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The Bureaucratic Gaze of International Human Rights Law: A Case Study of Bosnia

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Abstract

The international community officials in Bosnia argue that peace-building transition to a sustainable peace is blocked by the inability of the administration to establish the 'rule of law' and the 'legalisation' of human rights. Without the external enforcement of the rule of law, it is argued that democracy is not possible. Regular elections will not lead to the establishment of a government committed to reform because criminal elites empowered by the war and the compromises of the Dayton settlement will continue to prosper. This paper analyses the problems with this perspective, suggesting that the focus on human rights legislation tends to fetishise the legal framework and translate political problems into questions of crime and illegitimacy. This approach which sees legal or administrative solutions as a short cut to addressing political problems can only result in setting back democratic transition, through marginalizing the political sphere, and risks discrediting the rule of law, by imposing 'ideal' legislation which exists on paper but has little relationship to society.

Introduction: The 'Rule of Law' and Politics in Bosnia

Advocates of international human rights 'legislation' argue that this law is particularly important to protect individuals where states are weak and societies are segmented. The breakdown of weak and fragile states and internal conflict is often viewed today through the lens of crime and human rights abuse.¹ The 'New Wars' thesis views conflict as motivated, not by political or geo-political aims but by private aims of plunder, black market profiteering and corruption through the manipulation of particularist regional, ethnic or nationalist identities. Led by paramilitaries, local warlords and criminal gangs, the aim of conflict is understood to be that of destabilisation and the sowing of fear and hatred through ethnic cleansing and mass killing.² Once the crisis situation is seen to have human rights abuses at its heart, the solution is then held to be 'cosmopolitan law enforcement', or the international imposition of international human rights law.³

It would seem that concern with international protections for individual rights and institutionalising legal safeguards for human rights is no longer the preserve of radical campaigners but is increasingly mainstream government policy. Anyone attending international think tank or Foreign Office seminars dealing with the problems of non-Western states cannot but be struck by the shift towards understanding political problems in the framework of law and law-breaking. It is not unusual to hear leading policy advisors insist that crime is the biggest problem that the world faces today. Not traditional crime or even trans-border crime but 'political' crime. As one advisor described the new pressing problem at a recent UK government seminar, the issue we faced was: 'the politicisation of crime and the criminalisation of politics'. This confluence of crime and politics was confidently held to undermine both governments and societies and to be the main cause of conflict and war in the world today.

Bosnia has been under international administration for the past seven years, during which time various approaches have been undertaken in the attempt to impose human rights structures and address the problems of the political sphere. The internationally controlled Office of the High Representative (OHR) has administered the Bosnian state since the 1995 Dayton peace settlement. Direct international regulation was

initially intended to be a temporary measure, running up to the first post-conflict elections in 1996. However, concerns over political stability and human rights protections for Bosnia's citizens led to a two-year extension of international mandates and then to the indefinite extension of international regulation at the end of 1997.⁴ While there are regular elections in Bosnia, the Office of the High Representative is entrusted with the final authority in civilian affairs. Although international officials have accumulated extensive executive powers, including the ability to impose legislation by edict and to dismiss 'obstructive' elected politicians, many international commentators have been critical of the lack of progress achieved. For many analysts, the lack of political progress can be explained by the OHR's focus on dealing with the nationalist political parties rather than imposing legislation despite their opposition. This neglect of the 'rule of law' is held to have shaped international policy since the Dayton settlement, which created weak central Bosnian state bodies and decentralised many legislative powers to two distinct entities, the Bosniak-Croat Federation and the Serb-dominated Republika Srpska. The Democratization Policy Institute argues that: 'The political system negotiated at Dayton by corrupt and nationalist politicians was designed to reward corrupt and nationalist politicians, thereby enticing them to end the war.'⁵ According to David Dlouhy, Director of the US State Department's Office of Bosnia Implementation:

[D]uring the war, the nationalist warring parties took advantage of the breakdown in government structures to gain control of large parts of the Bosnian economy. This economic power enabled...the large mono-ethnic parties to sustain their party apparatus and exert influence at all levels of society.⁶

For many commentators and international officials involved in Bosnia, the links between crime and politics, cemented in the black market war economy, remain central to understanding the political sphere today.⁷ International experts argue that equal rights are denied and that the problems of ethnic division, reflected in continuing strong support for nationalist parties and the lack of refugee return are the results of crime, corruption and vested interests.

