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**PROTECTING HUMAN AND MINORITY RIGHTS IN BOSNIA:
A DOCUMENTARY SURVEY OF INTERNATIONAL PROPOSALS**

PAUL C. SZASZ*

Massive offenses against human rights are at the very heart of the conflict concerning the future of Bosnia and Herzegovina, one of the successor states to the former Socialist Federal Republic of Yugoslavia. Indeed, it can be argued that human rights violations, such as “ethnic cleansing,” are the real basis of the current conflict, and that 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.¹

Consequently—and this is less well known—all the diverse proposals that the international community has made during the three years that this conflict has already raged, and even before it was ignited, have heavily emphasized the need to include in any new governmental arrangements unusually powerful substantive and procedural provisions for the protection of human rights in general and those of minorities in particular. Although only one of these many proposals has actually been brought into force and is being implemented,² this sparse result is not due to the human rights aspects on which this study is focused, but rather to the overriding political differences between the parties that for the present appear to preclude their acceptance of any peaceful solution. As a matter of fact, the human rights provisions of these proposals have in general never been considered controversial by any party and at most minor adjustments have been demanded. This does not mean that all the parties are actually devoted to human rights, but that on the one hand all see a tactical advantage in such a pretense (and a severe public

* Adjunct Professor, New York University School of Law, and Legal Adviser to the International Conference on the Former Yugoslavia.

1. See miscellaneous statements made by Cyrus Vance and Lord Owen reproduced in *International Conference on the Former Yugoslavia: The Co-Chairmen of the Steering Committee and Human Rights Issues in the Former Yugoslavia*, U.N. SCOR, 48th Sess., Annex I to U.N. Doc. S/25221 (1993).

2. See Constitution of the Federation of Bosnia and Herzegovina [hereinafter Federation Constitution] described *infra* part I.D.

relations danger in appearing to oppose them), and on the other that they are genuinely interested in seeing their own people protected in situations where these people must or prefer to live within territory controlled by another party or ethnic group.

The object of this study is to present, first (in chronological order) the various instruments in which the successive international proposals are set out, with the texts relevant to human rights reproduced either in the text or in the addenda. Next, attention will be drawn to the various unusual, indeed often unique, features of these human rights-related proposals. Finally, there is a brief mention of litigations concerning war crimes.

I. THE INTERNATIONAL PROPOSALS

A. *The Carrington Conference*

1. "Treaty Provisions for the Convention"

In September 1991, the Committee of Ministers of the European Community (EC) convened the EC Peace Conference on Yugoslavia, also called the Carrington Conference after its Chairman, the Brussels Conference after its headquarters, or the Hague Conference after its usual venue. Following extensive consultations and negotiations, Lord Carrington on October 18, 1991, presented a text titled "Treaty Provisions for the Convention,"³ which was designed to hold together the already disintegrating Socialist Federal Republic of Yugoslavia (SFRY), albeit in a somewhat looser format; consequent on further negotiations, a slightly revised version was produced on November 4.⁴ The leaders of five of the six Yugoslav Republics accepted the text in principle, but President Milosevic of Serbia refused to do so.⁵ However, the extensive provisions concerning "Human rights of members of national or ethnic groups" set out in Chapter II⁶ have constituted a model or at least inspiration for most subsequent proposals advanced in respect to Yugoslavia generally or with respect to one or more of the Republics, including Bosnia and Herzegovina.

2. European Political Cooperation Declarations

On December 16, 1991, in the framework of the European Political Cooperation (EPC), the EC Ministers for Foreign Affairs issued in Brussels:

3. See *Report of the Secretary-General Pursuant to Paragraph 3 of Security Council Resolution*, U.N. SCOR, 46th Sess., para. 24 and Annex VII, U.N. Doc. S/23169 (1991).

4. See Add. 1 for extracts.

5. U.N. Doc. S/23169, *supra* note 3, at paras. 23-27.

6. See Add. 1.

(a) A Declaration on the “Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union,”⁷ in which they *inter alia* included the following two requirements:

respect for the provisions of the Charter of the United Nations and the commitments subscribed to in the Final Act of Helsinki and in the Charter of Paris, especially with regard to the rule of law, democracy and human rights;

guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE;⁸

(b) A “Declaration on Yugoslavia,”⁹ which established a special procedure whereby the ex-Yugoslav states could attain recognition by the EC and its members, *inter alia* by declaring by December 23, 1991 whether:

they accept the commitments contained in the above-mentioned guidelines [i.e. those set out in (a) above];

they accept the provisions laid down in the draft Convention [i.e. that referred to under part I.A.1. above]—especially those in Chapter II on human rights and rights of national or ethnic groups—under consideration by the Conference on Yugoslavia;¹⁰

3. Arbitration Commission Opinion No. 4

Pursuant to the procedure set out in the EPC Declaration on Yugoslavia,¹¹ the Arbitration Commission of the EC Peace Conference on Yugoslavia reviewed the application for recognition submitted by the government of the Republic of Bosnia and Herzegovina (then still a part of the SFRY) and issued its Opinion No. 4 “On International Recognition of the Socialist Republic of Bosnia-Herzegovina by the European Community and its Member States.”¹²

7. European Political Cooperation Press Release P.129/91, *reprinted in* 31 I.L.M. 1486 (1992).

8. *Id.* at 1487.

9. *Id.* at 1485.

10. *Id.* at 1485-86.

11. *See* part I.A.2., *supra*.

12. 31 I.L.M. at 1501. *See* Add. 2 for the relevant parts of Opinion No. 4. Similar Opinions were given in respect to Croatia, *id.* at 1503 (No. 5—together with later supplementary comments on a constitutional law adopted by Croatia consequent to the critique of the human rights provisions in the original Opinion, *id.* at 1505), Macedonia (No. 6), *id.* at 1507, and Slovenia (No. 7), *id.* at 1512.

4. The Cutiliero "Statement of Principles"

As a consequence of Opinion No. 4, Bosnia and Herzegovina moved towards attaining independence. Because there was great danger that once that goal was reached the ethnic differences in the new country would promptly tear it apart, the EC Conference initiated a Round of Talks on Bosnian Constitutional Arrangements, under the Chairmanship of Ambassador J. Cutiliero of Portugal. On March 18, 1992, at the conclusion of the 5th Round of Talks, held in Sarajevo, a three-page "Statement of Principles for new constitutional arrangements for Bosnia and Hercegovina" was tentatively agreed to by the leaders of the three principal Bosnian parties (representing respectively the Muslims, the Serbs and the Croats).¹³ At the conclusion of the 6th Round, held in Brussels on March 30-31, *inter alia* a four-paragraph addition on "Human Rights" was agreed to.¹⁴ However, the Statement of Principles was denounced almost immediately thereafter, and the war in Bosnia and Herzegovina broke out.

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, 1992.¹⁵ The Conference, *inter alia*, adopted a "Statement on Bosnia."¹⁶

The London Conference also established the International Conference on the Former Yugoslavia (ICFY), also called the Vance-Owen Negotiations and later the Stoltenberg-Owen Negotiations after the 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 "[On] Bosnia and Herzegovina."¹⁷

C. The International Conference on the Former Yugoslavia

1. Initial Consultations

Because, at least in principle, human rights appeared to be the least controversial issue among the three then-warring parties in Bosnia and Herzegovina, the Chairman of the Working Group On Bosnia and Herzegovina, (now President, then) Ambassador M. Ahtisaari of Finland,

13. See Add. 3 for the human rights related provisions.

14. See Add. 3.

15. The full set of documents adopted at the London Conference is *reprinted in* 31 I.L.M. 1531-48 (1992).

16. *Id.* at 1537. See Add. 4 for extracts.

17. *Id.* at 1535.

decided to start his consultations with the parties on that subject. For this purpose he distributed to them on September 25, 1992, the following three papers:¹⁸

(a) "Revised checklist of international human rights instruments relevant to a Constitution for Bosnia and Herzegovina (BiH)," listing forty-nine United Nations, Council of Europe and CSCE instruments (treaties, declarations and reports) on the subjects of: "General Human Rights, especially Civil and Political Rights;" "Protection of Minorities;" "Economic, Social and Cultural Rights;" and "Citizenship and Nationality;"

(b) "List of human rights that might be considered for inclusion in, or other protection under, the BiH Constitution," listing some thirty rights under four general headings similar to those set out in the paragraph above and keyed to twenty-four of the instruments included in the checklist; and

(c) "Preliminary thoughts for discussion on implementation, enforcement, and guarantees of human rights provisions of the BiH Constitution," outlining fourteen measures under the headings of: "Wholly Domestic Mechanisms;" "Partially International Mechanism[s];" and "Wholly International Mechanisms."

These three papers, which were generally—though not formally—accepted by the parties, constituted the foundation of all the subsequent proposals of ICFY and of associated negotiators on the subject of human rights in relation to Bosnia and Herzegovina.

2. Precursor to the Vance-Owen Plan

After further consultations in the ICFY Working Group On Bosnia and Herzegovina, the Co-Chairmen of the ICFY Steering Committee, Cyrus Vance and Lord Owen,¹⁹ at the end of October 1992, presented a "Proposed constitutional structure for Bosnia and Herzegovina" to the UN Security Council, the ICFY Steering Committee, and to the parties.²⁰ The most detailed provisions are those set out in section VI on "Human and group/minority rights" and in the Appendix on "International human rights treaties and other instruments to be incorporated by reference into the Constitution of Bosnia and Herzegovina" (listing seventeen of the forty-nine

18. See *Report of the Secretary-General on the [ICFY]*, U.N. SCOR, 47th Sess., para. 32(2)-(4), U.N. Doc. S/24795 (1992).

19. *Id.* para. 1.

20. *Id.* para. 33 and Annex VII (extracted in Add. 5).

instruments or groups of related instruments included in the original checklist).²¹

3. The Vance-Owen Plan

On January 2, 1993, at the first joint meeting of the three Bosnian parties under the auspices of ICFY (which was also attended by the Presidents of the Republic of Croatia, of the Federal Republic of Yugoslavia, of Serbia, and of Montenegro), the Co-Chairmen of the ICFY Steering Committee presented a set of proposals²² that became known as the "Vance-Owen Plan." As that Plan evolved during the next several months,²³ it came to consist of four draft instruments, of which two contained provisions of particular relevance for human rights:

(a) "Agreement relating to Bosnia and Herzegovina,"²⁴ section I of which set out nine principles that constituted the proposed "Constitutional framework for Bosnia and Herzegovina"—these principles were extracted from the "Proposed constitutional structure" document described in part I.C.2. Principle (8) read as follows: "The highest level of internationally recognized human rights shall be provided for in the Constitution, which shall also provide for the ensurance of implementation through both domestic and international mechanisms."²⁵

(b) "Agreement on interim arrangements,"²⁶ section H of which concerned the "Protection of Human Rights and the Reversal of Ethnic Cleansing," and was supplemented by Appendix C, "International human rights treaties and other instruments to be applied in Bosnia and Herzegovina during the interim period," listing seventeen instruments or groups of related instruments under the same four headings described under part I(C)(1) above.

21. See *supra* part I.C.1.a.

22. See *Report of the Secretary-General on the Activities of the [ICFY]*, U.N. SCOR, 48th Sess., U.N. Doc. S/25050 (1993). This and subsequent reports merely reproduce the texts of reports submitted to him by the Co-Chairmen of the ICFY Steering Committee.

23. See *Report of the Secretary-General on the Activities of the [ICFY]*, U.N. SCOR, 48th Sess., Annex to U.N. Doc. S/25100 (1993); *Report of the Secretary-General on the Activities of the [ICFY]*, U.N. SCOR, 48th Sess., U.N. Doc. S/25221 (1993); *Report of the Secretary General on the New York Round of the Peace Talks on Bosnia and Herzegovina* (3-8 February 1993), U.N. SCOR, 48th Sess., U.N. Doc. S/25248 (1993); *Report of the Secretary-General on the Activities of the [ICFY]*, U.N. SCOR, 48th Sess., U.N. Doc. S/25403 (1993); *Report of the Secretary-General on the Activities of the [ICFY]: Peace Talks on Bosnia and Herzegovina*, U.N. SCOR, 48th Sess., U.N. Doc. S/25479 (1993); and *Report of the Secretary-General on the Activities of the Co-Chairmen of the Steering Committee of the [ICFY]*, U.N. SCOR, 48th Sess., U.N. Doc. S/25708 (1993).

24. Annex II to U.N. Doc. S/25479, *supra* note 23.

25. *Id.*

26. Annex I to U.N. Doc. S/25479, *supra* note 23. See also Add. 6 for extracts.

4. Owen-Stoltenberg or *Invincible* Plan

After the collapse of the Vance-Owen Plan due to its rejection by the Bosnian Serbs in May 1993,²⁷ new negotiations started during July and August under the auspices of the ICFY Steering Committee Co-Chairmen (now Thorvald Stoltenberg and Lord Owen), which culminated on September 20, 1993, with a plenary negotiating session on the British aircraft carrier *Invincible*.²⁸ The new plan or "Agreement Relating to Bosnia and Herzegovina"²⁹ would have created a much less centralized state consisting of a Muslim, a Serb, and a Croat Republic, loosely held together in a "Union of Republics of Bosnia and Herzegovina." The draft "Constitutional Agreement of the Union of Republics of Bosnia and Herzegovina" constituted Appendix I to the Agreement; section V of that draft was titled "Human Rights and Fundamental Freedoms," and was supplemented by three annexes: Annex B, "Composition and Competence of the Human Rights Court;" Annex C, "Human Rights Instruments Incorporated into the Constitutional Agreement" (listing nineteen instruments or groups of related instruments); and Annex D, "Initial Appointment and Functions of the Ombudsmen." In addition, Part 2(C)-(D) of Appendix II ("Agreed Arrangements Concerning the Constitutional Agreement on the Union of Bosnia and Herzegovina") contains some supplementary provisions concerning the composition and functions of the police forces and the reversal of ethnic cleansing; because these were negotiated after substantial consensus had already been reached on the draft Constitutional Agreement, they were for tactical reasons included in a separate text.

The *Invincible* Plan failed because the government of the Republic of Bosnia and Herzegovina ("BH") did not consider that the 30% of the entire BH territory to be allocated to the Muslim Republic was sufficient,

27. The U.N. Secretary-General reported on the peace talks that had taken place in Athens on May 1-2, at which the President of the Bosnian Serbs had signed the instruments constituting the Vance-Owen Plan, subject to ratification by the Bosnian Serb Assembly. *Report of the Secretary-General on the Activities of the [ICFY]*, U.N. SCOR, 48th Sess., U.N. Doc. S/25709 (1993). However that body, at the urging of the President, rejected these texts within a week and called for a referendum to confirm that rejection; the referendum less than two weeks later overwhelmingly rejected the Vance-Owen Plan. *Report of the Co-Chairmen of the Steering Committee of the [ICFY]*, U.N. SCOR, 48th Sess., Annex to U.N. Doc. S/26066 (1993).

28. See *Report of the Co-Chairmen of the Steering Committee of the [ICFY]*, U.N. SCOR, 48th Sess., Annex to U.N. Doc. S/26233 (1993); *Report of the Co-Chairmen of the Steering Committee on the Activities of the [ICFY]*, U.N. SCOR, 48th Sess., Annex to U.N. Doc. S/26337 (1993); *Report of the Co-Chairmen of the Steering Committee on the Activities of the [ICFY]*, U.N. SCOR, 48th Sess., Annex to U.N. Doc. S/26395 (1993); and *Report of the Co-Chairmen of the Steering Committee on the Activities of the [ICFY]*, U.N. SCOR, 48th Sess., Annex to U.N. Doc. S/26486 (1993).

