieutenant Colonel Chip Erdmann to the author 27 May 1998. LTC Erdmann is assigned to OHR's Legal Affairs department.

⁴¹ Report of the Bonn Peace Implementation Conference, "Bosnia and Herzegovina 1998: Self-Sustaining Structures," 10 December 1997, para 2(c), (<http://www.ohr.int/docu/d971210a.htm>); 27 May 1998.

⁴² Bonn Peace Implementation Conference 1997, *Conclusions*, "Bosnia and Herzegovina 1998: Self-Sustaining Structures," 10 December 1997, Section I.

⁴³ ABA/CEELI *Bosnia and Herzegovina Judicial Reform Concept Paper*, p.1.

⁴⁴ High Representative's quarterly report to the UN Secretary General, 16 January 1998.

BIBLIOGRAPHY

1. American Bar Association/Central and Eastern European Law Initiative, "ABA/CEELI Bosnia and Herzegovina Judicial Reform Concept Paper," January 1998, (Sarajevo: American Bar Association/Central and Eastern European Law Initiative, 1998).
2. Apple, James G., Chief of the Interjudicial Affairs Office of the Federal Judicial Center, Washington DC: memo on Bosnia dated April 7, 1997 addressed to George Huff of the Center's Administrative Office.
3. Carnegie Commission on Preventing Deadly Conflict, *Preventing Deadly Conflict: Final Report*, (Washington DC: The Carnegie Commission on Preventing Deadly Conflict, 1997).
4. *Conclusions Of The Peace Implementation Conference Held At Lancaster House, London, 8-9 December 1995*, (<http://www.ohr.int/docu/d951208a.htm>), February 20, 1998.
5. Dahrendorf, Ralf, "Adam Smith Was An Optimist," *THE NEW DEMOCRACIES: Global Change and US Policy*, ed. by Brad Roberts, (Cambridge, MA: The MIT Press and the Center for Strategic and International Studies, 1990); first printed in *THE WASHINGTON QUARTERLY* 10, No. 4 (Autumn 1987).
6. de Soto, Hernando, "The Informals Pose an Answer to Marx," *THE NEW DEMOCRACIES: Global Change and US Policy*, ed. by Brad Roberts, (Cambridge, MA: The MIT Press and the Center for Strategic and International Studies, 1990), first printed in *THE WASHINGTON QUARTERLY* 12, No. 1, (Winter 1989).
7. Diamond, Larry, "Beyond Authoritarianism and Totalitarianism: Strategies for Democratization," *THE DEMOCRATIC REVOLUTION*, by Brad Roberts: a report of the third annual CSIS Leadership Forum (Washington DC: The Center for Strategic and International Studies, 1989); first published in *TWQ* 12, No. 1, Winter, 1989.
8. Diamond, Larry, "Promoting Democracy in the 1990s, A Report to the Carnegie Commission on Preventing Deadly Conflict," (New York: Carnegie Corporation, 1995).
9. Eide, Espen Barth and Bratteland, Thorstein, "Norwegian Experiences with UN Police Operations," (Oslo: Norwegian Institute of International Affairs, September 1997), a paper presented at the Institute for National Strategic Studies, Ft. McNair, Washington DC, workshop on Policing the New World Order, September 1997.