At the start of the international administration it was expected that the first post-war elections would result in a rejection of the nationalist parties, seen by the international community as discredited and tainted by the crimes of war. However, the first post-war elections, held in 1996, and those succeeding it have demonstrated that the hold of these populist parties was much deeper than the international community initially foresaw. From the perspective of the international officials, Bosnian politics appeared to have been hijacked by nationalist elites who sought to sustain ethnic divisions in order to cling on to power. As an International Peace Academy 2002 conference report states:

One senior UN official involved in UN Mission in Bosnia recalled that every general and municipal election that was held in Bosnia and Herzegovina since 1996 turned out to be a "census of ethnicity" instead of a contest of substantive policy issues.⁸

The international officials clearly perceived the leading parties as a threat to democracy through their use of political and criminal 'centres of power' in all three

ethnic communities. Most international commentators have focused on the Serb and Croat communities. For example, the Democratization Policy Institute describes the Republika Srpska governing bodies in criminal terms:

In Republika Srpska, the entity government, many municipal authorities, and most political parties remain influenced and intimidated by a parallel hard-line authority centred on indicted war criminal and former Bosnian Serb wartime leader Radovan Karadzic. The Karadzic network and other regional hard-line offshoots include other indicted war criminals and organized crime rings with deeply rooted connections in government.⁹

The leading Croatian political party the HDZ (*Hrvatska Demokratska Zajednica* – Croatian Democratic Community) is similarly dismissed as criminal activists. Jacques Klein, Special Representative of the UN Secretary-General and Chief of the UN Mission in Bosnia, describes the HDZ as a ‘criminal elite that has enriched itself while politically and economically impoverishing its followers’,¹⁰ while the Democratization Policy Institute describes the party as ‘a mafia peddling itself as a protector of the Croat nation’.¹¹ The current international High Representative Lord Ashdown, who assumed his post in May 2002, has gone so far as to say that: ‘Corruption and organised crime in Bosnia are a bigger threat to the country than nationalism’ while the Senior Deputy High Representative, Matthais Sonn, argues that ‘corruption and nationalist political forces are interlinked’.¹²

In this context, the liberal approach of institution-building and elections has been dismissed as being inadequate, focusing ‘too much’ on politics. The failure of successive elections to bring ‘true democracy’ and to dent the support of nationalist parties has led the international community to attempt to achieve political change through focusing on the ‘rule of law’ and the promotion of human rights. It is argued that for democratic progress it is essential that human rights law is not made subordinate to the will of a criminalized political sphere in which the interests of the public are held to be ignored. Today, there is a general consensus that the rule of law should be prioritised. This point was stressed at the International Peace Academy high-level conference on transitional administrations, where international practitioners argued that: ‘focusing on democracy at the expense of the rule of law results in expensive democratic form without democratic substance’.¹³

Echoing this view, UN chief Jacques Klein stated, in July 2002, that the popular support garnered by the nationalist parties in elections was: ‘the price to be paid for the erroneous policies of establishing a façade of democracy at the expense of a solid foundation of justice and the rule of law’.¹⁴ For Klein, the political sphere is an unhealthy one where criminal political elites spread the ‘virus’ of nationalism which enables them to ‘sacrifice the general interests to their personal interest’. This perceived promotion of personal or sectional interests, rather than striving for the public benefit of Bosnian society as a whole, is held to undermine democracy. The Democratization Policy Institute suggests that: ‘Giving free rein to the current powers that be in Bosnia is not “democracy”’.¹⁵ The US State Department bluntly argues, the task of the international community is to develop ‘true democracy where rule of law and not rule of nationalist party politics reigns’.¹⁶ The influential policy-NGO International Crisis Group, asserts that: ‘Although the rule of law does not require democratic government, democracy presupposes the rule of law.’¹⁷ This is also the

position of Senior Deputy High Representative Sonn, who states: 'Justice may be achievable without democracy, but you certainly cannot create a democracy without justice.'¹⁸ The current High Representative Lord Paddy Ashdown has made the 'rule of law' his primary objective, stating in his inaugural speech in May 2002: 'First Justice. Then Jobs. Through Reform ...working with you to establish the rule of law will be my first, and my top, priority.'¹⁹

There is now a clear consensus, not just on the point that democracy is not possible without the 'rule of law' but that the establishment of the rule of law necessarily means 'legalising' human rights through measures which may not be formally considered to be democratic. The Democratization Policy Institute argues that: 'Development of true democracy, to include not just representative self-rule, but also respect for human rights and good governance, demands international intervention that in the short-run may be "anti-democratic", as were the international protectorates in post-WWII Germany and Japan.'²⁰ As the advisor to a leading international figure in Bosnia stated at a Foreign Office seminar on human rights promotion: 'You can't be too liberal and think too much about democratisation. You have to be an enlightened despot.'