29. The final *Invincible* Plan was not set out in any published document, but a slightly earlier version, the human rights provisions of which were identical to those that appeared in the Plan, were set out in an Addendum to *Letter Dated 20 August 1993 from the Secretary-General Addressed to the President of the Security Council*, U.N. SCOR, 48th Sess., U.N. Doc. S/26337/Add.1 (1993). See also Add. 7 for extracts.

demanding a minimum of 33 1/3%.³⁰ From November 1993 to January 1994, the Foreign Ministers of the new European Union (which succeeded the EC upon the entry into force of the Maastrich Treaty)³¹ attempted to revive the Plan in cooperation with ICFY, but insisted that the Muslims be offered at least one-third of BH territory. Though that figure was ultimately accepted by the Bosnian Serbs no complete agreement could be reached,³² and subsequent events caused the Plan to be superseded.

D. The Federation of Bosnia and Herzegovina

Soon after the collapse of the negotiations designed to revive the *Invincible* Plan, the United States sponsored negotiations between the Bosnian Muslim (now called "Bosniac") and Croat parties, in which the government of the Republic of Croatia also joined. These negotiations 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," signed in Washington on March 1, 1994,³³ and subsequently in the "Constitution of the Federation of Bosnia and Herzegovina"³⁴ and the "Preliminary Agreement Concerning the Establishment of a Confederation Between the Federation of Bosnia and Herzegovina and the Republic of Croatia,"³⁵ signed in Washington on March 18, 1994. The Federation Constitution entered into force in accordance with its terms on March 30, 1994,³⁶ though its actual implementation is still lagging, this text so far constitutes the only one of the proposals discussed in this section of the study that has become operative.

30. See *Report of the Co-Chairmen of the Steering Committee on the activities of the [ICFY]*, U.N. SCOR, 48th Sess., Annex to U.N. Doc. S/26486 (1993).

31. For text see 31 I.L.M. 247 (1992); for note on entry into force, see 32 I.L.M. 1693 (1993).

32. *Report of the Co-Chairmen of the Steering Committee on the activities of the [ICFY]*, U.N. SCOR, 48th Sess., Annex to U.N. Doc. S/26922 (1993); and *Report of the Co-Chairmen of the Steering Committee on the activities of the [ICFY]*, U.N. SCOR, 49th Sess., Annex to U.N. Doc. S/1994/64 (1994).

33. Both texts annexed to *Letter Dated 3 March 1994 From the Permanent Representatives of Bosnia and Herzegovina and Croatia to the United Nations Addressed to the Secretary-General*, U.N. SCOR, 49th Sess., U.N. Doc. S/1994/255 (1994). The human rights provisions relating to the Federation appear in section V of the Framework Agreement and in the annex thereto—which is identical to the corresponding list in the *Invincible* Plan (see Add. 7, App. I, Annex C).

34. *Reprinted in* 33 I.L.M. 740 (1994). See Add. 8 for extracts.

35. *Id.* at 611.

36. ODLUKU: O PROGLAŠENJU USTAVA FEDERACIJE BOSNE I HERCEGOVINE [Resolution adopting the Constitution of the Federation of Bosnia and Herzegovina], I(1) SLUZBENE NOVINE FEDERACIJE BOSNE I HERCEGOVINE [Official Journal of the Bosnia and Herzegovina Federation] 1 (1994). For the Bosnian and Croatian language versions of the Federation Constitution see *id.* at 1 and 11.

The Federation Constitution, in section II on “Human Rights and Fundamental Freedoms,” sets out both “General” provisions and those relating to the “Initial Appointment and Functions of the Ombudsmen.” These are supplemented by section IV(C)(5) on “The Human Rights Court” and the transitional provisions relating thereto in section IX, article 9(d), as well as by an annex on “Human Rights Instruments to be Incorporated into the Federation Constitution” (listing twenty-one instruments or groups of related instruments).³⁷

E. The Bosnian Contact Group

With the Bosnian Muslims and Croats united in the Federation of Bosnia and Herzegovina, it remains to reach some sort of accommodation between the new Federation and the Bosnian Serbs, who at present occupy some 70% of the country. Such an accommodation will have to have at least two aspects: (1) A territorial division, concerning which a Contact Group of the United States, Russia, France, Germany, and the United Kingdom, which was established in May 1994, in association with ICFY, has proposed to allocate 51% to the Federation and 49% to the Serb entity; and (2) A constitutional structure that would relate the two entities in some mutually acceptable way. At this time no proposals have yet been officially advanced concerning such a structure, which might take the form of a very loose “Union,” the constitution of which is expected to contain human rights provisions similar to those of the Federation.

II. ANALYSIS OF THE PROPOSED HUMAN RIGHTS PROVISIONS FOR BOSNIA AND HERZEGOVINA

A. Substantive Provisions

1. International Human Rights Instruments

It is a special, probably unique feature of the successive constitutional proposals made to resolve various aspects of the current crises resulting from the disintegration of the former Yugoslavia, and especially those concerning Bosnia and Herzegovina, that the substantive obligations concerning human rights are largely or even exclusively expressed by incorporating by reference a substantial list of international human rights instruments.³⁸ The reasons for this approach are two-fold:

37. See Add. 8 for extracts. Instead of the 19 instruments or groups of instruments listed in four categories in the Framework Agreement, the newer list eliminated the categories, combined two of the previous listings and, at the request of the parties, added three instruments—items 17, 18, and 21 in Add. 8, Annex.

38. See Add. 1, ch. II, art. 2(a)1(l); Add. 5, Annex VII and App.; Add. 6, App. C; Add. 7, App. I and Annex C; and Add. 8, Annex.

(a) A desire by the international negotiators who prepared these successive proposals to avoid all-too-heavy reliance on mere recitations of established human rights (e.g., the right to life) which, unless explained in detail, would necessarily have to be interpreted in terms of the established meaning of these terms that had appeared in previous Yugoslav constitutional instruments. These meanings were not generally known by the negotiators and were in any event regarded with considerable suspicion in view of the massive violations of human rights currently occurring in ex-Yugoslavia.

(b) The tremendous time pressure under which most of these constitutional proposals were formulated, sometimes allowing only hours for the preparation of the entire human rights sections of a new draft instrument.

The latter consideration was certainly an important factor in the very first instrument in which this feature appeared, paragraph 1(k) of article 2 of the Carrington Conference's "Treaty Provisions for the Convention" (Carrington Proposal).³⁹ As pointed out above, the human rights provisions of that otherwise failed instrument achieved general acceptance and were therefore deliberately imitated in subsequent essays.

i. Bases for Selection of the Instruments

The sources of the instruments selected for inclusion are essentially the same for all these lists: world-wide instruments formulated by the United Nations or under the auspices of the International Committee of the Red Cross (ICRC); European instruments formulated by the Council of Europe (C/E); and some "Atlantic" instruments formulated by the Conference [now Organization] on Security and Cooperation in Europe (CSCE). Already the above-cited provision of the Carrington Proposal relied on these sources. The SFRY itself had been a party to practically every U.N. human rights treaty⁴⁰ and a vocal supporter of most of the non-treaty instruments; it also aspired, as did the successor states, to full integration into the European Community, which required acceptance of its human rights regime.

Although the potential list of such U.N., ICRC, C/E, and CSCE instruments is very long,⁴¹ the instruments selected for inclusion in these successive lists were necessarily restricted because of their proposed utilization as explained under part II.A.1.b.ii. below, to instruments expressed in normative terms, i.e. as a series of rules, rather than discursively. Consequently most of the instruments listed are treaties, only some are

39. See *supra* part I.A.1.

40. As of September 1, 1987 the SFRY was a party to 18 out of 22 U.N. human rights treaties and a signatory of another, compared, for instance, to the United States, which was party to only six and a signatory of six others. UNITED NATIONS, HUMAN RIGHTS: STATUS OF INTERNATIONAL INSTRUMENTS, U.N. Doc. ST/HR/5, U.N. Sales No. E.87.XIV.2 (1987).

41. See the reference to 49 instruments in part I.C.1. *supra*.

declarations, and only a very few are in the form of reports—except in the Carrington Proposal in which a number of CSCE “documents” are listed.⁴²

Finally, it should be noted that the instruments selected fall into four categories, which are in some instances expressly identified:⁴³ general human, especially civil and political rights; group, especially minority rights;⁴⁴ economic, social, and cultural rights; and citizenship and nationality rights. For the most part, each instrument falls fairly clearly under one or another of these categories, though the Universal Declaration of Human Rights (UDHR)⁴⁵ clearly covers rights under the first and third categories, and the International Covenant on Civil and Political Rights (ICCPR)⁴⁶ also covers some rights in the second and fourth categories.

ii. Methods of Utilizing the Instruments

From the proposed provisions in which the listed international instruments are referred to, it appears that there are the following three distinct purposes of incorporating them into constitutional instruments.⁴⁷

The first and most important reason is to make the provisions of the listed instruments immediately applicable domestic constitutional law, binding on all organs of the government, including the courts. Thus the treaty instruments (which predominate in the lists) do not require any further incorporating legislation, whether or not by their nature or by the established practice of the ex-Yugoslav states they would be considered as self-executing. This is the principal reason why the instruments listed are generally limited to ones expressed normatively, for otherwise such direct incorporation into domestic law would not be possible. It is also the reason why, for the most part, only treaties are referred to, as their provisions are ones—unlike those of mere declarations—that states have explicitly agreed to abide by. Therefore declarations (except for the UDHR to which a number of the parties explicitly wished to refer) are only used in connection with subjects,

42. Add. 1, ch. II, art. 2(a)1(l).

43. See, e.g., Add. 5, Annex VII, art. VI.A.2. and App.

44. These rights are specified in greatest detail in Add. 1, ch. II, art. 2(b) and (c). In subsequent instruments these rights are mostly covered by just a few of the international instruments listed in the attached schedules, in particular those listed in Add. 8, Annex, items 18-21: the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE; paras. 10-13 of the 1990 C/E Parliamentary Assembly Recommendation 1134 (1990) on the Rights of Minorities (see also *infra* note 48); the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; and the 1992 European Charter for Regional and Minority Languages.

45. G.A. Res. 217A (III), adopted on 10 December 1948, U.N. Doc. A/810, at 71 (1948).

46. International Covenant on Civil and Political Rights, opened for signature, Dec. 16, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368. See also Add. 8, Annex, item 10.

47. For an explicit explanation of these purposes, see Add. 5, Annex VII, App., intro. paras.

especially group and minority rights, as to which few, if any treaties, have yet been adopted.⁴⁸

With one exception, there is no differentiation in the legal force to be attributed to the various provisions of the several instruments listed. Only in the Precursor to the Vance-Owen Plan (Pre-VOP)⁴⁹ and in the *Invincible* Plan⁵⁰ are the economic, social, and cultural rights characterized as merely aspirational, and in the latter the protection of groups and minorities are referred to similarly. In the BH Federation Constitution, the only one of the proposed instruments so far in force, such a distinction has been abandoned.⁵¹

Although presumably each of the listed human rights instruments is largely free of internal contradictions, it is possible that there may be some discrepancies between different instruments—especially instruments with different sources (e.g., those of the U.N. and the C/E), and especially between such instruments and some explicitly listed rights.⁵² In a few proposals, care has been taken to specify that in such instance “the provision providing the greater protection of human rights shall be applied.”⁵³ In most instruments there is no equivalent provision as such a rule of construction appears to be self-evident.⁵⁴

The second purpose of referring to particular instruments is to require the state concerned to become a party to such instruments if and when possible.⁵⁵ Evidently, this is not possible in respect of non-treaty instruments, such as declarations and reports. Also, in respect of most C/E treaties

48. It is thus likely that the reference to the 1990 C/E Parliamentary Assembly Recommendation 1134 (1990) on the Rights of Minorities, paras. 10-13, the only normative parts of the Recommendation (see Add. 8, Annex, item 19), will in future instruments be replaced by the Framework Convention for the Protection of National Minorities, done Feb. 1, 1995, 34 I.L.M. 351 (1995) (adopted by the C/E Committee of Ministers on November 10, 1994).

49. Add. 5, Annex VII, section VI.A.2(c). See also *supra* part I.C.2.

50. Add. 7, App. I, section V, art. 2. See also *supra* part I.C.4.

51. Add. 8, section II.A., art. 2. See also *supra* part I.D. It should be noted that the earlier distinction might be considered as contrary to point 5 of the Vienna Declaration and Programme of Action of the UN World Conference on Human Rights, adopted on June 25, 1993. *Report of the World Conference on Human Rights*, U.N. GAOR, U.N. Doc. A/CONF.157/24 (Part I) at 20 (1993). According to that point: “All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. . . .”

52. See *infra* part II.A.2.

53. E.g., Add. 6, Annex I, para. H.1.

54. Nevertheless, the European Commission for Democracy through Law (the so-called “Venice Commission”), in an *Opinion on the constitutional aspects of Recommendation 1238 (1994) of the Parliamentary Assembly on the situation in Bosnia-Herzegovina*, C/E Doc. CDL(94)53 Revised, App. to *Communication from the Committee of Ministers*, Eur. Parl. Ass., Doc. No. 7203 (1994), notes this omission critically and suggests that it will be for the Constitutional Court or the Court of Human Rights to establish through case law the principle that “the provision most favourable to the rights of the individual would be applicable in the event of conflict.” *Id.* para. A.2.

55. E.g., Add. 1, ch. II, art. 2(d)8.; Add. 7, App. I, section V, art. 3.

participation is restricted to members of the Council. However, there is no obstacle to prompt participation in any of the U.N. human rights treaties (indeed most are open to all states); as the SFRY had been a party to most such treaties, any successor state need only file an instrument of succession with the U.N. Secretary-General (the depositary of these treaties). The reason for insisting on such participation in treaties that have already been incorporated into domestic law by the constitution itself is a desire to add, to the domestic constitutional force, the binding force of an international agreement which obligates a state vis-à-vis all the other parties.⁵⁶

The third purpose of the listing and the requirement to become a party to treaty instruments, is to impose the international monitoring mechanisms provided for in an increasing number of human right treaties,⁵⁷ so as to supplement the other domestic and international control mechanisms referred to under part II.B. below.⁵⁸

2. Provisions to be Explicitly Set Out in Constitutions

In addition to the extensive rights that would accrue from the scheduled international instruments to be incorporated by reference into the constitutions, some of the proposed texts also list certain rights explicitly.⁵⁹ As the incorporated rights are in any event more complete and detailed than those that would thus be set out in the constitutions themselves, the principal purpose of doing so is optical, that is to show to citizens the principal human rights they can rely on, without merely referring them to the titles of international instruments to which they are unlikely to have ready access.⁶⁰ It is generally made clear that these expressly listed rights are to be interpreted in light of the scheduled international instruments.⁶¹

Whether there is a listing of general human rights, there almost always are provisions relating to the special problem of the reversal of "ethnic cleansing," that is the particularly despicable practice characterizing much of the conflicts in Bosnia and Herzegovina and in Croatia. That term, which

56. See arts. 26 and 27 of the Vienna Convention on the Law of Treaties, *done* May 23, 1969, 1155 U.N.T.S. 331, 339.

57. *E.g.*, the Human Rights Committee established by the ICCPR, *supra* note 46, art. 28, 999 U.N.T.S. at 179, 61 I.L.M. at 376.

58. See, *e.g.*, Add. 1, art. 2(d)8.; Add. 5, App., intro. para. (c); Add. 7, App. I, section V, art. 4.

59. See Add. I, ch. II, art. 2(a)1(a)-(j); Add. 8, section II.A., art. 2.

60. It might be expected that the government of any state or entity whose constitution does set out a list of instruments, would issue their texts, in the local language, in a collection readily available to all.