10. Gnessotto, Nicole, "Lessons of Yugoslavia," *Chaillot Papers*, (Paris: Institute for Security Studies, 1994).
11. Hayward, Jack and Edward C. Page, eds., *Governing the New Europe*, (Durham, NC: Duke University Press, 1995).
12. Hoffman, Michael, "War, Peace, and Interventional Armed Conflict: Solving the Peace Enforcer's Paradox," *Parameters*, Vol. XXV, No. 4, Winter 1995-96.
13. Human Rights Watch/Helsinki, "BOSNIA-HERCEGOVINA, Politics of Revenge, The Misuse of Authority in Bihac', Cazin, and Velika Kladusa," (New York: Human Rights Watch/Helsinki), August 1997, Vol 9, No. 9.
14. Human Rights Watch/Helsinki, "BOSNIA-HERCEGOVINA, No Justice No Peace, The United Nations International Police Task Force's Role in Screening Local Law Enforcement," (New York: Human Rights Watch/Helsinki), September 1996, Vol 8, No. 15.
15. Johnsen, William T., *DECIPHERING THE BALKAN ENIGMA: Using History to Inform Policy*, (Carlisle Barracks, PA: U.S. Army War College Strategic Studies Institute, 1995).
16. Kelly, Raymond W., "Keynote Address: American Law Enforcement Perspectives on Policing in Emerging Democracies," from the report on the workshop conducted December 14-15, 1995 in Washington DC by the US Departments of Justice and State (Washington DC: National Institute of Justice, 1997).
17. LaPalombara, Joseph, *Politics Within Nations*, (Englewood Cliffs, NJ: Prentice-Hall, Inc., 1974).
18. "17-03-97 Fact Sheet: NATO Fact Sheet No. 11 on NATO in Bosnia," March 1997, (<http://www.nato.int>), 24 September 1997.
19. Neild, Rachel, *Can Haiti's Police Reforms Be Sustained?*, A Report by the National Coalition for Haitian Rights and the Washington Office on Latin America, (Washington DC: Washington Office on Latin America, January, 1998).
20. Office of the Legal Adviser, Headquarters Allied Command Europe Rapid Reaction Corps, "A Report on the legal System in Bosnia and Herzegovina," 8 October 1996.
21. Roberts, Brad, *THE DEMOCRATIC REVOLUTION*, A Report of the Third Annual CSIS Leadership Forum, (Washington DC: The Center for Strategic and International Studies, 1989).

22. Rose, Richard, "Dynamics of Democratic Regimes," *Governing the New Europe*, Jack Hayward and Edward C. Page, eds., (Durham, NC: Duke University Press, 1995).
23. SFOR/LANDCENT, Transcript: Joint Press Briefing by the OSCE Democratization Branch, 9 September 1997, Sarajevo (<http://www.xs4all.freenet.kiev.ua/nato/ifor/landcent/+970909b.htm>), 29 January 1998.
24. Sismanidis, Roxane D., *Police Functions in Peace Operations*, (Washington DC: US Institute of Peace, 1997).
25. Somers, Susan L. and Lieutenant Colonel Thomas M. Reeves, "A Functional Review of the Criminal Justice System of Bosnia and Herzegovina," 28 October 1996, (report sponsored by the US Justice Department's International Criminal Investigative Training and Assistance Program/Combined-Joint Civil-Military Cooperation Task Force), Sarajevo, Bosnia and Herzegovina.
26. *The Challenge of Law Reform*, (Princeton: Princeton University Press, 1955) as cited by Abraham, Henry J., *The Judicial Process*, (New York: The Oxford University Press, 1962).
27. The General Framework Agreement for Peace in Bosnia and Herzegovina, 14 Dec 95 (<http://www.ohr.int/gfa/gfa-frm.htm>), April 29, 1998.
28. The Lawyers' Committee for Human Rights, *IN THE NATIONAL INTEREST*, 1996 Quadrennial Report on Human Rights and US Foreign Policy (New York: Lawyers' Committee for Human Rights, 1996).
29. "TRUTH COMMISSIONS: A Comparative Assessment," An Interdisciplinary Discussion Held at Harvard Law School in May 1996, organized by the Human Rights Program of Harvard Law School and the World Peace Foundation (Cambridge, MA: Harvard Law School Human Rights Program, 1977).
30. Tuozzolo, John J., "The Challenge of Civil-Military Operations," *Joint Forces Quarterly*, Summer 1997.
31. UN High Representative, "Repatriation and Return Task Force Report, December 1997" (<http://www.ohr.int/rtrtf/9712-02.htm>), February 13, 1998.
32. UN High Representative for the Implementation of the Bosnian Peace Agreement, "Report of the UN High Representative for the Implementation of the Bosnian Peace Agreement to the Secretary General of the UN," October 16, 1997 (<http://www/ohr.int/reports.Htm>), December 1997.