Once the public interest is seen to lie in the hands of the external administrators then the role of elected representatives is necessarily a secondary one. Ashdown alluded to this at his inauguration: 'I have concluded that there are two ways I can make my decisions. One is with a tape measure, measuring the precise equidistant position between three sides. The other is by doing what I think is right for the country as a whole. I prefer the second of these.'²¹ Ashdown argues that while political parties represent the sectional interests of the ethnic groups, it is his job to put forward the public interest, the interests of "all" Bosnians. From Ashdown's perspective, Bosnian politicians are a barrier to the universal 'legalisation' of human rights and the pursuit of the Bosnian public interest because of their partial allegiances. He argues that the problems of Bosnia are in large part down to there being too many politicians and too much "politics".²²

This paper suggests that human rights regulation through the prioritisation of the rule of law above the political sphere cannot compensate for, or overcome, political problems. In fact, international policy, which seeks to marginalize the sphere of politics, institutionalises the current ethnic divide rather than seeking to overcome it. Progress in the 'rule of law' has been promoted by the Office of the High Representative as demonstrating the major improvements made under international administration, despite the continued political division of the tiny state. Here it is suggested that the gap between the internationally-imposed laws and the politically expressed will of Bosnian society, at the heart of the justification for externally-imposed human rights legislation, creates a 'rule of law' paradox. This paradox is drawn out below, in examples which illustrate that the attempt to privilege law above politics in fact weakens and discredits the 'rule of law' rather than strengthening it. Firstly, while the new laws may appear to be very impressive achievements on paper, they do not necessarily reflect or encourage an improvement in practice, and second, and more importantly, the development of the 'rule of law' through the external imposition of human rights legislation undermines the sphere of law itself.

The following sections will consider briefly three areas of legislation publicly justified as necessary to protect and enforce human rights and imposed over the opposition of Bosnian political representatives. The areas have been selected on the basis of their prominence in international reports on progress in the region. Firstly, the imposition of new constitutional changes which have sought to marginalize the governing influence of the main nationalist political parties, secondly, the imposition of housing legislation allowing refugees and displaced people to return to their pre-war homes, and thirdly the imposition of public sector job allocations, particularly in the police force, in proportion to the 1991 census figures.

Human Rights Legislation and Political Representation

In September 2000, the Bosnian constitutional court ruled that the general principle of political equality of the three constituent peoples should hold throughout Bosnia and both the political entities, the Bosniak-Croat Federation and the Serb-dominated Republika Srpska. This decision, which affected the entity constitutions, was pushed through by the three non-Bosnian internationally appointed judges but with the support of only the Bosnian judges representing one of the three ethnic constituencies. The two Bosniak judges supported the international judges' opinion, but the two Bosnian Serb and two Bosnian Croat judges opposed the ruling.

Already clearly politically divisive, this general ruling on principle was then used by the international administration to radically reshape the political framework. In January 2001 the High Representative issued a decree creating two constitutional commissions, which met to discuss specific textual proposals for constitutional change, already drawn up by an international taskforce.²³ The Mrakovica-Sarajevo 'Agreement on the Implementation of the Constituent Peoples' Decision of the Constitutional Court of Bosnia and Herzegovina' was finally imposed by the Office of the High Representative in March 2002.²⁴ Although it was signed by representatives of the United States and the European Union, the Agreement was not supported by Bosnian representatives despite its perceived constitutional importance as 'an addendum to the Dayton Agreement'.²⁵ The new constitution was imposed by three decrees imposing constitutional changes in the two entities and reforming the election laws. According to High Representative Wolfgang Petritsch imposition was necessary: 'I'm not going to allow...nationalist parties...to prevent them from taking effect. As a guarantor of the Mrakovica-Sarajevo Agreement, I simply cannot accept the continuing obstruction on the side of these nationalistic dinosaurs. I cannot allow the prospect that these...parties could hold the citizens of this country hostage.'²⁶

The implications for the governments of both the Bosnian entities were extensive. Section II, covering the distribution of key political posts in both entities states:

PM and Deputy Prime Ministers may not come from the same constituent people. Out of the following positions not more than 2 may be filled by representatives of any one constituent people or of the group of Others: 1) Prime Minister 2) Speaker of the House of Representatives / Republika Srpska National Assembly 3) Speaker of the House of Peoples / Council of Peoples 4) President of Supreme Court 5) President of Constitutional Court 6) Public Prosecutors. Presidents of Entities - the President shall have two Vice-Presidents coming from different constituent peoples.²⁷