61. *E.g.*, Add. 8, section II.A., art. 2 (intro. paras.). It also regrets that the protection of minority rights received only a simple mention. The Venice Commission, in its Opinion, does express the concern that in spite of this language the specifically listed rights might be considered to be accorded higher value than those not listed, and suggests "it will be for the supreme courts of the Federation to clarify this point." See paras. A.2.-3. of the Opinion, *supra* note 54.

was coined in these conflicts, designates the practice of an ethnic group in military control of a territory seeking to remove the members of other ethnic groups therefrom, often by frightening such populations by random or selective killings, sexual assaults, confiscations or destruction of property, etc.⁶² Naturally, these practices have been explicitly condemned by the international community, whose organs have numerous times expressed their abhorrence and the need to reverse the effects.⁶³ These provisions cover some or all of the following matters: (a) Return of refugees and displaced persons;⁶⁴ (b) Restoration of property and compensation for losses.⁶⁵ in

62. Examples of such practices abound in the numerous reports on human rights violations filed with the United Nations by member states, including both those outside of the conflict and those directly involved, by non-governmental organizations (NGOs), and especially by the Special Rapporteur for Former Yugoslavia appointed by the U.N. Commission on Human Rights. See, e.g., those set out in the following General Assembly and/or Security Council documents: *Human Rights Questions: Human Rights Situations and Reports of Special Rapporteurs and Representatives*, U.N. GAOR, 47th Sess., Agenda Item 98(c), U.N. Doc. A/47/418 (1992); *Human Rights Questions: Human Rights Situations and Reports of Special Rapporteurs and Representatives*, U.N. GAOR, 48th Sess., Agenda Item 115(c), U.N. Doc. A/48/92 (1993). See also Paul C. Szasz, *The Proposed War Crimes Tribunal for Ex-Yugoslavia*, 25 N.Y.U. J. INT'L L. & POL. 405, 431 n.81 (1993).

63. E.g., U.N. General Assembly resolutions on "The situation in Bosnia and Herzegovina," G.A. Res. 121, adopted on 18 December 1992, U.N. GAOR, 47th Sess., pmb. paras. 9, 14, U.N. Doc. A/RES/47/121 (1993); G.A. Res. 88, adopted on 20 December 1993, U.N. GAOR, 47th Sess., pmb. para. 12, paras. 3, 8, U.N. Doc. A/RES/48/88 (1993); G.A. Res. 10, adopted on 3 November 1994, U.N. GAOR, 49th Sess., pmb. para. 14, paras. 6-9, U.N. Doc. A/RES/49/10 (1994); as well as related resolutions dealing directly with certain human rights aspects, G.A. Res. 80, adopted on 16 December 1992, U.N. GAOR, 47th Sess., U.N. Doc. A/RES/47/80 (1993) on "'Ethnic cleansing' and Racial Hatred;" G.A. Res. 147, adopted on 18 December 1992, U.N. GAOR, 47th Sess., U.N. Doc. A/RES/47/147 (1993), on "Situation of human rights in the territory of the former Yugoslavia;" G.A. Res. 143, adopted on 20 December 1993, U.N. GAOR, 48th Sess., U.N. Doc. A/RES/48/143 (1994), on "Rape and abuse of women in the areas of armed conflict in the former Yugoslavia;" G.A. Res. 153, adopted on 20 December 1993, U.N. GAOR, 48th Sess., U.N. Doc. A/RES/48/153 (1994), on "Situation of human rights in the territory of the former Yugoslavia: violations of human rights in the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro);" G.A. Res. 196, adopted on 23 December 1994, U.N. GAOR, 49th Sess., U.N. Doc. A/RES/49/196 (1995) on "Situation of human rights in the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro);" G.A. Res. 205, adopted on 23 December 1994, U.N. GAOR, 49th Sess., U.N. Doc. A/RES/49/205 (1995), on "Rape and abuse of women in the areas of armed conflict in the former Yugoslavia." See also numerous UN Security Council resolutions, e.g., S.C. Res. 771, U.N. SCOR, 47th Sess., pmb. para. 3, para. 2, U.N. Doc. S/RES/771 (1992); S.C. Res. 787, U.N. SCOR, 47th Sess., paras. 2, 7, 8, U.N. Doc. S/RES/787 (1992); S.C. Res. 808, U.N. SCOR, 48th Sess., pmb. para. 6, U.N. Doc. S/RES/808 (1993); S.C. Res. 819, U.N. SCOR, 48th Sess., pmb. paras. 5, 6, paras. 5-7, U.N. Doc. S/RES/819 (1993); S.C. Res. 941, U.N. SCOR, 49th Sess., pmb. paras. 5, 8, paras. 2-4, U.N. Doc. S/RES/941 (1994); S.C. Res. 947, U.N. SCOR, 49th Sess., paras. 7-8, U.N. Doc. S/RES/947 (1994).

64. See Add. 7, App. II, part 2.D.1.; Add. 8, section II.A., art. 3. It should be noted that this is different from a general right of settlement, which was included in Add. 7, App. I, section V, art. 5(a), but was, by decision of the parties, deliberately omitted from Add. 8, section II.A.

65. See Add. 7, App. I, art. V(5)(a); App. 8, section II.A., art. 4.

this connection it is also provided that statements made under duress are to be treated as “null and void.”⁶⁶

It should be noted that a number of the other provisions of the proposed constitutional instruments also contain dispositions relevant to certain aspects of human rights. These include requirements for democratic governance and for the ethnic balancing of governmental appointments, in particular of the police.⁶⁷

B. Procedural Provisions

It was recognized from the beginning that the assurance of human rights requires more than just their listing in constitutional instruments, in no matter what form, detail and solemnity, but also the establishment of institutions that can ensure the observance of these rights. Also, since suspicions between the successor Republics of the former SFRY and especially between the contending ethnic groups within some of them, constitute such important factors in the ongoing conflict, purely national control measures would not suffice, at least in the beginning.⁶⁸

1. Fully Domestic Procedures

In all the proposed constitutions it is either explicitly or implicitly provided that all organs of government are bound to comply with the human rights provisions set out directly in the constitution or incorporated therein by reference to the scheduled international instruments.⁶⁹ In some of the instruments the access of all persons to domestic courts is explicitly required.⁷⁰

2. Mixed Domestic and International Procedures

a. Human Rights Court

The establishment of a “Court of Human Rights” to resolve questions concerning human rights, and especially group and minority rights, was

66. This refers to statements that are often demanded in the course of ethnic cleansing that those leaving the territory in question do so “voluntarily” and also yield up all rights to real and personal property abandoned there. See Add. 6, Annex I, para. H(1), final sentence; Add. 7, App. II, part 2(D)(1); see also the provisions cited in *supra* note 65.

67. *E.g.*, Add. 3, Statement of Principles, para. B(1)(b)-(c); Add. 5, Annex VII, sections I(D)(1)(c), V(B)(1)(b); Add. 6, Annex I, para. H(5); Add. 7, App. II, part 2(C)(1)-(3).

68. See, *e.g.*, Add. 1, ch. II, art. 2(A)(5B); Add. 3, Statement of Principles, para. B(1)(e), and Additional Part paras. (2)-(4); Add. 5, Annex VII, section I(D)(1); Add. 8, section IX, art. 9.

69. *E.g.*, Add. 7, App. I, section V, art. 2; Add. 8, section II.A., art. 6.

70. See Add. 5, Annex VII, art. VI.B.4.; Add. 6, para. H.2.(a).

already foreseen in the Carrington Proposal.⁷¹ In later proposals this requirement was further developed and became a constant feature.⁷² It was also recognized that such a court would, at least initially, have to have a decisive number of foreign judges appointed by an authoritative organ of the international community, to supplement several domestic judges who would be appointed from the various ethnic groups in the country. The first thought (in the Pre-VOP) was that these external judges should be appointed by the Presidents of the European Court of Human Rights and the European Commission of Human Rights, both organs of the C/E.⁷³ However, after ICFY Co-Chairman Lord Owen made a proposal to this effect to the C/E Parliamentary Assembly, the procedure that was actually negotiated, with the assistance of an ad hoc group of legal experts convened by the C/E Secretary-General, was to have the appointments made by the C/E Committee of Ministers after consultation with the Court and the Commission.⁷⁴ That procedure, which is explicitly meant to apply to all European States not yet members of the C/E—i.e. especially to the European ex-USSR states and to the fragments of the former SFRY, and not only to BH—was thereafter incorporated into the various BH-related proposals here under consideration,⁷⁵ as well as into other instruments formulated under the auspices of ICFY.⁷⁶

In all these instruments it was foreseen that the Court of Human Rights would be basically a domestic court, the highest court of appeals for all human rights questions, i.e. questions relating to any of the rights set out or provided for in the relevant chapter of the constitution. This would mean that in this respect this Court would be superior to all other highest courts, such as a Supreme Court (for all normal civil, criminal and administrative litigations) and a Constitutional Court (which would primarily decide disputes among state organs).⁷⁷ Even though the Court of Human Rights would normally act only as a final appellate court once a case was no longer subject to other domestic appeals,⁷⁸ it could also assume jurisdiction if a relevant case has been pending too long in another court⁷⁹—thus obviating the

71. Add. 1, art. 2(c)5B(c).

72. See especially Add. 7, App. I, section III, art. 4(iii) and Annex B; Add. 8, section IV.C.5., arts. 18-23.

73. Add. 5, Annex VII, art. VI.B.3.

74. See *Resolution (93)6 on the Control of Respect for Human Rights in European States Not Yet Members of the Council of Europe*, art. 1, at 5, Eur. Comm. of Ministers, Doc. No. 93/222 Add. (1993) (adopted on Mar. 9, 1993). Reprinted in Add. 9.

75. See Add. 7, App. I, Annex B, arts. 1, 2(c); Add. 8, section IX, art. 9(d)(i)-(iii).

76. See, e.g., the Agreed Minutes concluded on August 27, 1993 by the Macedonian Minister of the Interior and a representative of the Serbs in Macedonia, U.N. SCOR, 49th Sess., para. 9, App. I to U.N. Doc. S/1994/83 (1994).

77. See, e.g., Add. 8, section IV.C., arts. 29 and 22.

78. *Id.* section IV.C.5., art. 20.

79. *Id.* section IV.C.5., art. 21.

possibility that justice might be denied by purely domestic courts⁸⁰ by mere delay. Furthermore, the Human Rights Court could reply to questions addressed to it by other domestic courts (including the Supreme or the Constitutional Court).⁸¹

In the normal course, the Court of Human Rights is to be maintained with its special composition until Bosnia and Herzegovina becomes a member of the Council of Europe⁸² at which time the state becomes subject to the European Court of Human Rights, which in effect acts as the highest court of appeals for all human rights questions for all Council members.

b. Ombudsmen

The other special mixed domestic/international human rights control organ foreseen in all the post-Carrington proposals was the establishment of Ombudsmen. Although this originally Scandinavian institution, which has since spread widely throughout the world in use by both governmental and private entities, had not previously gained a foothold in Yugoslavia, there seemed to be no difficulty in including it in the various proposals developed by ICFY in relation to BH and other successor Republics.

These proposals generally provide for several Ombudsmen, one from each "constituent" peoples or ethnic group and one from "others."⁸³ Though eventually they would be appointed by the legislature,⁸⁴ for an initial transitional period the appointments are to be made by some international authority, such as the ICFY Co-Chairmen⁸⁵ or the CSCE.⁸⁶ The Ombudsmen are *not* to function primarily as a collective body, but each Ombudsman would normally act individually.⁸⁷ Incidentally, it is also

80. I.e., courts which have no foreign judges.

81. Add. 8, section IV.C.5., art. 22.

82. See, e.g., Add. 8, section IX, art. 9(d)(i), read together with Add. 9, arts. 5.

83. At the explicit demand of all the BH parties, the proposed constitutional instruments all specify that the state consists of specified "constituent peoples" (i.e., for BH as a whole, the Muslims, Serbs and Croats, and for the BH Federation, just the Bosniacs (i.e. Muslims) and the Croats; somewhat more reluctantly they have also agreed to assign a slightly subsidiary role to a group of unspecified "others," who presumably are either persons who do not belong to any of the specified peoples (e.g., Slovenes, Hungarians, Albanians), or are of thoroughly mixed parentage, or who simply do not wish to identify with any of the specified peoples. It should be noted that even though many important constitutional arrangements depend on such group identification (e.g., the appointment of Ombudsmen—see Add. 5, Annex VII, art. VI.B.2.; Add. 8, section II.B.1., art. 1), there is generally no indication whether group attribution is to be a matter of individual decision, or based on objective factors (parentage, religion, language) or on a decision of the group concerned; only the Carrington Proposal explicitly specifies autodetermination, (but this appears to be understood also in respect of the subsequent texts). Add. 1, ch. II, art. 2(a)3, 5th sub-para.

84. See, e.g., Add. 8, section II.B.1., art. 1.

85. Add. 7, App. I, Annex D, section I, art. 4.

86. Add 8, section IX, art. 9(e).

87. Add. 8, section II.B.1., art. 3.

foreseen that each Ombudsman would have deputies and a staff,⁸⁸ i.e. the office would be an institution rather than just a person.

The Ombudsmen are to have wide powers of investigation, intervention⁸⁹ and reporting—including, temporarily, to international authorities.⁹⁰ They are to promulgate, either individually or collectively, regulations to govern their activities, though these might be changed by a law.⁹¹

c. Mixed Commission for Human Rights and Monitoring Mission

The additional part to be added to the Cutillero Statement of Principles⁹² foresaw the establishment of a Mixed Commission for Human Rights composed of a representative from each of the three constituent units and four representatives from the EC. There was also to be a Monitoring Mission to conduct investigations at the request of the Mixed Commission.⁹³ No strictly comparable organs are suggested in any of the later proposals.

3. Entirely International Procedures

From the time of the Carrington Proposal, it was foreseen that there would have to be international monitoring of the implementation of the human rights provisions that the ex-SFRY Republics would adopt.⁹⁴ Over the course of several proposals various devices were foreseen:

(a) The Pre-VOP foresaw the establishment of an International Commission on Human Rights for Bosnia and Herzegovina, initially to be established by the ICFY for a limited period of perhaps five years, subject to extension.⁹⁵

(b) The actual VOP would have required the establishment by the U.N. Secretary-General of an International Human Rights Monitoring Mission, to be headed initially by an Interim Human Rights Commissioner for Bosnia and Herzegovina.⁹⁶ Similar provisions appeared in the *Invincible Plan*.⁹⁷

88. *Id.*, section II.B.1., art. 1(2)-(3).

89. *Id.*, section II.B.2., arts. 5-7.

90. *Id.*, section II.B.3., art. 8, esp. art. 8(2).

91. *Id.*, section II.B.4., art 9. The three Ombudsmen appointed for the BH Federation have already drawn up a set of such Regulations in 53 articles—*reprinted in* add. 10.

92. *See supra* part I.A.4.

93. Add. 3, Additional Part, paras. 3-4.

94. *See* Add. 1, ch. II, art. 2(c)5B(a).

95. Add. 5, Annex VII, art. VI.B.1.

96. Add. 6, Annex I, para. H.3.

97. Add. 7, App. II, part 2.D.2.

(c) In the BH Federation Constitution, the detailed provisions for such an international monitoring system have disappeared, though a reference to such a possible arrangement is still included.⁹⁸ This lack of detail on the one hand reflects the consideration that these arrangements are ones to be made by the international community, rather than by agreement of the parties to a given constitutional arrangement, and on the other the diminishing likelihood that the international community will really wish to dispatch as powerful a mission as was originally foreseen in 1992-93.

In addition to a formal international human rights monitoring mission, it was also provided in several of the proposals that the U.N. Protection Force (UNPROFOR), especially through its civilian or police component (UNCIVPOL), would perform, at least initially, important monitoring functions.⁹⁹ These would be especially important in regard to any reversal of ethnic cleansing, which would imply the return of refugees and displaced persons into hostile territory from which they had forcibly been expelled and whose authorities would likely be unsympathetic to them.