Of the six most important positions in the Republika Srpska only two, or one-third, could be held by Bosnian Serbs. This was held to be a major step forward for democratising the Serb entity as despite the fact that the majority of the population were Bosnian Serb the governing representatives would be dominated by non-Serbs. Section III of the Agreement covered in greater detail the ‘minimum representation in the government of the Federation of Bosnia and Herzegovina and of the Republika Srpska’, stating:

The RS Government (Prime Minister and 16 ministers) shall be composed of 8 Serb, 5 Bosniak and 3 Croat ministers. One Other may be nominated by the Prime Minister from the quota of the largest constituent people. There shall be additionally a Prime Minister who shall have two Deputy Prime Ministers from different constituent peoples selected from among the Ministers; and the Federation Government (Prime Minister and 16 ministers) shall be composed of 8 Bosniak, 5 Croat and 3 Serb ministers. One Other may be nominated by the Prime Minister from the quota of the largest constituent people. There shall be additionally a Prime Minister who shall have two Deputy Prime Ministers from different constituent peoples selected from among the Ministers.²⁸

The new framework radically transformed the governments of Bosnia, particularly that of the Republika Srpska. For Petritsch, the use of the law to implement drastic reforms to the peace settlement was immensely pleasing. He stressed ‘that never ever in the three years of my mandate in Bosnia and Herzegovina have I experienced a feeling of such profound relief and satisfaction’.²⁹ On paper the three main nationalist parties have lost their power and control, governments at both the entity and state level are based on multi-ethnicity rather than votes. The October 2002 elections demonstrated the apparent necessity of adopting this strategy of using the law to reshape Bosnian politics. Representatives of the three main nationalist parties, the SDA (*Stranka Demokratska Akcija* – Party of Democratic Action), SDS (*Srpska Demokratska Stranka* – Serbian Democratic Party), and the HDZ, won the Bosniak, Serb, and Croat seats in the three-member Bosnian Presidency. At the State level, and in the elections for the Entity parliaments, the HDZ, SDS and SDA were the leading parties in their respective ethnic constituencies, yet are restricted to minority positions in ruling authorities.

The manipulation of election and constitutional laws had produced a situation where the results of the elections have no relationship to the expressed will of Bosnia’s citizens at the ballot box. It is not just at the level of entity governments that multi-ethnic political representation is imposed from above, regardless of the ethnic composition of the electorate. At the local level of municipal government and at cantonal level in the Federation the constitutional amendments have been used to break the hold of majority political parties elected to power where there is a clear ethnic majority. In some towns, major political parties or even the town mayor may live outside the town in some cases many miles away or even in another entity.³⁰

The imposition of new constitutional arrangements which have sought to ameliorate the influence of nationalist political parties has done little to strengthen the Bosnian political framework. Institutions which are run by politicians elected on few votes, and who have little connection to the people whose lives they are regulating over,

have little political legitimacy and are unable to secure wider support for the political settlement. While the constitutional changes may produce governments which look good on paper, they in fact institutionalise and perpetuate the problems which they seek to address. The fact that these institutions are dependent on international administrators to appoint them and oversee their operation means they perpetuate divisions and external dependencies. As long as the political settlement is dependent on external regulation, the questions of ethnic insecurity and uncertainty over the future remain. Rather than the nationalist parties losing credibility it would appear that their support is cohered by international manipulation of the political process.³¹ The use of the 'rule of law' to reform the political process has merely resulted in the undermining of Bosnia's political institutions. With growing cynicism over the political process, there was little surprise that only just over half the population wished to vote in the last elections, in October 2002.³²

The Law on Property Return

Annex 7 of the Dayton Peace Agreement, Article 1(1), states that:

All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them.³³

The issue of property return to displaced people and refugees has been held to be central in the struggle to enforce the 'rule of law' against the sectional interests of the main political parties. According to many international policy-makers, refugees and displaced people are up against the self-interest of political elites in two ways:

Bosnians wishing to return to areas where they will be a minority population face a double barrier. Nationalists in their former hometowns work to impede their return through administrative obstruction, intimidation and violence, more often than not with the connivance of local (and higher) authorities. Furthermore, the nationalist elites who rely on these derascinated populations as reservoirs of support also work to prevent their return.³⁴

For the international community imposing the 'rule of law' would mean 'squeezing' the 'opaque corrupt political and criminal networks' and 'help uproot the deadwood that has no interest in Bosnia functioning for its citizens – of any ethnicity'.³⁵ In November 1998 the international community acted to impose legislation in the Federation insisting that the right to repossess pre-war property took precedence over any rights that local authorities had granted to the current occupant. In April 1999 similar laws were imposed in Republika Srpska.³⁶ These laws were later strengthened and harmonised by the High Representative.³⁷ The implementation of property legislation met with resistance throughout Bosnia and has entailed detailed regulation and enforcement by international agencies, including the UN High Commission for Refugees, the Office of the High Representative, the Organisation for Security and Co-operation in Europe and UN Mission in Bosnia-Herzegovina. The UN International Police Task Force has supervised local police to ensure that evictions take place and international officials have taken over the running of reluctant local housing offices, setting quotas to be resolved and overseeing the management on a

day-by-day basis.³⁸ The High Representative has also used his 1997 Bonn-Petersburg powers to dismiss over 30 mayors and other municipal officials held to have obstructed the implementation of property laws and the exercise of the right to return. Even with the international community effectively running local housing authorities and removing any scope for discretion the solution is not straightforward. This is because property return is a political not a purely legal question.

Studies of the return situation and the imposition of the property legislation suggest that the imposition of law is not the same as refugee return itself. On paper the more coercive international policy seems to be paying dividends. By the end of September 2002 it was reported that 150,000 (62 per cent of applicants) had been successful in reclaiming their property.³⁹ However, forcing through property returns in a situation of uncertainty has merely resulted in the 'legally dubious but increasingly common practice of selling off property claims before they have been realised' or in the legally fine but politically counterproductive selling of the property, often to the family which were the former occupants.⁴⁰

Although the imposition of property legislation against the will of Bosnian local authorities is promoted as a key example where the 'rule of law' protections of human rights and equal treatment have taken precedence over Bosnian political will, there is little accounting for the success of this policy on the ground. According to the International Crisis Group:

No international organisation or government agency has precise figures on how many Bosnians, after reclaiming their houses or flats – or receiving reconstruction assistance – then decide to sell or exchange them and relocate elsewhere. Both anecdotal evidence and classified advertisements in the newspapers suggest that the practice is widespread.⁴¹

In fact, the Office of the High Representative has been happy to connive in the artificial conflation of 'law' and 'reality' in order to give the impression of progress. In July 2001 the High Representative decreed the end to the two-year moratorium on re-sale in the Federation.⁴² After the decree, applications for repossession from refugees 'shot up', the motivation being for sales rather than return.⁴³ Along with not keeping figures distinguishing permanent return from selling or exchanging property, the High Representative seems willing to compromise on permanent return in order to boost the success of property law implementation.

The majority of the property law returns have been implemented where they concern socially-owned apartments in urban areas rather than private property in rural areas. This gives a misleading impression as it is precisely urban municipal properties which are most likely to be exchanged or sold. Permanent return is most often centred on villages because in the towns economic opportunities are scarce, while in the rural areas economic survival is helped through the reliance on subsistence agriculture.⁴⁴ Even if property sold or exchanged is excluded, many of the properties returned are not occupied by their legal owners and either left vacant or rented out. Sarajevo media report that as many as 10,000 repossessed apartments in Sarajevo canton remain empty, representing half the properties repossessed in the canton.⁴⁵ In Dvar about 500 Serb owners of repossessed and privatised flats have signed rental agreements

allowing displaced Croats to stay on. Similar arrangements exist in Foca where Bosniaks have repossessed their flats but have rented them out to displaced Serbs.

Often even where property figures do represent actual returns, the level of return is only a partial one, and does not represent a return to pre-war patterns of integration. In many cases where there is return to pre-war housing, the figures are misleading as only part of the family returns, particularly older family members while school-age children are likely to remain in or be sent back to their 'majority' areas.⁴⁶ In cities such as Prijedor and Sarajevo, survey results indicate that many people who have returned continue to commute to work in the places where they were formerly displaced.⁴⁷

The 'rule of law' perspective, as imposed by international administrators, attempts to impose a return to the pre-war situation. After four years of war and eight years of living apart many people have naturally made new lives for themselves, either in Western states, neighbouring states, or in other parts of Bosnia.⁴⁸ Former sociology professor at Sarajevo University, Dzemal Sokolovic, himself a Bosniak refugee, argues that the Bosnian demographic map can never be put back to 1991. Refugees and those displaced with new opportunities elsewhere in Bosnia or new national citizenship status in Switzerland, Canada or Sweden cannot be expected to return to their previous lives in Bosnia and, of course, the war dead (estimated at between 50,000 and 250,000) will never return.⁴⁹

However, from the perspective of Bosnia's international administrators, any attempt to respond to new needs created by population changes brought by the war and economic and social transition is problematised and seen as preventing a return to the 1991 ethnic balance. It would appear that in the actions of international administrators 'dead souls' overrule the demands of those living in Bosnia. Local authority attempts to address the needs of displaced people living within their area are perceived to be criminal actions designed to shore up the gains of ethnic cleansing. The distribution of building plots, construction materials, business premises and commercial estate to displaced persons is seen as problematic as this 'cements' ethnic cleansing, as does the provision of employment.