Finally, as already mentioned above,¹⁰⁰ reliance was placed in a number of the proposals on the monitoring mechanisms provided for in many of the international human rights treaties to which BH would be required to become a party.

C. Limitations on the Amendability of the Constitution

Because of the deep-seated suspicions that characterize relations in the former Yugoslavia, and especially in Bosnia and Herzegovina, it was recognized that concerns of minority groups and parties would have to be allayed that protective constitutional provisions adopted in the course of settling the current conflicts would thereafter be revised or eliminated by amending the constitutional instruments—something that it has generally been easy to do in respect of the SFRY Constitution and those of its constituent Republics.

To respond to these concerns, it has generally been provided that amending the BH Constitution should be relatively difficult, and require the assent of at least the major “peoples” or groups in the country.¹⁰¹ However, to make assurance doubly sure, provisions have been inserted into the instruments here under consideration which absolutely forbid amending the constitutional instruments so as to weaken or delete the human rights

98. Add. 8, section II.A., art. 7.

99. *E.g.*, Add. 6, para. H.5.; Add. 7, App. II, part 2.C.3.

100. *See supra* part I.A.1.b.ii., final para.

101. *See* Add. 5, Annex VII, section III.A.3. This requirement is even clearer in the Federation Constitution, Add. 8, section VIII, art. 1(3)(a).

protective provisions.¹⁰² This device was adapted from various national Constitutions that have similar protective features, in particular those of Germany¹⁰³ and Namibia,¹⁰⁴ both of which were formulated under certain international auspices.

III. OTHER RELEVANT ARRANGEMENTS AND PROCEEDINGS

No account of human rights provisions concerning Bosnia and Herzegovina would be complete without at least mentioning certain institutions and proceedings that have been established or instituted respecting the several types of war crimes and crimes against humanity that have characterized the conflict in ex-Yugoslavia and especially in Bosnia and Herzegovina.

First of all, the U.N. Security Council, after repeatedly condemning the ongoing human rights violations and calling the attention of the parties to their obligation to observe the 1949 Geneva Conventions,¹⁰⁵ asked the Secretary-General to establish a Yugoslav War Crimes Commission (formally known as the "Commission of Experts established pursuant to Resolution 780 (1992))."¹⁰⁶ This Commission was charged with examining evidences of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia, and making recommendations based on the Commission's conclusions. It was duly established and functioned from November 1992, until it was superseded by the War Crimes Tribunal in April 1994.¹⁰⁷

Based on the initial report of the Commission and on other information and urgent proposals from various sources, the Security Council decided on February 22, 1993, to establish an international tribunal and requested the Secretary-General urgently to submit a report on all aspects of the matter, including specific proposals.¹⁰⁸ The Secretary-General did so within the

102. See Add. 5, Annex VII, section III(A)(3); Add. 7, App. I, section VII, art. 1(b); Add. 8, section VIII, art. 2.

103. GRUNDGESETZ [Constitution] art. 79(3) (Germ.), translated in [1995 Binder VII], Const. Countries World (Oceana) Gisbert H. Flanz, *Germany* at 139 (Albert P. Blaustein & Gisbert H. Flanz, eds.).

104. NAMIBIA CONST., art. 131, 132(5)(a), [1995 Binder XII], Const. Countries World (Oceana) Albert P. Blaustein, *Republic of Namibia* at 57-58 (Gilbert H. Flanz, ed.).

105. E.g., S.C. Res. 764, U.N. SCOR, 47th Sess., U.N. Doc. S/RES/764 (1992); and S.C. Res. 771, U.N. SCOR, 47th Sess., U.N. Doc. S/RES/771 (1992). See Add. 8, Annex, item 3 for citations to the Geneva Conventions.

106. S.C. Res. 780, U.N. SCOR, 47th Sess., U.N. Doc. S/RES/780 (1992).

107. See *Interim Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992)*, U.N. SCOR, 48th Sess., Annex I to U.N. Doc. S/25274 (1993); *Second interim report of the Commission of Experts established pursuant to Security Council resolution 780 (1992)*, U.N. SCOR, 48th Sess., Annex to U.N. Doc. S/26545 (1993); and *Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992)*, U.N. SCOR, 49th Sess., Annex to U.N. Doc. S/1994/674 (1994).

108. S.C. Res. 808, *supra* note 63.

sixty-day time limit, in a report including a draft Statute of such a tribunal that had been drafted by the U.N. Legal Counsel.¹⁰⁹ The Security Council adopted this Statute, unchanged from the Secretary-General's draft, by a resolution on May 25, 1993,¹¹⁰ thereby establishing 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 itself later decided that its name should be "The International Tribunal for Crimes in the Former Yugoslavia" but which is generally referred to as the "Yugoslav War Crimes Tribunal."¹¹¹ The jurisdiction of the Tribunal extends to Grave Breaches of the Geneva Conventions of 1949 (Article 2 of the Statute), Violations of Laws and Customs of War (Article 3), Genocide (Article 4), and Crimes Against Humanity (Article 5). It consists of a Court with two Trial Chambers and one Appellate Chamber, a Prosecutor and a Registry. The Court has started its work by promulgating several sets of Rules;¹¹² recently the Prosecutor has announced a number of indictments.¹¹³

Finally, note should be taken of the case in the International Court of Justice brought by the Republic of Bosnia and Herzegovina against the Federal Republic of Yugoslavia accusing the latter of abetting genocide in Bosnia in violation of the Genocide Convention; the Court has already responded in two Orders concerning Provisional Measures requested in the first instance by BH and in the second by both BH and SFRY.¹¹⁴ The BH Government also threatened at one stage to bring a case against the United

109. *Report of the Secretary General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993)*, U.N. SCOR, 48th Sess., U.N. Doc. S/25704 (1993) revised by U.N. Doc. S/25704/Corr.1 and U.N. Doc. S/25704/Add.1 (1993). The Statute of the International Tribunal [hereinafter Statute] is annexed to S/25704 and is also reproduced in 32 I.L.M. 1203 (1993).

110. S.C. Res. 827, U.N. SCOR, 48th Sess., U.N. Doc. S/RES/827 (1993).

111. There has already appeared a considerable academic literature about the Tribunal, including D. Shraga & R. Zacklin, *The International Criminal Tribunal for the Former Yugoslavia*, 5 EUR. J. INT'L L. 360, 362 n.4 (1994) (citing earlier articles). See also a Report by the Lawyers Committee for Human Rights on Prosecuting War Crimes in Former Yugoslavia: The International Tribunal, National Court and Concurrent Jurisdiction: A Guide to Applicable International Law, National Legislation and its Relation to International Human Rights Standards (May 1995).

112. *Rules of Procedure and Evidence*, U.N. Doc. IT/32 (1994) reproduced in 33 I.L.M. 484 (1994), as amended on May 5, 1994, 33 I.L.M. 838 (1994), and on October 4, 1994, 33 I.L.M. 1620 (1994); *Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal*, adopted May 5, 1994, U.N. Doc. IT/38/Rev.3 (1994) reproduced in 33 I.L.M. 1590 (1994); and *Directive on Assignment of Defence Counsel (Directive No. 1/94)*, 4th Sess., U.N. Doc. IT/73/Rev.1 (1994) reproduced in 33 I.L.M. 1581 (1994).

113. See, e.g., Roger Cohen, *Serb is First to Face Post-World War II War-Crimes Indictment*, N.Y. TIMES, Nov. 8, 1994.

114. See Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugo. (Serbia and Montenegro)), 1993 I.C.J. REPORTS 3 (Order of Apr. 8); and Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugo. (Serbia and Montenegro)), 1993 I.C.J. REPORTS 325 (Order of Sept. 13).

Kingdom, accusing it, in effect, of not sufficiently meeting its responsibilities under the Convention to prevent genocide, but was induced to desist from such a proceeding.¹¹⁵

CONCLUSION

The elaborate human rights provisions that have so far been proposed in respect of Bosnia and Herzegovina, those that have already been partially put into effect, and those likely to appear in any final settlement, have many unique or at least unusual substantive and procedural features designed to respond to a bloody conflict in which human rights violations have been of the very essence. The special characteristics of these proposals reflect in part a somewhat uneasy marriage of classic post-World War II rights focusing on the individual, and some more recent attempts to take into account the rights of minorities and other groups. Account must also be taken of the circumstance that they have largely not originated in the country itself as natural developments of its legal system, but have been advanced by outsiders attempting to suggest constitutional frameworks that the warring parties are unable to construct by agreements among themselves; nevertheless, the proposed rules and mechanisms can only accomplish their purpose if and to the extent they are accepted by the parties and implemented by them, and by the peoples of Bosnia and Herzegovina, in good faith.

115. See *Letter dated 24 November 1993 from the Permanent Representative of Bosnia and Herzegovina to the United Nations addressed to the Secretary-General*, U.N. GAOR, and U.N. SCOR, 48th Sess., Agenda Item 42, U.N. Doc. A/48/659-S/26806 (1993), to which was annexed a "Statement of Intention By the Republic of Bosnia and Herzegovina to Institute Legal Proceedings against the United Kingdom Before the International Court of Justice;" *Letter dated 6 December 1993 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the Secretary-General*, U.N. GAOR, and U.N. SCOR, 48th Sess., Agenda Item 42, U.N. Doc. A/48/736-S/26847 (1993); *Letter dated 17 December 1993 from the Permanent Representative of Bosnia and Herzegovina to the United Nations Addressed to the President of the Security Council*, U.N. SCOR, 48th Sess., U.N. Doc. S/26908 (1993).

ADDENDUM 1¹

Corrected Version

4 November 1991

TREATY PROVISIONS FOR THE CONVENTION

....

CHAPTER II HUMAN RIGHTS AND RIGHTS OF NATIONAL OR ETHNIC GROUPS

Article 2

a) Human Rights

1. The Republics shall guarantee the following human rights:
 - a) the right to life
 - b) the right not to be subjected to torture or to inhuman or degrading treatment
 - c) the right not to be subjected to slavery or compulsory labour
 - d) the right to liberty
 - e) the right to a fair and public hearing by an impartial tribunal and not to be subject to retrospective criminal proceedings
 - f) the right to respect for private and family life, the home and correspondence
 - g) the right to freedom of thought, conscience and religion
 - h) the right to freedom of expression
 - i) the right to freedom of peaceful assembly and freedom of association
 - j) the right to marry and form a family
 - k) the right to an effective remedy determined by law and available to all persons whose human rights have been violated, and
 - l) all the other rights envisaged in the instruments listed below,subject only to the exceptions and restrictions set out in those instruments, and without discrimination on any ground such as sex,

1. The Carrington Proposal (*see* part I.A.1 of the text.) This text was reproduced from an unpublished document of the Carrington Conference, an earlier version of which, dated October 18, 1991 appeared in U.N. Doc. S/23169, Annex VII, *see supra* note 3 of the text. The italicized passages are those added to or changed from the 18 October 1991 version. Deletions from that version are so indicated.

race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

The instruments referred to above are:

- the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights of the United Nations;
- the Final Act of the Conference on Security and Co-operation in Europe, the Charter of Paris for a New Europe and the other CSCE documents relating to the human dimension, in particular the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE and the document of the Moscow meeting of the Conference on the Human Dimension of the CSCE;
- the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols to that Convention.

b) Rights of members of national *or* ethnic groups

2. The Republics *shall* guarantee human rights as applied to national or ethnic groups, in particular, and embodied in:
- the instruments of the United Nations, CSCE and the Council of Europe referred to in paragraph 1 of this Article;
 - the Convention on the Elimination of Racial Discrimination, the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention on the Rights of the Child of the United Nations;
 - the report of the CSCE meeting of experts on national minorities held in Geneva.

In giving effect to this Convention, they shall also take appropriate account of

- proposals for a United Nations Declaration *on* the Rights of Persons *belonging to* National *or* Ethnic, *Religious* and Linguistic Minorities;
- the proposal for a Convention for the Protection of Minorities of the European Commission for Democracy and Law in the framework of the Council of Europe.

3. The Republics shall guarantee to persons belonging to a national or ethnic group the following rights:

- the principle of non-discrimination as set out in the legal instruments mentioned in paragraph 2 of this Article;
- *the right to be protected against any activity capable of threatening their existence;*
- all cultural rights as set out in the instruments mentioned in paragraph 2 of this Article, in particular the right to identity, culture, religion, use of language and alphabet, both in public and *in private*, and education;
- protection of equal participation in public affairs, such as the exercise of political and economic freedoms, in the social sphere, in access to the media and in the field of education and cultural affairs generally;
- the right to decide to which national or ethnic group he or she wishes to belong, and to exercise any rights pertaining to this choice as an individual or an association with others. *No disadvantage shall arise from a person's choice to belong or not to belong to national or ethnic group.*
 This *right shall* particularly apply in the case or marriage between persons of different national or ethnic groups.

Those persons of the same national or ethnic group living distant from others of the same origin, for example, in isolated villages, shall be granted self-administration, to the extent that it is practicable.

The above principles shall also apply in areas where members of the main national or ethnic group of a Republic are numerically inferior to one or more other national or ethnic groups in that area.

4. The Republics shall guarantee to persons belonging to a national or ethnic group forming a substantial *percentage* of the population in the *Republic* where they live but not forming a majority, in addition to the rights set out in paragraph 3 of this Article, a general right of participation of members of this group in public affairs, *including participation in the government of the Republics* concerning their affairs.

c) Special status

5. In addition, areas in which persons belonging to a national or ethnic group form a majority, shall enjoy a special status of autonomy. Such a status will provide for:
 - a. the right to have and show the national emblems of that *area*;
 - b. (deleted)
 - c. an educational system which respects the values and needs of that group;

- d.
 - i. a legislative body
 - ii. an administrative structure, including a regional police force
 - iii. and a judiciary
 responsible for matters concerning the area, which reflects the composition of the population of the area;
- e. provisions for appropriate international monitoring.

These areas are listed in Annex A. . .

- 5A Such areas, unless they are defined in part by an international frontier with a State not party to this Convention, shall be permanently demilitarised and no military forces, exercises or activities on land or in the air shall be permitted in those areas.
- 5B
 - a. The Republics shall provide for international monitoring of the implementation of the special status of autonomy. To this end, they shall conclude agreements which would provide for a permanent international body to monitor implementation of this paragraph.
 - b. The monitoring missions thus established shall
 - report to the Republics in question as well as to the other parties to the agreement, and
 - as appropriate formulate recommendations on the implementation of the special status.
 - c. The Republics shall give effect to such recommendations through legislation or otherwise. In case of dispute, the Court of Human Rights shall be requested to give its decision.

6. (deleted)

d) General provisions

- 7. Persons belonging to a national or ethnic group, in exercising their rights, respect the rights of the majority and of persons belonging to other groups.
- 8. The Republics should jointly, or individually as the case may be, become parties to international instruments in the field of human rights, including *all* related complaint procedures.
- 9. The Republics shall provide, by legislation and through national institutions, in respect of the rights referred to in this Article, full implementation of the rights and an effective remedy for breaches of any of those rights.

10. As none of the Republics will have an ethnically homogeneous population, they shall cooperate and consult one another directly or through a mixed commission in respect of matters dealt with in paragraphs 3 to 5 of this Article.

ADDENDUM 2¹

CONFERENCE ON YUGOSLAVIA

ARBITRATION COMMISSION

OPINION No.4

ON INTERNATIONAL RECOGNITION OF THE SOCIALIST REPUBLIC OF BOSNIA-HERCEGOVINA BY THE EUROPEAN COMMUNITY AND ITS MEMBER STATES

.....

The Arbitration Commission proceeded to consider this application in accordance with the Declaration on Yugoslavia and the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union adopted by the Council on 16 December 1991² and with the rules of procedure adopted by the Arbitration Commission on 22 December.