Many local authorities have been building new housing, something which would normally be seen as positive in the post-war situation. However, new construction is often seen as questionable because it inevitably reinforces the post-war status quo. In Pale, Sokolac, Srpska Ilidza and Srpsko Novo Sarajevo thousands of new houses and flats have been built to meet the needs of Serbs displaced from the Federation. Republika Srpska municipalities previously linked to Sarajevo have been particularly active in building commercial enterprises – hotels, cafes and other businesses on socially owned land. Those involved in authorising and supplying these projects have been investigated by OHR staff and action has been taken by the Office of the High Representative to ban the use of socially owned land without explicit OHR permission. In order to build on free land the authorities must petition the OHR for a waiver on the grounds that the use of this land is 'non-discriminatory and in the best interests of the public'.⁵⁰ The High Representative Petritsch and his successor Lord Ashdown have both sacked town mayors and other municipal officials precisely for the crime of making land allocations without adequate permission.⁵¹ Even welfare policies such as giving war veterans and the families of those killed low-interest loans

to purchase flats in new blocks have been criticised. All these policies are held by Bosnia's unaccountable rulers to perpetuate current ethnic imbalances rather than encourage a return to pre-war housing allocations.⁵²

The gap between Bosnia of 2003 and the Bosnia of 1991 continually brings out the problematic nature of international rule under the rubric of human rights enforcement. When elected representatives respond to the wishes of the electorate they are held to be pursuing criminal interests or to be 'cementing ethnic cleansing'. The biggest problem with the imposition of the 'rule of law' and focus on the imposed absolutes of human rights rather than political solutions is that it is very difficult for Bosnian society to move forward. There is an open threat that opposition to international regulation will be criminalized along with solutions aimed at enabling people to look forward and establish new lives. High Representative Lord Ashdown argues that 'we've invented a new human right here, the right to return after a war', by which he meant not post-war return to one's country but to reclaim and return to one's own home.⁵³ The 'human right' to put the pieces back together to the pre-war status-quo is not one that has been decided upon by the people of post-war Bosnia. To date arguments for the rule of politics on behalf of the living rather than the 'rule of law' on behalf of 'dead souls' have been rejected by the international administration and Bosnian calls for a new census to be held have been condemned as seeking to legitimise post-war population shifts.

Law on Employment in Public Institutions

One of the most widely praised legal developments has been the Mrakovica-Sarajevo 'Agreement on the Implementation of the Constituent Peoples' Decision of the Constitutional Court of Bosnia and Herzegovina' of March 2002, referred to above. Section IV of the Agreement covers: 'proportionate representation in all public authorities, including courts' and states:

Constituent peoples and members of the group of Others shall be proportionately represented in public institutions in the Federation of Bosnia and Herzegovina and in Republika Srpska... As a constitutional principle, such proportionate representation shall follow the 1991 census until Annex 7 is fully implemented...⁵⁴

In this context, the figures and claims of success for multi-ethnic policing are particularly significant because Bosnia's police forces are the only public institution that the international community had systematically sought to integrate prior to the new constitutional ruling.

In restructuring agreements signed with the Federation in 1996 and Republika Srpska in 1998, the UN set down quotas for the recruitment of 'minority' officers. In the Federation, forces were meant to reflect the pre-war national composition of each municipality, in the RS the quotas were less exacting.⁵⁵ As of March 2002 there were 307 non-Serb police officers in Republika Srpska and 633 Serbs and 'Others' in the Federation. The RS police academy had 562 non-Serb cadets who had graduated or were in training and the Federation academy had 516 Serb cadets.⁵⁶

The UN Mission in Bosnia (UNMIBH) is responsible for police reform, head of mission, Jacques Klein, argues that the police reforms have made little difference:

Initially, it was assumed that the rule of law could be achieved solely by reforming the police. The thin slice of the international mandate given to UNMIBH in 1996 was confined to non-executive police reform and restructuring... Consequently, there is an imbalance between the components of the rule of law. Local police and corrections personnel have reached a baseline of professionalism and democratic policing. All other elements, namely: courts, judges, prosecutors, legal codes, the rules of evidence and criminal procedure, and witness protection, still require radical reform and restructuring.⁵⁷

Klein's comments flag up the limits of seeking to address the question of human rights through the imposition of new laws. The broader problems with the legal system in Bosnia reveal that the question of rights is intimately tied up with broader questions of social, political and economic transformation which cannot be addressed by the sloop of the administrator's pen and sending round a few policemen.