For the purposes of its deliberations the Commission took note of the following materials supplied by the Socialist Republic of Bosnia-Herzegovina (SRBH):

.....

5. The Decision of 8 January 1992 by the Prime Minister of the SRBH, published by the *Official Journal*, whereby the Government undertook to abide by the international agreements cited in the Guidelines;

.....

Having regard to the information before it, and having heard the Rapporteur, the Arbitration Commission delivers the following opinion:

1. By an instrument adopted separately by the Presidency and the Government of Bosnia-Herzegovina on 20 December 1991 and published in the *Official Journal* of the Republic on 23 December these authorities accepted all the commitments indicated in the Declaration and the Guidelines of 16 December 1991.

In that instrument the authorities in question emphasized that Bosnia-Herzegovina accepted the draft Convention produced by the Hague

1. Reproduced with permission from 31 I.L.M. 1485 (1992).^o The American Society of International Law. For a discussion, see part I.A.3 of the text.

2. See part I.A.3.a. and b. of the text.

Conference on 4 November 1991, notably the provision in Chapter II on human rights and the rights of national or ethnic groups.³

By a Decision of 8 January 1992 the Government of the SRBH accepted and undertook to apply the United Nations Charter, the Helsinki Final Act, the Charter of Paris, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and all other international instruments guaranteeing human rights and freedoms and to abide by the commitments previously entered into by the SFRY concerning disarmament and arms control.

The current Constitution of the SRBH guarantees equal rights for “the nations of Bosnia-Herzegovina—Muslims, Serbs and Croats—and the members of the other nations and ethnic groups living on its territory”.

The current Constitution of the SRBH guarantees respect for human rights, and the authorities of Bosnia-Herzegovina have sent the Commission a list of the laws in force giving effect to those principles; they also gave the Commission assurances that the new Constitution now being framed would provide full guarantees for individual human rights and freedoms.

. . . .

Paris, 11 January 1992

(signed)

R. Badinter

3. See Add. 1.

ADDENDUM 3¹

18 March 1992

STATEMENT OF PRINCIPLES for new constitutional arrangements for Bosnia and Hercegovina

. . . .

B General Principles

1. Bosnia and Hercegovina and its constituent units would be governed in accordance with the following constitutional principles, as understood and generally practised among the democratic states of Western Europe and as set out in Draft Convention under discussion in the Conference:

a. Respect for human rights at the highest standards as envisaged in the draft Convention, respect for private ownership, the market economy and free enterprise;²

b. The general and equal right to vote, free elections and secret voting;

c. Freedom for political and trade union activities;

d. A secular state system with full religious freedom and separation of church and state, separation of powers between the branches of government, the rule of law and a democratic and effective system of control and protection of constitutionality and legality;

e. International control and jurisdiction for the protection of human rights and freedom.

. . . .

31 March 1992

Additional Part to be added after Part B of the Statement of Principles of 18 March 1992.

1. The Cutiliero Statement of Principles (*see* part I.A.4 of the text). *See also supra* note 13 of the text.

2. *See* Add. 1.

Human Rights

1. The Constitution would include provisions providing for the protection of human rights and rights of minorities as envisaged in Article 2 a) b) and d) of the draft Convention of the EC Peace Conference on Yugoslavia,³ and full effect would be given to those rights by the authorities of Bosnia and Hercegovina and the authorities of the constituent units.
2. Cases in Courts involving allegations of a breach of those rights would be decided, as a final Court of Appeal, by the special Tribunal, envisaged in paragraph C4 of the agreed Statement of Principles; the jurisdiction of that Tribunal would extend to cover such cases.
3. A Mixed Commission for Human Rights would be established, composed of one representative of each of the three nations and four representatives including the Chairman from the European Community. The Mixed Commission would consider and make recommendations by majority vote on any question relating to those rights which are brought before it.
4. A monitoring mission including members drawn from the European Community would be established would could, at the request of a representative on the Mixed Commission for Human Rights, investigate and report on any allegation of infringement of the rights referred to in paragraph 1 above.

3. *Id.*

ADDENDUM 4¹

The London Conference

LC/C5 (FINAL)
27 August 1992

STATEMENT ON BOSNIA

The participants in the London Conference on the former Socialist Federal Republic of Yugoslavia condemn the continuing violence in Bosnia and Herzegovina and the attempts to gain territory by the use of force. They reject as inhuman and illegal the expulsion of civilian communities from their homes in order to alter the ethnic character of any area. They welcome the adoption by the United Nations Security Council of Resolution 771 and other Security Council Resolutions, and the Resolution of the U.N. Commission on Human Rights on the situation of human rights in the territory of the former Yugoslavia. They undertake to collate substantiated information on violations of international humanitarian law and to make this information available to the United Nations. They reaffirm that persons who commit or order the commission of grave breaches of the Geneva Conventions are individually responsible in respect of such breaches.

A political settlement in Bosnia and Herzegovina must include the following provisions:

. . . .

d) implementation of guarantees for the rights of persons belonging to all national communities and minorities in accordance with the U.N. Charter and the CSCE provisions;

e) just and adequate arrangements for people who have been forcibly expelled from their homes including the right to return and compensation for their losses;

f) democratic and legal structures which properly protect the rights of all in Bosnia and Herzegovina, including national communities and minorities;

. . . .

1. Reproduced with permission from 31 I.L.M. 1488 (1992). © The American Society of International Law. For a discussion, see *supra* part I.B of the text.

ADDENDUM 5¹

Security Council

S/24795

11 November 1992

REPORT OF THE SECRETARY-GENERAL ON THE INTERNATIONAL CONFERENCE ON THE FORMER YUGOSLAVIA

Annex VII

Proposed constitutional structure for Bosnia and Herzegovina

.

I. Overall Structure

.

D. The Constitution is to provide that on a transitional basis certain of the constitutional bodies be manned by persons appointed by the International Conference on the Former Yugoslavia and certain functions be internationally supervised.

1. These include:

.

(b) The ethnic balancing and integration of the military forces (V.A.2);

(c) The non-discriminatory composition of the police (V.B.1(b));

(d) The International Commission of Human Rights for Bosnia and Herzegovina (VI.B.1);

(e) The ombudsmen (VI.B.2);

(f) The Human Rights Court (VI.B.3).

.

1. The Precursor to the Vance-Owen Plan (see part I.C.2 of the text). See also *supra* note 20 of the text. Lettered footnotes appeared in the original text.

III. Constitutions

A. Central:

.....

3. Difficult to amend (i.e., high majority requirements in both Houses of legislature and possibly a referendum with high absolute and/or relative majority requirements), with the following provisions enjoying special protection (e.g., still higher majority requirements or even unanimity):

(a) Human and group right provisions (VI.A.2(a)-(b)) and the related procedural devices (VI.B);

.....

(c) Certain provisions for transitional international supervision (I.D.2(d)).

.....

IV. Governmental Structures

A. Central government

.....

3. Judiciary

.....

(b) A Human Rights Court (VI.B.3);

.....

V. Executive force

A. Military:

.....

2. Central staff to be group balanced with rotating occupation of key posts and all units to be integrated (i.e., not established on group lines); the initial arrangements relating to balancing and integration to be supervised by ICFY and thereafter by an appropriate authority designated by ICFY.

B. Police:

1. Provincial: All uniformed police to be at provincial or local level:

.....

- (b) Police to observe same rules as to non-discrimination, etc., as all branches of government (VI.A.2(b)); the initial arrangements relating to non-discrimination to be supervised by ICFY and thereafter by an appropriate authority designated by ICFY.

.....

VI. Human and group/minority rights

A. Substantive:

1. Source: The highest level of internationally recognized rights, as set out in instruments (primarily treaties and some intergovernmental organizations declarations—originating with United Nations, Council of Europe and CSCE) to be specified in the Constitution (see the appendix hereto).
2. Types:
- (a) General human, especially civil and political rights;
- (b) Group, especially “minority”^h rights, including obligation to maintain group balance in governmental decision-making bodies as well as in the various central and provincial civil, police and other services (or, at the minimum, strict non-discrimination);
- (c) Economic, social and cultural rights—which to a considerable extent may have to be set out as aspirations and goals, and not be subject to the rigid protection of the other above-mentioned rights.

h. This term will require special attention and definition in respect of Bosnia and Herzegovina, because on the one hand no ethnic or other group has an absolute majority in the country as a whole, so that in a sense all are minorities, but it is likely that in many regions one group will have a clear majority.

- B. **Procedural:** The general human, civil and political, and group rights to be protected by a number of domestic and international procedural arrangements, including:ⁱ
1. An International Commission on Human Rights for Bosnia and Herzegovina, with wide powers to investigate and to hear complaints, the obligation to report to competent international United Nations, CSCE, Council of Europe bodies, including, if appropriate, the Security Council. To be established by ICFY for a limited period (e.g., five years), subject to prolongation by ICFY or another appropriate international authority designated by it.
 2. Four ombudsmen, one from each group, to be initially appointed by ICFY and later by the Lower House of the legislature. They are to have adequate staffs and be equipped with strong powers to investigate, be obliged to make reports to all competent governmental authorities at any level, and be empowered to appeal to or intervene in courts to protect rights; they are to have special responsibility to reverse ethnic cleansing.
 3. A Human Rights Court to which appeals can be taken from any court (provincial or national) on human rights issues, which would initially be established as part of a Council of Europe mechanism and consist of one national judge from each group appointed by the Presidency and at least five foreign judges, appointed by the Presidents of the European Court of Human Rights and the European Commission of Human Rights—to be maintained at least until Bosnia and Herzegovina becomes a member of Council of Europe and party to the European Convention on Human Rights, and perhaps even beyond.
 4. Unimpeded access by individuals and recognized groups to courts under all circumstances, and with right to rely directly on constitutional provisions and on those of international treaties to which Bosnia and

i. In addition to the arrangements listed below, account should also be taken of the international supervision provided on a normal basis by the special organs created by the human rights treaties to which Bosnia and Herzegovina will be obliged to become a party (to be specified in the Constitution (VI.A.1), see para. (c) of the appendix hereto).

Herzegovina is a party or which are referred to in the Constitution, whether or not there is implementing legislation.

- C. Citizenship (Closely connected with many of the human and group right provisions):
1. Citizenship of Bosnia and Herzegovina: to be determined by central government, in accordance with the Constitution and national laws.
 2. Dual citizenship to be allowed.
 3. No "provincial citizenship".
 4. No official ethnic identification of citizens (e.g., on identity cards).

Appendix

International Human Rights Treaties and other Instruments^a to be incorporated by reference into the Constitution of Bosnia and Herzegovina

The purpose of such incorporation would be:

(a) Make their provisions immediately applicable to Bosnia and Herzegovina and enforceable by its courts. In this connection it should be noted that normally States are only bound by treaties and only by those to which they voluntarily become parties. Although States can bind themselves to observe other instruments, such as declarations, many such instruments are not so formulated as to allow them to be easily used as a source of positive law. Also requiring a state to abide by such instruments puts it into a somewhat invidious position as almost no states have voluntarily entered into, or become subject to, such obligations. Consequently, before requiring Bosnia and Herzegovina to bind itself constitutionally to abide by any non-treaty instruments, each such instrument should be examined carefully to determine whether it is suitable.

(b) To oblige Bosnia and Herzegovina to become a party to those of the listed instruments that are treaties, as and when possible, i.e. immediately in respect of U.N. treaties, and upon becoming a member of the

a. In the list herein, treaties are underlined and other instruments (e.g., declarations) are not.

Council of Europe in respect of its treaties. As to those treaties to which the former Yugoslavia was a party^b, Bosnia and Herzegovina will only have to submit a statement of succession to the U.N. Secretary-General.

(c) Allow international monitoring or other supervision by the bodies created by certain of these treaties.^c

It is understood that the parties to the constitutional negotiations may agree to list additional instruments in the Constitution.^d

A. General human rights, especially civil and political rights

(a) United Nations system instruments:

1. 1948 Convention on the Prevention and Punishment of the Crime of Genocide.
2. 1948 Universal Declaration of Human Rights, Articles 1-21.
3. 1966 International Covenant on Civil and Political Rights* and its 1966 (right of petition to the Human Rights Committee) and perhaps its 1989 (abolition of death penalty) Optional Protocols [Human Rights Committee].
4. 1965 International Convention on the Elimination of All Forms of Racial Discrimination* [Committee on the Elimination of Racial Discrimination (CERD)].
5. 1979 International Convention on the Elimination of All Forms of Discrimination against Women* [Committee on the Elimination of Discrimination Against Women (CEDAW)].
6. 1989 Convention on the Rights of the Child* [Committee on the Rights of the Child].

b. In this list, those treaties are marked with an asterisk (*).

c. Such bodies are indicated in this list by [square brackets].

d. [For the sources of the instruments in the following list, see the annotations and the list appearing in Add. 8, Annex, at 60-62.] This list does not include about a dozen instruments, including a number of CSCE declarations that would fit under categories A or B, that do not appear to meet the criteria in paragraph (a) above or as to which it otherwise appears doubtful that inclusion in the BiH Constitution should be demanded, but which were included in a list of human rights instruments provided to the parties for their information.

7. 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [Committee Against Torture].
8. 1951 Convention relating to the Status of Refugees* and the 1966 Protocol thereto* [U.N. High Commissioner for Refugees].

(b) Council of Europe instruments:

9. 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, and Protocols 1-10 thereto [European Commission on Human Rights and European Court of Human Rights].
10. 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment [European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment—operates in respect to art. 3 of instrument 9 above].

(c) Conference on Security and Cooperation in Europe (CSCE) instruments:

11. 1975 Final Act of the [Helsinki] Conference on Security and Co-operation in Europe, Part 1(a)(VII) and Basket III [[Helsinki Review Process], as enhanced by the human dimension review mechanism established by paras. 1-4 of the Vienna Concluding Document, paras. (41)-(42) of the Document of the Copenhagen Meeting, and Part I of the Document of the Moscow Meeting].

B. Protection of minorities:

(a) United Nations system instruments:

12. 1992 draft Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities.

(b) Council of Europe instruments:

13. 1990 Council of Europe Parliamentary Assembly Recommendation 1134 (1990) on the rights of minorities, paras. 10-13 .

(c) CSCE instruments:

C. Economic, social and cultural rights

(a) United Nations system instruments:

- 2*. 1948 Universal Declaration of Human Rights, articles 22-27.

14. 1966 International Covenant on Economic, Social and Cultural Rights* [Economic and Social Council [Committee on Economic, Social and Cultural Rights]]

(b) Council of Europe instruments:

15. 1961 European Social Charter and Protocol 1 thereto [Committee of Experts]

(c) CSCE instruments:

D. Citizenship and Nationality

(a) United Nations system instruments:

16. 1957 Convention on the Nationality of Married Women*

17. 1961 Convention on the Reduction of Statelessness

(b) Council of Europe instruments:

. . . .

(c) CSCE instruments

. . . .

ADDENDUM 6¹

Security Council

S/25479
26 March 1993

REPORT OF THE SECRETARY-GENERAL ON THE ACTIVITIES OF THE INTERNATIONAL CONFERENCE ON THE FORMER YUGOSLAVIA: PEACE TALKS ON BOSNIA AND HERZEGOVINA

. . . .

Annex I

Agreement on interim arrangements

. . . .

G. POLICE FORCES

During the interim period, all police forces shall conform to the proposals made by the Co-Chairmen in respect of the constitutional structure.^b Therefore, all uniformed police shall be controlled by the Interim Provincial Governments or by local authorities under them, and shall reflect the proportions of the constituent peoples in the respective Provinces.

. . . .