However, it could be argued that even Klein exaggerates the achievements made in this area. The International Crisis Group argues that the numbers are misleading and that few of the ethnic minority police officers are experienced officers of a high rank.⁵⁸ Those that do take up employment in areas dominated by another nationality often end up marginalized and sidelined by not being issued with weapons or badges, prevented from participating in investigations or being assigned to menial jobs such as doorman or parking attendant.⁵⁹ Studies into police reform in Bosnia suggest that the top-down imposition of ethnic quotas while looking good on paper may well not be sustainable in the absence of international regulation.⁶⁰

Despite the problems with the high profile restructuring of the police along the lines of ethnic proportionality the international administrators argue that they need to impose ethnic proportionality across the public sector. According to the Office of the High Representative: 'For Republika Srpska, the Agreement states that Bosniaks, Croats and Others have to fill posts in the public administration, from the municipal level to the Entity level, according to the 1991 census. This means 45 per cent of all posts - tens of thousands of jobs.'⁶¹ The High Representative states that, following the Agreement in the RS: 'We have so many more opportunities now in the administration, in the judiciary. There are literally hundreds, if not thousands, of new jobs that are now being made available for Croats and for Bosniaks.'⁶²

The High Representative's claim that jobs in the public sector should be allocated on the basis of the 1991 census is clearly problematic. With unemployment officially at 40 per cent for Bosnia as a whole and a weak private sector (accounting for a mere 35 per cent of Bosnian GDP) public institutions are the largest employers. Any redistribution of public sector jobs in this context will, as the International Crisis Group notes, 'prove difficult for both practical and political reasons'.⁶³

The motivating reason for the law based on the 1991 census is the belief that the current distribution of public sector posts needs to be challenged. However the law is not necessarily the best mechanism to do this. In Visegrad, for example, the law

insists that 63 per cent of the posts in the municipal government and administration should be held by Bosniaks despite the fact that they make up only around three per cent of the current population. Further up the Drina valley the law states that in Foca 52 per cent of the public sector jobs should go to the Bosniaks despite the fact that they constitute only six per cent of the population today. On the lower Drina in Zvornik, the Bosniak population of 15 per cent will be due 59 per cent of the government posts.⁶⁴

The 'public interest' is held to dictate that what is relevant for public sector employment is the population census of 1991 rather than the population situation in 2003. When the 'rule of law' insists that 63 per cent of public sector jobs or of government posts should be preserved for just three per cent of the local population, it is clear that the law will either only be imposed through increasing local antagonisms between ethnic groups or that the law will be ignored risking economic and political sanctions against the region concerned. Rather than the 'legalisation' of human rights guaranteeing the basis for peace and reconstruction, it would appear that these laws, if ever implemented, would lead to social instability and conflict

The 'Rule of Law'?

Even the advocates of the 'rule of law' realise that the external imposition of 'law' has been problematic in Bosnia. For example, the Democratization Policy Institute suggest:

International experts are poorly poised to craft such sets of laws. The track record of internationals drafting laws for Bosnia is abysmal. Legal experts who parachute into Sarajevo on six-month contracts, have little grasp of the Bosnian context, no understanding of the language, and who don't have to live with the results of their work, have made a mess of attempts to reform Bosnian statutes... The muddle resulting from internationals drafting detailed statutes leaves the Bosnian people understandably feeling like guinea pigs.⁶⁵

For the Democratization Policy Institute and other policy think tanks the problem is a technical rather than a political one. Internationals involved in the drawing up of laws are too often more focused on 'high salaries, low expenses and a "per-diem rich environment"' resulting in bad laws.⁶⁶

The advocates of the 'rule of law' approach recognise that there is inevitably a gap between the laws imposed and the needs and sensitivities of the society in which they are meant to take effect. The Democratization Policy Institute argues that this gap can be closed by giving Bosnians a larger role in the law-making process. They suggest that these Bosnians should be selected by international officials rather than by political representatives: 'Because the Bosnian political system is broken, OHR should not defer to it... instead selecting the small group of Bosnians itself.'⁶⁷ For this influential policy institute, Bosnian laws should be drawn up by international experts and the Office of the High Representative but then there should be consultation with Bosnian experts, but they stress forcibly that: 'Politicians should be excluded'.⁶⁸ For the Democratization Policy Institute the problem with external imposition of the law in the 'public interest' is not a political one. It is precisely this narrow understanding

of both law and politics which is problematic for international administrations such as the one in Bosnia.