H. PROTECTION OF HUMAN RIGHTS AND THE REVERSAL OF ETHNIC CLEANSING

1. During the interim period all persons in Bosnia and Herzegovina shall be entitled to all rights provided for in the existing Constitution and in applicable legislation in force, as well as to all rights provided for in specified international instruments on human rights (set out in appendix C). To the extent that there are any discrepancies, the provision providing the greater protection of human rights shall be applied. All statements or commitments made under duress, particularly those relating to the relinquishment of rights to land or property, shall be treated as wholly null and void.

2. The implementation of the above-mentioned human rights shall be ensured through:

1. The Vance-Owen Plan (see part I.C.3 of the text). See also *supra* note 26. Lettered footnotes appeared in the original text.
b. See S/24795, annex VII, part V.B.

(a) The national and provincial courts of Bosnia and Herzegovina, to which all persons shall have unimpeded access;

(b) An Interim Human Rights Court for Bosnia and Herzegovina, to be established immediately along the lines of that proposed by the Co-Chairmen for inclusion in the new Constitution;^c and

(c) The immediate appointment of four Ombudsmen, supported by adequate staff and facilities.^d

3. In addition, there shall be an International Human Rights Monitoring Mission, to be established by the Secretary-General and to be headed by an Interim Human Rights Commissioner for Bosnia and Herzegovina, to be based in Sarajevo. Deputy Commissioners are to be based in various parts of the country. The Commissioner is to be supported by international human rights monitors, deployed throughout the country and particularly in areas affected by "ethnic cleansing". They shall be permitted to observe the situation of human rights throughout Bosnia and Herzegovina; in order to provide protection in urgent cases they shall be allowed to intercede with the Interim Presidency, the Interim Central Government and the Interim Provincial Governments, and with UNPROFOR; they may refer issues to the Ombudsmen and to other human rights agencies as needed, and are to work closely with UNHCR, ICRC and other humanitarian agencies. The Commissioner is expected to submit regular reports to the Secretary-General who is to report periodically to the Security Council and to other international bodies, including the United Nations Commission on Human Rights and its Special Rapporteur.

4. The Interim Presidency, the Interim Central Government and the interim Provincial Governments shall be required to make certain that all authorities give the fullest access, in respect of all relevant persons and places, to the Interim Human Rights Commissioner, the Deputy Commissioners and the human rights monitors, as well as to UNHCR, ICRC and other international humanitarian organizations.

5. It is understood that as part of the UNPROFOR deployment in Bosnia and Herzegovina there will be a large UNCIVPOL element whose principal task would be to monitor the police of the Provinces so that each: has an appropriately balanced ethnic composition (part G above); does not oppress members of minority ethnic groups; contributes positively to the reversal of "ethnic cleansing" by protecting persons returning after having been forced to flee; carries out the judgments of courts, in particular the Human Rights Court (para. H.2.b above); and assists the Interim Human Rights Commissioner, the Deputy Commissioners and the human rights monitors (para. H.3 above).

Appendix C

International human rights treaties and other instruments to be applied in Bosnia and Herzegovina during the interim period²

A. General human rights, especially civil and political rights

1. 1948 Convention on the Prevention and Punishment of the Crime of Genocide
2. 1948 Universal Declaration of Human Rights, Articles 1-21
3. 1966 International Covenant on Civil and Political Rights and its 1966 and 1989 Optional Protocols
4. 1965 International Convention on the Elimination of All Forms of Racial Discrimination
5. 1979 Convention on the Elimination of All Forms of Discrimination against Women
6. 1989 Convention on the Rights of the Child
7. 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
8. 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto
9. 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, and Protocols 1-10 thereto
10. 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

B. Protection of minorities

11. 1992 draft Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities
12. 1990 C/E Parliamentary Assembly Recommendation 1134 (1990) on the rights of minorities, paras. 10-13

² For the sources of the instruments in the following list, see the annotations to the list appearing in Add. 8, Annex, at 298-301. 43

C. Economic, social and cultural rights

13. 1948 Universal Declaration of Human Rights, Articles 22-27
14. 1966 International Covenant on Economic, Social and Cultural Rights
15. 1961 European Social Charter and Protocol 1 thereto

D. Citizenship and nationality

16. 1957 Convention on the Nationality of Married Women
17. 1961 Convention on the Reduction of Statelessness

ADDENDUM 7¹

AGREEMENT RELATING TO BOSNIA AND HERZEGOVINA

....

APPENDIX I

**CONSTITUTIONAL AGREEMENT OF THE UNION OF
REPUBLICS OF BOSNIA AND HERZEGOVINA**

I. The Union of Republics of Bosnia and Herzegovina

....

Article 3

- (a) Citizenship of Bosnia and Herzegovina shall be determined by a law adopted by the Union Parliament.
- (b) Every person who on the entry into force of this Constitutional Agreement was entitled to be a citizen of the Republic of Bosnia and Herzegovina shall be entitled to be a citizen of a Constituent Republic as well as of the Union of Republics of Bosnia and Herzegovina.
- (c) Dual citizenship shall be allowed.
- (d) Decisions about citizenship shall be made by the designated organs of the Constituent Republics, subject to appeal to the competent courts.

....

III. The Common Institutions of the Union of Republics of Bosnia and Herzegovina

....

Article 4

The Union of Republics of Bosnia and Herzegovina shall have the following courts:

....

- (iii) A Court of Human Rights to be established in accordance with Resolution 93(6) of the Committee of Ministers of the Council of Europe, whose precise composition and competence shall be as set out in the agreed Annex B.

. . . .

V. Human Rights and Fundamental Freedoms

Article 1

(a) Subject to Article V.2, all persons within the territory of the Union of Republics of Bosnia and Herzegovina shall be entitled to enjoy the rights and freedoms provided for in the instruments listed in Annex C.

(b) Should there be any discrepancy between the rights and freedoms specified in any of these instruments, or between any of these and the rights and freedoms specified in any other legal provisions in force, the provision providing the greater protection for human rights and fundamental freedoms shall be applied.

Article 2

All courts, administrative agencies and other governmental organs of the Union of Republics of Bosnia and Herzegovina and of the Constituent Republics shall apply and conform to the rights and freedoms specified in the instruments listed in Parts I and IV of Annex C. The rights specified in the instruments listed in Parts II and III of Annex C shall be considered as aspirations to be attained as rapidly as possible; all legislative, judicial, administrative and other governmental organs of the Union and Republican governments shall take these rights appropriately into account in promulgating, executing and interpreting any legislative provisions designed to or otherwise suitable for implementing such rights and in otherwise carrying out the functions of these organs.

Article 3

The Union of Republics of Bosnia and Herzegovina shall as soon as possible become a party to each of the international treaties listed in Annex C.

Article 4

All organs of the Union and Republican governments shall cooperate with the supervisory bodies established by any of the instruments listed in Annex C, as well as with the International Human Rights Monitoring Mission for Bosnia and Herzegovina established by the United Nations.

Article 5

- (a) All citizens shall have the right to settle in any part of the territory of the Union of Republics of Bosnia and Herzegovina. They shall have the right to have restored to them any property of which they were deprived in the course of ethnic cleansing and to be compensated for any property which cannot be restored to them.
- (b) The Union Parliament, as well as the legislatures of the Constituent Republics, shall enact laws to assist in implementing these rights.

Article 6

To assist in implementing the rights and freedoms specified in this Chapter and in particular in Article V.5(a), ombudsmen shall be appointed and carry out functions initially as specified in Annex D and thereafter as specified in a law adopted by the Union Parliament.

. . . .

VII. The Constitutional Agreement

Article 1

- (a) This Constitutional Agreement may be amended by decision of the Union Parliament, when such amendment has been approved by each of the Constituent Republics according to its constitutional processes.
- (b) No amendment may be adopted that abolishes or diminishes any of the rights or freedoms specified in Chapter V.

. . . .

ANNEX B

COMPOSITION AND COMPETENCE OF THE HUMAN RIGHTS COURT

Article 1

The Human Rights Court of Bosnia and Herzegovina (the “Court”) shall operate within the framework of the mechanism established by the Council of Europe by Resolution 93(6)² of its Council of Ministers, as that Resolution may be amended from time to time.

Article 2

- (a) The Court shall initially consist of nine judges.
- (b) The Presidency shall appoint four of the judges of the Court, one from each recognized group: Muslims, Serbs, Croats and Others. These judges shall enjoy tenure and shall not require reappointment.
- (c) The Committee of Ministers of the Council of Europe shall appoint five of the judges of the Court in accordance with the above-cited resolution. These judges may not be citizens of the Union of Republics of Bosnia and Herzegovina nor of neighbouring States.
- (d) If the Court concludes that its business requires the participation of more judges to avoid undue delays in the disposition of cases, the Government shall make arrangements with the Council of Europe for the appointment of additional judges, in accordance with the above-specified proportion of national and foreign judges.

Article 3

- (a) The Court shall regulate its own procedures and its organization.
- (b) Each panel of the Court is to have the composition specified for the Court in Article 2(b)-(c) of this Annex.
- (c) The equality of the parties shall be ensured in every proceeding.
- (d) The Court shall allow written and oral pleadings in every proceeding pursuant to Articles 5-7 of this Annex.

Article 4

The competence of the Human Rights Court shall extend to any question concerning a constitutional or other legal provision relating to human rights or fundamental freedoms or to any of the instruments listed in Annex C to the Constitutional Agreement.

Article 5

Any party to a proceeding in which another court of the Union of Republics of Bosnia and Herzegovina or of any of its Constituent Republics has pronounced a judgment that is not subject to any other appeal (for a reason other than the lapse of a time limit for which the moving party is responsible), may appeal such judgment to the Court on the basis of any question within its competence. The decision of the Court on such an appeal shall be final and binding.

Article 6

(a) An appeal may also be taken to the Court if a proceeding is pending for what it considers an unduly long time in any other court of the Union of Republics of Bosnia and Herzegovina or of any of its Constituent Republics.

(b) The Court shall decide whether to accept such an appeal after a preliminary consideration of whether the proceeding in the other court has been pending too long and whether the subject of the appeal is within its competence.

Article 7

Any appellate court of the Union of Republics of Bosnia and Herzegovina or of any of its Constituent Republics may, at the request of any party to a proceeding pending before it, or on its own motion in relation to such a proceeding, address to the Court a question arising out of the proceeding if the question relates to any matter within the competence of the Court. The response of the Court is binding on the requesting court.

Article 8

The Court shall continue to function until the Union of Republics of Bosnia and Herzegovina becomes a party to the European Convention on Human Rights and Fundamental Freedoms, unless the Council of Europe mechanism referred to in Article 1 of this Annex ceases at some earlier date to be in force in respect of the Union of Republics of Bosnia and Herzegovina.

ANNEX C³

HUMAN RIGHTS INSTRUMENTS INCORPORATED INTO THE CONSTITUTIONAL AGREEMENT

A. General Human Rights, especially Civil and Political Rights

1. 1948 Convention on the Prevention and Punishment of the Crime of Genocide
2. 1948 Universal Declaration of Human Rights, Articles 1-21
3. 1949 Geneva Conventions I-IV on the Laws of War, and the 1977 Geneva Protocols I-II thereto

4. 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, and Protocols 1-10 thereto
5. 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto
6. 1965 International Convention on the Elimination of All Forms of Racial Discrimination
7. 1966 International Covenant on Civil and Political Rights and its 1966 and 1989 Optional Protocols thereto
8. 1979 International Convention on the Elimination of All Forms of Discrimination against Women
9. 1981 [U.N.] Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief
10. 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
11. 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
12. 1989 Convention on the Rights of the Child

B. Protection of Groups and Minorities

13. 1990 Council of Europe Parliamentary Assembly Recommendation on the Rights of Minorities, paras. 10-13
14. 1992 [U.N.] Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

C. Economic, Social and Cultural Rights

15. 1948 Universal Declaration of Human Rights, Articles 22-27
16. 1961 European Social Charter and Protocol 1 thereto
17. 1966 International Covenant on Economic, Social and Cultural Rights

D. Citizenship and Nationality

18. 1957 Convention on the Nationality of Married Women

19. 1961 Convention on the Reduction of Statelessness

ANNEX D

INITIAL APPOINTMENT AND FUNCTIONS
OF THE OMBUDSMEN

I. GENERAL PROVISIONS

Article 1

(a) The Ombudsmen are to protect human dignity, rights and liberties as provided in the Constitutional Agreement and in the instruments listed in Annex C thereto, and in the constitutions and legislation of the Constituent Republics, and in particular shall act to reverse the consequences of the violations of these rights and liberties and especially of ethnic cleansing.

(b) In carrying out their functions, the Ombudsmen must be guided by law and by the principles of morality and justice.

Article 2

Each Ombudsman shall exercise his functions individually, except as otherwise provided herein. Two or more Ombudsmen may cooperate in carrying out any of their functions.

Article 3

The Ombudsmen are independent in carrying out their functions and no governmental organ or any other person may interfere with such functions.

Article 4

(a) There shall be four Ombudsmen, one from each recognized group: Muslims, Serbs, Croats and Others. Until the Parliament adopts a law relating to the appointment and functioning of the ombudsmen, these shall be appointed and may be removed by the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia, after consultations with the members of the Presidency.

(b) Each of the Ombudsmen shall, with the approval of the Presidency, appoint one or more Deputies.

(c) The terms of service of the Ombudsmen and their Deputies shall be the same respectively as those of the President and of judges of the Supreme Court.

(d) Each Ombudsman shall also appoint additional staff within the framework of the budget approved therefor by the Parliament or initially by the Presidency.

II. THE COMPETENCE AND THE POWERS OF THE OMBUDSMEN

Article 5

The Ombudsmen may follow the activities of any common institution of the Union of Republics of Bosnia and Herzegovina or of any organ of a Constituent Republic or of governmental units subordinate thereto, as well as of any other institution or person by whom human dignity, rights or liberties may be negated or ethnic cleansing may be accomplished or its effects preserved.

Article 6

In the course of carrying out his functions an Ombudsman may examine all official documents, including secret ones, as well as judicial and administrative files and require any person (including any official) to cooperate, in particular by transmitting relevant information, documents and files. Ombudsmen may also attend court and administrative hearings, as well as meetings of other organs and enter and inspect any place where persons deprived of their liberty are confined or work.

Article 7

The Ombudsmen, their Deputies and any other person who carries out inquiries pursuant to Article 6, are required to maintain the secrecy of whatever they learned in the course of such inquiry, and must treat all documents and files in accordance with the applicable rules.

III. REPORTS OF THE OMBUDSMEN

Article 8

(a) Each Ombudsman shall present an annual report to the Presidency of the Union of Republics of Bosnia and Herzegovina, to the Presidents of each of the Constituent Republics and to the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia.

(b) An Ombudsman may also present at any time special reports to any competent authorities.

IV. REGULATIONS OF THE OMBUDSMEN

Article 9

Each Ombudsman shall draw up, or the Ombudsmen may collectively draw up, Regulations that specify their organisation and the method of exercising their functions, which shall be promulgated in the Official Journal of the Union of Republics of Bosnia and Herzegovina, as well as in the official journals of the Constituent Republics. These Regulations may be changed by a law adopted by the Parliament.

APPENDIX II

AGREED ARRANGEMENTS CONCERNING THE CONSTITUTIONAL AGREEMENT OF THE UNION OF REPUBLICS OF BOSNIA AND HERZEGOVINA

. . . .

PART 2

. . . .

C. Police forces

1. Each existing or new opstina in the Sarajevo District and the Mostar City Opstina shall organize and control its own uniformed police force, which shall have a proportionally balanced ethnic composition and shall be subject to supervision by respecting the Administrator for the Sarajevo District or the Mostar City Opstina.

2. Each Constituent Republic shall organize and control its own uniformed police force, which shall have a proportionally balanced ethnic composition. Any necessary coordination shall be the responsibility of the Presidency.

3. The parties understand that as part of the UNPROFOR deployment in Bosnia and Herzegovina there is to be a large civilian police element, whose principal task will be to monitor the police of the Constituent Republics and of the opstinas in the Sarajevo District, and the Mostar City Opstina, so that each: has an appropriately balanced ethnic composition; does not oppress members of minority ethnic groups; contributes positively to the reversal of "ethnic cleansing" by protecting persons returning after having been forced to flee; carries out the judgements of courts, in particular the Human Rights Court; assists the Interim Human Rights Commissioner, the Deputy Commissioners and the human rights monitors; and that the numbers and equipment of the police are in keeping with normal European standards.

D. Protection of human rights and the reversal of ethnic cleansing

1. The right is established of a refugee or displaced person to freely return as part of an overall process of normalisation. All statements or commitments made under duress, particularly those relating to the relinquishment of rights to land or property, shall be treated as wholly null and void.

2. The parties understand that there is to be an International Human Rights Monitoring Mission, to be established by the Secretary-General of the United Nations, which is to be headed by a Human Rights Commissioner for Bosnia and Herzegovina based in Sarajevo. Deputy Commissioners are to be based in various parts of the country. The Commissioner is to be supported by international human rights monitors, deployed throughout the territory of the Union of Republics of Bosnia and Herzegovina; in order to provide protection in urgent cases, they may intercede with the Presidency and the governments of the Constituent Republics, with the Administrator of Sarajevo District and the Mostar City Opstina and with UNPROFOR; they may refer issues to the ombudsmen and to other human rights agencies as needed and are to work closely with the United Nations High Commissioner for Refugees (UNHCR), the International Committee of the Red Cross (ICRC) and other humanitarian agencies. The Commissioner is expected to submit regular reports to the Secretary-General, who is to report periodically to the Security Council and to other international bodies, including the United Nations Commission on Human Rights and its Special Rapporteur.

ADDENDUM 8¹

CONSTITUTION OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

. . . .

II. HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

A. GENERAL

Article 1

As the principles set out below and the rights and freedoms provided in the instruments listed in the Annex are to be applied throughout the territory of the Republic of Bosnia and Herzegovina, the following provisions govern the Federation.

Article 2

The Federation shall ensure the application of the highest level of internationally recognized rights and freedoms provided in the instruments listed in the Annex. In particular:

(1) All persons within the territory of the Federation shall enjoy the rights:

- (a) To life;
- (b) To liberty, with arrest and detention authorized only by law;
- (c) To equality before the law;
- (d) To freedom from discrimination based on race, color, sex, language, religion or creed, political or other opinions, and national or social origin;
- (e) To fair criminal proceedings;
- (f) To freedom from torture and cruel or inhuman treatment or punishment;
- (g) To privacy;
- (h) To freedom of movement;

(i) To asylum;

(j) To protection of the family and of children;

(k) To property;

(l) To fundamental freedoms: free speech and press; freedom of thought, conscience, and belief; freedom of religion, including private and public worship; freedom of assembly; freedom of association, including to form and belong to and labor unions and the freedom not to associate; and freedom to work;

(m) To education;

(n) To social protection;

(o) To health;

(p) To nutrition;

(q) To shelter; and

(r) To protection of minorities and vulnerable groups.

(2) All citizens shall enjoy the rights:

(a) To form and belong to political parties; and

(b) To political rights: to participate in public affairs; to have equal access to public service; to vote and stand for election.

Article 3

All refugees and displaced persons have the right to freely return to their homes of origin.

Article 4

All persons shall have the right, to be implemented in accordance with Federation legislation and Cantonal legislation consistent therewith, to have restored to them any property of which they were deprived in the course of ethnic cleansing and to be compensated for any property which cannot be restored to them. All statements or commitments made under duress, particularly those relating to the relinquishment of rights to land or property, shall be treated as null and void.

Article 5

The acquisition and termination of citizenship shall be regulated by Federation Legislation, provided that:

- (a) No person shall be deprived of citizenship arbitrarily or in such a way as to leave him stateless.
- (b) All citizens shall be entitled to hold the citizenship of another state.

Article 6

All courts, administrative agencies and other governmental organs of the Federation shall apply and conform to the rights and freedoms provided in the instruments listed in the Annex. A Court of Human Rights shall be established in accordance with Article IV.C.16.

Article 7

All competent authorities in the Federation shall cooperate with any international human rights monitoring mechanisms established for Bosnia and Herzegovina and with the supervisory bodies established by any of the instruments listed in the Annex.

B. Initial Appointment and Functions of the Ombudsmen

1. General Provisions

Article 1

(1) There shall be three Ombudsmen, one Bosniac, one Croat, and one Other, who shall be appointed by the Federation Legislature in accordance with legislation it shall adopt no sooner than three years after the entry into force of this Constitution.

(2) Each of the Ombudsmen shall, with the approval of the President, appoint one or more Deputies. They shall in particular seek to appoint Deputies in Municipalities with populations that do not reflect the composition of the Canton as a whole. The competent authorities shall facilitate such efforts.

(3) The terms of service of the Ombudsmen and their Deputies shall be the same respectively as those of the President and of the judges of the Supreme Court.

(4) Each Ombudsman shall also appoint additional staff within the framework of the budget approved therefore by the Cabinet of the Federation or initially by the Prime Minister.

Article 2

(1) The Ombudsmen are to protect human dignity, rights, and liberties as provided in the Constitution, in the instruments listed in the Annex thereto, and in the constitutions of the Cantons. In particular, they shall act to reverse the consequences of the violations of these rights and liberties and especially of ethnic cleansing.

(2) In carrying out their functions, the Ombudsmen must be guided by law and by the principles of morality and justice.

Article 3

Each Ombudsman shall exercise his functions individually, except as otherwise provided herein. Two or more Ombudsmen may cooperate in carrying out any of their functions.

Article 4

The Ombudsmen are independent in carrying out their functions, and no person or governmental organ may interfere with such functions.

2. The Competence and the Powers of the Ombudsmen

Article 5

The Ombudsmen may examine the activities of any institution of the Federation, Canton, or Municipality, as well as of any institution or person by whom human dignity, rights, or liberties may be negated, including by accomplishing ethnic cleansing or preserving its effects.

Article 6

(1) An Ombudsman is entitled to initiate proceedings in competent courts and to intervene in pending proceedings, including any in the Human Rights Court.

(2) As provided for in Article IV.C.8, an Ombudsman is entitled to receive the assistance of the Judicial Police.

Article 7

(1) In carrying out his functions an Ombudsman may examine all official documents, including secret ones, as well as judicial and administrative files and require any person (including any official) to cooperate, in particular by providing relevant information, documents, and files. Ombudsmen may also attend court and administrative hearings, as well as meetings of other organs,

and may enter and inspect any place where persons deprived of their liberty are confined or work.

(2) The Ombudsmen, their Deputies, and any person who carries out inquiries pursuant to paragraph (1) are required to maintain the confidentiality of information obtained and shall in particular treat all documents and files in accordance with applicable rules, except as provided in Article 8.

3. Reports of the Ombudsmen

Article 8

(1) Each Ombudsman shall present an annual report to the Prime Minister and the Deputy Prime Minister of the Federation, to each Cantonal President, and to the CSCE.

(2) An Ombudsman may also present at any time special reports to any competent Federation, Cantonal, Municipal, or international authorities. Domestic institutions shall have an obligation to reply within a time limit specified by the Ombudsman.

(3) In the reports referred to in paragraphs (1) and (2), an Ombudsman may include any material described in Article 5 and shall make arrangements to protect information requiring confidentiality.

4. Regulations of the Ombudsmen

Article 9

Each Ombudsman shall draw up, or the Ombudsmen may collectively draw up, Regulations that specify their organization and the method of exercising their functions. The Regulations shall be promulgated in the Official Journal of the Federation. The Federation Legislature may change these Regulations by law.

.....
IV. STRUCTURE OF THE FEDERATION GOVERNMENT

.....
C. The Judiciary

.....
5. The Human Rights Court

Article 18

(1) The Human Rights Court shall consist of three Judges, one Bosniac, one Croat and one Other.

(2) If the Court concludes that its business requires the participation of more judges to avoid undue delays in the disposition of cases, the Federation Legislature shall by legislation provide for the appointment of additional judges, in accordance with the above-specified proportion.

Article 19

The competence of the Human Rights Court shall extend to any question concerning a constitutional or other legal provision relating to human rights or fundamental freedoms or to any of the instruments listed in the Annex. The Court shall have jurisdiction over cases commenced after 1 January 1991.

Article 20

Any party to an appeal in which another court of the Federation or any Canton has pronounced a judgment that is not subject to any other appeal (for a reason other than the lapse of a time limit for which the moving party is responsible), may appeal such judgment to the Court on the basis of any question within its competence. The Court may issue orders or other relief it deems appropriate. The decision of the Court shall be final and binding.

Article 21

(1) An appeal may also be taken to the Court if a proceeding is pending for an unduly long time in any other court of the Federation or any Canton.

(2) The Court shall decide whether to accept such an appeal after a preliminary consideration of whether the proceeding in the other court has been pending too long and whether the subject of the appeal is within its competence.

(3) The Court may make other provisions for expediting proceedings.

Article 22

The Constitutional Court and the Supreme Court or any Cantonal court may, at the request of any party to an appeal pending before it, or on its own motion in relation to such an appeal, address to the Human Rights Court a question arising out of the appeal if the question relates to any matter within the competence of that Court. The response of the Court is binding on the requesting court.

Article 23

(1) The Human Rights Court shall regulate its own procedures and its organization.

- (2) Each panel of the Court is to have the composition specified for the Court in Article 18(1).
- (3) The Court shall allow written and oral pleadings in every proceeding pursuant to Articles 20-22.

VIII. AMENDMENT OF THE CONSTITUTION

Article 1

.....

- (3) To be adopted, proposed amendments require the following majorities:
- (a) In the House of Peoples, a simple majority, including a majority of the Bosniac Delegates and a majority of the Croat Delegates;
- (b) In the house of Representatives, a two-thirds majority.

.....

Article 2

No amendment to the Constitution may eliminate or diminish any of the rights or freedoms set out in Sub-Chapter II.A, or alter the present Article.

IX. APPROVAL AND ENTRY INTO FORCE OF THE CONSTITUTION AND TRANSITIONAL ARRANGEMENTS

.....

Article 9

The following provisions relating to certain transitional international arrangements shall apply for the periods respectively specified:

.....

- (d) (i) The Human Rights Court shall operate within the framework of the mechanism established by the Council of Europe by Resolution 93(6)² of its Committee of Ministers, as that Resolution may be amended from time to time as long as that Resolution remains applicable to the Federation.
- (ii) The Human Rights Court shall initially consist of seven Judges, three of whom shall be appointed and serve in accordance with the requirements of Article IV.C.6. The Committee of Ministers of the

Council of Europe shall appoint four of the Judges of the Court in accordance with the above-cited resolution. These Judges shall be foreigners who shall not be citizens of any neighboring state.

(iii) If the Court concludes that its business requires the participation of more judges to avoid undue delays in the disposition of cases, the President shall make arrangements with the Council of Europe for the appointment of additional judges, in accordance with the above-specified proportion of domestic and foreign judges.

(e) For a period of no less than three years and in any event until the Legislature of the Federation adopts a law relating to the appointment of the Ombudsmen, these shall be appointed and may be removed by the Conference on Security and Cooperation in Europe (CSCE) after consultation with the President and Vice-President of the Federation.

.....

ANNEX

HUMAN RIGHTS INSTRUMENTS TO BE INCORPORATED INTO THE FEDERATION CONSTITUTION

1. 1948 Convention on the Prevention and Punishment of the Crime of Genocide³
2. 1948 Universal Declaration of Human Rights⁴
3. 1949 Geneva Conventions I-IV on the Protection of the Victims of War,⁵ and the 1977 Geneva Protocols I-II thereto⁶

3. *Approved and opened for signature* Dec. 9, 1948, by G.A. Res 260A(III) (1948), 78 U.N.T.S. 277, 45 AM. J. INT'L L. Supp. 7, UNITED NATIONS, I(2) HUMAN RIGHTS: STATUS OF INTERNATIONAL INSTRUMENTS 673, U.N. Doc. ST/HR/1/Rev.5, U.N. Sales No. E.94.XIV.1 (1993) [hereinafter HR COMPILATION]; M.J. BOWMAN & D.J. HARRIS, MULTILATERAL TREATIES: INDEX AND CURRENT STATUS, Treaty No. 225 (Butterworths, 1984 and Tenth Cumulative Supplement, Univ. of Nottingham Treaty Centre, 1993) [hereinafter B & H].

4. G.A. Res. 217A(III), U.N. Doc. A/810, at 71 (1948), I(1) H.R. COMPILATION 1.

5. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Force in the Field, *done* Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31, I(2) H.R. COMPILATION 685, B & H TREATY No. 238; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, *done* Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85, I(2) H.R. COMPILATION 711, B & H TREATY No. 239; Geneva Convention Relative to the Treatment of Prisoners of War, *done* Aug. 12, 1949, 6 U.S.T. 331, 75 U.N.T.S. 135, I(2) H.R. COMPILATION 732, B & H TREATY No. 240; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, *done* Aug. 12, 1949, 6 U.S.T. 351, 75 U.N.T.S. 287, I(2) H.R. COMPILATION 803, B & H TREATY No. 241.

6. Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts, (Protocol 1), *adopted* June 8, 1977, 1125 U.N.T.S. 3, 16 I.L.M. 1391, I(2) H.R. COMPILATION 866, B & H TREATY No. 707; Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts, (Protocol 2), *adopted* June 8, 1977, 1125 U.N.T.S. 609, 16 I.L.M. 1442, I(2) H.R. COMPILATION 934, B & H TREATY No. 708.

4. 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms,⁷ and the Protocols thereto⁸
5. 1951 Convention relating to the Status of Refugees⁹ and the 1966 Protocol thereto¹⁰
6. 1957 Convention on the Nationality of Married Women¹¹
7. 1961 European Social Charter¹² and the Protocol 1 thereto¹³
8. 1961 Convention on the Reduction of Statelessness¹⁴
9. 1965 International Convention on the Elimination of All Forms of Racial Discrimination¹⁵
10. 1966 International Covenant on Civil and Political Rights¹⁶ and its 1966¹⁷ and 1989¹⁸ Optional Protocols thereto

7. Convention for the Protection of Human rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221, Europ. T.S. No. 5, B & H TREATY No. 256.

8. Protocol, Mar. 20, 1952, 213 U.N.T.S. 262, Europ. T.S. No. 9, B & H TREATY No. 275; Protocol No. 2, Conferring Upon the European Court of Human Rights Competence to Give Advisory Opinions, May 6, 1963, Europ. T.S. No. 44, 58 AM. J. INT'L L. 331, B & H TREATY No. 449; Protocol No. 3, Amending Articles 29, 20, and 34 of the convention, May 6, 1963, Europ. T.S. No. 45, 58 AM. J. INT'L L. 333; Protocol No. 4, Securing Certain Rights and Freedoms Other Than Those Included in the Convention and in Protocol No. 1, Sept. 16, 1963, Europ. T.S. No. 46; Protocol No. 5, Amending Articles 22 and 40 of the Convention, Europ. T.S. No. 55; Protocol No. 6, Concerning the Abolition of the Death Penalty, Apr. 28, 1983, Europ. T.S. No. 114, 22 I.L.M. 538, B & H TREATY No. 832; Protocol No. 7, Nov. 22, 1984, Europ. T.S. No. 117, 24 I.L.M. 435, B & H TREATY No. 857; Protocol No. 8, Europ. T.S. No. 118; Protocol No. 9, Nov. 6, 1990, Europ. T.S. No. 140, 30 I.L.M. 693, B & H TREATY No. 977; Protocol No. 10, Europ. T.S. No. 146; Protocol No. 11, Restructuring the Control Machinery Established Thereby, Europ. T.S. No. 155.

9. July 28, 1951, 189 U.N.T.S. 150, I(2) H.R. COMPILATION 638, B & H TREATY No. 267.

10. *Done* Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267, I(2) H.R. COMPILATION 655, B & H TREATY No. 501.

11. *Done* Jan. 29, 1957, 309 U.N.T.S. 65, G.A. Res. 1040, U.N. GAOR, 11th Sess., U.N. Doc. A/RES/1040(XI) (1957), I(2) H.R. COMPILATION 607, B & H TREATY No. 342.

12. Oct. 18, 1961, 529 U.N.T.S. 89, Europ. T.S. No. 35, B & H TREATY No. 422.

13. Additional Protocol, May 5, 1988, Europ. T.S. No. 128, B & H TREATY No.

14. *Done* Aug. 20, 1961, 989 U.N.T.S. 175, I(2) H.R. COMPILATION 616, B & H TREATY No..

15. *Opened for signature*, Mar. 7, 1966, 660 U.N.T.S. 195, G.A. Res. 2106A, U.N. GAOR, 20th Sess. U.N. Doc. A.RES/2106(XX) (1966), 5 I.L.M. 352, I(1) H.R. COMPILATION 66, B & H TREATY No. .

16. *Done* Dec. 16, 1966, 999 U.N.T.S. 171, G.A. Res. 2200, U.N. GAOR, 21st Sess, U.N. Doc. A/RES/2200(XXI) (1967), I(1) H.R. COMPILATION 20, B & H TREATY No. .

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11. 1966 International Covenant on Economic, Social and Cultural Rights¹⁹
12. 1979 International Convention on the Elimination of All Forms of Discrimination against Women²⁰
13. 1981 [U.N.] Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief²¹
14. 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment²²
15. 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment²³
16. 1989 Convention on the Rights of the Child²⁴
17. 1990 Convention on the Rights of Migrant Workers and Members of their Families²⁵
18. 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE [Part IV]²⁶
19. 1990 Council of Europe Parliamentary Assembly Recommendation on the Rights of Minorities, paras. 10-13²⁷

19. *Adopted and opened for signature*, Dec. 16, 1966, 993 U.N.T.S. 3, G.A. Res. 2200, U.N. GAOR, 21st Sess., U.N. Doc. A/RES/2200(XXI) (1967), I(1) H.R. COMPILATION 8, B & H TREATY No. 497.

20. *Convention on the Elimination of all Forms of Discrimination against Women, adopted and opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1980), 19 I.L.M. 33, I(1) H.R. COMPILATION 150, B & H TREATY No. 769.

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23. Done Nov. 26, 1987, Europ. T.S. No. 126, 27 I.L.M. 1152, B & H TREATY No. 912.

24. *Adopted and opened for signature* Nov. 20, 1989, U.N.T.S. Reg. No. 27531, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 166, U.N. Doc. A/44/49 (1990), 28 I.L.M. 1448, I(1) H.R. COMPILATION 174, B & H TREATY No. 953.

25. *Adopted and opened for signature* Dec. 18, 1990, G.A. Res. 45. 158, U.N. GAOR, 45th Sess., U.N. Doc. A.RES/45/158 (1991), 30 I.L.M. 1521, I(2) H.R. COMPILATION 554, B & H TREATY No. 983.

26. June 29, 1990, 29 I.L.M. 1305, 1318.

27. *Recommendation 1134*, Eur. Parl. Ass., 42d Sess., 2d part (1990) (adopted on Oct. 1, 1990). As mentioned in *supra* note 48 of the text, it is likely that in subsequent listings, this Recommendation will be replaced by a revised 25 (1992) Framework Convention for the Protection of National Minorities adopted by the C/E Committee of Ministers on Nov. 10, 1994.

20. 1992 [U.N.] Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities²⁸
21. 1992 European Charter for Regional and Minority Languages²⁹

28. Dec. 18, 1992, G.A. Res. 47/135, U.N. GAOR, 47th Sess., U.N. Doc. A/RES/47/135 (1993), I(1) H.R. COMPILATION 140, B & H TREATY No. 1014.

29. Nov. 5, 1992, Europ. T.S. 148, B & H TREATY No. 1014.

ADDENDUM 9¹

**COUNCIL OF EUROPE
COMMITTEE OF MINISTERS**

RESOLUTION 93(6)

**ON THE CONTROL OF RESPECT FOR HUMAN RIGHTS
IN EUROPEAN STATES NOT YET MEMBERS OF THE COUNCIL
OF EUROPE**

*(Adopted by the Committee of Ministers on 9 March 1993 at the 489th
meeting of the Ministers' Deputies)*

The Committee of Ministers of the Council of Europe.

Acting under the Statute of the Council of Europe signed in London on
5 May 1949;

Having regard to the Convention on the Protection of Human Rights
and Fundamental Freedoms of 4 November 1950 and the Protocols thereto;

Considering that it is desirable that all European states become members
of the Council of Europe and Parties to the European Convention on Human
Rights and the Protocols thereto;

Wishing to make arrangements under which the Council of Europe can
contribute to the setting up by European states which are not yet members
of the Council of Europe and which so desire, as a transitional measure,
within their internal legal system, of a body responsible for the control of
respect for human rights that takes into account the substantive provisions of
the European Convention of Human Rights;

Considering that the establishment of a transitional human rights control
mechanism drawing on the competence and experience of the control organs
of the European Convention on Human Rights might promote the process of
accession to the Council of Europe;

Having consulted the European Court and Commission of Human Rights
which have both indicated their agreement;

Resolves to contribute towards the control of respect for human rights
in European non-member states, in accordance with the following principles:

1. For a discussion, see *supra* part II.B.2.a of the text. *See also supra* note 74 of the text.

Article 1

At the request of a European non-member state, the Committee of Ministers may, after consultation with the European Court and Commission of Human Rights, appoint specially qualified persons to sit on a court or other body responsible for the control of respect for human rights set up by this state within its internal legal system (hereafter called the "control body").

Article 2

The number of members of the control body set up by the requesting state shall be such that the number of members appointed by virtue of this resolution will be greater than the number of other members.

Article 3

The law applicable by the control body shall include the substantive provisions of the European Convention on Human Rights.

Article 4

Practical arrangements concerning the participation described in Article 1 shall be specified in an agreement concluded by the Secretary General of the Council of Europe with the requesting state on behalf of the Committee of Ministers.

Article 5

The arrangements under this resolution shall cease once the requesting state has become a member of the Council of Europe except as otherwise agreed between the Council of Europe and the state concerned.

ADDENDUM 10¹

Based on sect. IIB, article 9 of the Constitution of the Federation of Bosnia and Herzegovina, the three Ombudsmen, together, and in accordance with the mandate of the OSCE Mission to Bosnia and Herzegovina (in later text the Mission), and the meeting held on 21 January 1995 have adopted the following

**REGULATIONS [of the BH Federation Ombudsmen]
on the method of executing their functions and on their internal
organisation**

1. General Guidelines**Article 1.**

The Ombudsmen carry out their function as established in the Constitution of the Federation with the aim of re-establishing mutual trust and co-operation between the Constituent Peoples (along with Others) and citizens of the Federation of Bosnia and Herzegovina² (in further text groups).

Article 2.

With the aim of carrying out their function in Article 1. of these Regulations, each Ombudsman is obliged to hear a claimant for the protection of rights regardless of the group to which the claimant belongs, if this person wishes to approach him with such a request.

Article 3.

The Ombudsmen will, in carrying out their functions, to the furthest extent possible, follow the principle of direct personal contact and communication with claimant for the protection of rights.

Article 4.

The Ombudsmen individually investigate the cases presented to them, but they will eventually address themselves to the public only as a joint body.

Article 5.

The Ombudsmen will not interfere in the regular political, administrative or juridical procedures, as long as no discrimination due to ethnic adherence or violation of human or civilian rights as stated in the Constitution are claimed.

1. English translation provided by the Ombudsmen. For a discussion, see *supra* part II.B.2.a of the text.

2. See *supra* Add. 8, at 56.

Article 6.

The Ombudsmen, in carrying out their function, are obliged to co-operate as much as possible and follow these Regulations.

2. Claims for the protection of rights

Article 7.

In the event that he feels himself the victim of ethnic discrimination or of a violation of human rights, any individual on the territory of the Federation may personally (the preferred method) or, in specific cases, through his legal guardian or representative, submit one or more requests for the protection of rights to the ombudsman selected by him or by his legal guardian or representative.

Article 8.

The request may be submitted in any written form, or orally including by telephone, and in any of the languages of the groups of the Federation.

Article 9.

A request for the protection of rights may be submitted, in accordance with the provisions of article 7, by a third person only when the claimant is physically prevented from undertaking an action for him/herself, or when he/she is unable to speak one of the languages of the groups of the Federation. A third person as in the first part of the Article, until the resolution by the Ombudsman of the request for protection of rights, may not submit additional requests for protection of the rights which pertain to other claimants.

Article 10.

An Ombudsman may decide to group two or more similar requests for protection of human rights and treat them as one case or accept that several similar cases are initially submitted by only one person. All the concerned claimants must be heard later.

Article 11.

Personal information pertaining to the claimant for protection of rights, as well as personal information pertaining to the party against which a request for protection of rights has been submitted, will be protected by the Ombudsmen with the highest degree of confidentiality.

Ombudsmen will not carry out their functions on the basis of anonymous requests for protection of human rights.

Article 12.

In so much as, during his investigation of a request for protection of rights, an ombudsman determines that other evidence for a violation of rights due

to ethnic discrimination or violation of human or civil rights exists, he may on his own initiative open a process on the basis of such additional evidence.

3. Deputies

Article 13.

Each Ombudsman may name one or more deputies with the consent of the competent authority as provided by the Federation Constitution.

Article 14.

The Ombudsmen will however consult each other before the nomination of a deputy is submitted to the component authority as provided by the Federation Constitution.

Article 15.

A deputy shall be invested with the authority of the Ombudsman, in accordance with provisions of the previous Article of these Regulations, for a clearly defined canton and only for cases transmitted to him in writing by the Ombudsman.

Article 16.

A deputy communicates his findings exclusively to the Ombudsman he represents.

4. Inquiries

Article 17.

Each Ombudsman will investigate the cases submitted to him

Article 18.

An Ombudsman may charge his deputy with a case; the deputy acts then freely on his behalf within the limits of the specific case.

Article 19.

An Ombudsman may also charge any person of his trust by written proxy to undertake an inquiry.

The proxy from the first part of this Article must then state clearly which documents shall be supplied to the person noted in the first part of this Article, the names of the persons to be interviewed and subject of the interview.

General proxies are excluded.

Article 20.

Deputies or Holders of proxies submit the results exclusively to the Ombudsman who named or authorised them.

Article 21.

Requests of an Ombudsman to see any official document must be granted immediately, without delay.

Article 22.

All courts, administrative agencies, and legal and juridical entities are obliged to treat requests by Ombudsmen as a priority obligation and must insure that such request is fulfilled within three days of its submission.

Article 23.

If, during his inquiries, an Ombudsman finds indications of a criminal act without violation of human or civil rights, he so informs the competent prosecutor. That ends his involvement in that case.

5. Resolution of cases

Article 24.

In carrying out his function, the first tool of the Ombudsman shall be mediation between the claimant and the other side against which the claim has been submitted.

Article 25.

If during an investigation an Ombudsman finds that a claimant has been discriminated against or that human rights have been violated, he will first so inform the accused party and ask it to rectify its error. If the accused party can not or will not act on the Ombudsman's findings, the Ombudsman may then inform the accused's superiors.

In case such superiors do not act on the Ombudsman's finding, the Ombudsman may appeal to the President and/or Vice President of the Federation.

Article 26.

If the representative of the accused institution claims that a full rectification is not possible, the Ombudsman will endeavor to find a mutually acceptable solution.

Article 27.

If an Ombudsman has reason to believe, that his instructions are neglected, he shall send the case to the appropriate political or juridical body.

Article 28.

An Ombudsman may make a case public if he considers that this may further the rectification of the mistreatment in a given case, but only with the consent of the other Ombudsmen.

If the Ombudsmen do not agree on a [sic] eventual publication, any of them may refer to the Mission for advise.

Article 29.

Each Ombudsman is free to cite any case in his yearly report.

6. Procedures.

Article 30.

Every claim, written or oral, shall open a case.

Article 31.

The Ombudsman shall notify the opening of his case to the claimant within 20 days in writing.

Article 32.

The Ombudsman will log any step he undertakes in a case.

Article 33.

Summary protocols shall record all oral interviews.

Article 34.

If the Ombudsman finds that a claim is not justified, he closes the case and informs the claimant of his decision in writing, explaining his reasons, within 10 days of the date of decision to close the case.

Article 35.

If a claimant has not used the regular juridical or administrative procedures before applying to the Ombudsman, and the Ombudsman's evaluation is that the claim can be resolved by using such procedures in a reasonable timeframe, the Ombudsman shall instruct him on the necessary regular steps and close the case. If it is not possible to resolve the claim in that manner, or the resolution would take an excessive amount of time, the ombudsman may attempt by his own intervention to resolve the violation of rights.

In case of a claimed violation of rights where no possibility of resolution through the responsible organs of the Federation, the ombudsman is authorized to act himself to eliminate the results of the rights violation in accordance with Constitutional provisions.

Article 36.

If a so instructed claimant appeals to the Ombudsman again, asserting that his claim is not resolved or not resolved within the required time frame, then a new case shall be opened against the accused institution.

7. Formal requirements

Article 37.

No claim may be refused on formal grounds. It is up to the Ombudsmen to draw up any necessary formalities.

Article 38.

Requests of an Ombudsman to look into documents or to interview any official or private person must be delivered in writing, signed and duly sealed. However, specific documents to be viewed need not to be specified.

Article 39.

Ombudsmen shall seal their documents using their own seal in accordance with the provisions of the 1994 Law on Seals of the Federation of Bosnia and Herzegovina.

Article 40.

All documents concerning a case, together with the log, shall be filed and kept for ten years, after the conclusion of the investigation.

8. Co-operation

Article 41.

The three Ombudsmen shall co-operate as much as possible to reverse violations of human or civil rights.

Article 42.

To further the trust between groups, the Ombudsmen shall avoid individual public statements, except if agreed upon beforehand.

Article 43.

The Ombudsmen will meet regularly, if possible at least once a week, to exchange their experiences and to decide on common actions.

Those meeting will be presided in turn by an Ombudsman, the chairman's designation to rotate weekly following alphabetical order.

In exceptional cases, where one Ombudsman is unable to personally attend a meeting, he may participate by phone.

Article 44.

A Mission member shall be present at those meetings, until the Ombudsmen are nominated by Parliament.

Article 45.

The protocol of these meetings shall be prepared by the personal adviser/secretary of the Ombudsman presiding.

9. Transition period

Article 46.

Initially each Ombudsman shall nominate one personal adviser/secretary, to work in a common office with the advisers/secretaries of the other ombudsmen.

Article 47.

The Mission will put one technical secretary at the disposition of the Chancery of the Ombudsmen.

Article 48.

This [sic] Regulations became effective from the day of their approval.

Article 49

For competencies of the ombudsmen which are not regulated by these regulations, the Constitution of the Federation will be applied.

Article 50

Until the completion of the laws under which the Judicial Police will assist the ombudsmen in accordance with Article 8.IV.C of the Constitution of the Federation, the ombudsmen can request assistance from regular police on the territory of the Federation.

Article 51.

Changes and Amendments to these Regulations are established following the same procedure as that for their initial approval.

Article 52.

The Ombudsman who is preceding [sic] at the time these Changes and Amendments are passed, will present them together with the authorized translation in English to the Mission.

Article 53.

This Regulation is to be published in the Official Gazette of the Federation of BiH.