The narrow understanding of both politics, which is dismissed as irrelevant to public needs, and of law, which is seen as an off-the-peg external solution, has little in common with the traditional liberal-democratic meaning of the 'rule of law'. The rule of law has historically been understood in relation to the modern democratic framework and in contrast to the rule of bureaucratic regulation or authoritarian repression.⁶⁹ The 'rule of law' did not mean merely that there was a set of rules and regulations or laws, but that this framework was predicated on consent, the equality of rights and the autonomy of individuals. It is important to stress the qualitative difference between the liberal-democratic approach, which derives rights from self-governing human subjects, and the human rights 'rule of law' approach of externally imposing a rights framework outside of the political process of debate and consensus-building.

The central component of all democratic systems of rights or legal systems, and their theoretical starting point, is the individual's capacity for self-government. The subject of the modern law is a person assumed to be a moral agent or self-willing actor. As a rights-bearing subject the person is not simply coerced into accepting the law by forces outside their influence. The law is seen to be freely accepted and to derive from his or her will. The framework of regulation of the modern democratic system is historically and logically derived from the formal assumption of equal self-governing individuals, responsible and accountable for their actions and capable of rational decision-making. All modern doctrines of the enforcement of contract, the punishment of crime, the election of governments and the state system of international law rest on this core assumption.⁷⁰ This can be usefully highlighted by a brief consideration of the different facets of a modern state's 'rights-framework' or legal system.

Civil law is the clearest expression of the derivation of the law from the will of the self-governing subject. In enforcing the law of contract, civil law does not impose an alien or external goal onto individuals. In fact, the civil law only binds individuals to their word; this is an expression of the will of the legal subject as the contract is voluntarily made. There is no compulsion to higher policy goals or ends; the only object of the law is the contract between two equal contracting parties. Criminal law also assumes the equality and free will of the legal subject. The accused is represented at the court in the same way as for breaches of civil law and has the right to defend their interests in court equal to any other citizen. The law is binding on the individual as if it were a contract, although there is no formal contract beyond the assumption of assent to membership of a law-bound community (mythologised in social contract theory). This is clearly only notional assent, but it is through this fiction of consent that the equal rights of defendants before the law are enshrined. In constitutional law, the notional social contract is given content. For all its limitations, the principle of popular sovereignty is a thoroughly radical conception of authority from the people. It argues that the state's authority and legislative legitimacy derives exclusively from the people, rather than any external source, whether this is the 'divine right' of Kings or the 'civilizing' mission of a colonial administration.

This idealised picture reveals the centrality, to all aspects of the modern framework of rights, of the rights-bearing individual with the capacity for self-government. The source of democratic rights and the modern 'rule of law' is the citizen, as an autonomous legal subject, rather than an external body which lays down the law from above. As Hannah Arendt noted, the concept of the 'rule of law', separated from a democratic political framework, would inevitably be a hollow one:

Equality, in contrast to all that is involved in mere existence, is not given us, but is the result of human organisation... We are not born equal; we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights.⁷¹

The universal human subject assumed by the human rights legislator may be identifiable as an individual, but unless that individual can act within a political and legal framework based on equality they will be unable to exercise equal legal or political rights. Norman Lewis notes:

Placing the concept 'human' in front of 'rights' may represent a quantum leap up. But this is only in the abstract. No matter how these rights are presented, what they have in common is the fact that they are not derived from legal subjects.⁷²

This central distinction in approach to the rights-subject explains why the 'rule of law' approach of human rights legalisation attaches little importance to the political sphere and state institutions. From the point of view of the international community administrators, leading nationalist political parties appear to be criminal or corrupt precisely because they are engaged in representing and negotiating on behalf of the particular interests of an ethnic constituency, interests which are defined as conflicting with the 'public interest'. Yet in this highly segmented society it is inevitable that elected representatives will reflect this social division. The international community is calling for a Bosnian political class that is apolitical and which therefore is disconnected from Bosnian society.

Politicians who have little representational legitimacy are unlikely to build bridges within society and lack the capacity to resolve conflicts. The attempt to externally impose the 'public interest' through legalising human rights from the top-down in fact undermines the creation of any genuine public interest from the bottom-up through the political process. Removing the process of engagement and participation in the political and legal process gives Bosnian citizens no sense of ownership of these 'rights' granted by the international administration. The people of Bosnia may have a legal framework, which institutionalises their rights, but these imposed rights appear as an oppressive, alien and artificial creation. If there is any lesson from eight years of international rule over Bosnia, it is that high-handed intervention to give priority to the 'rule of law' over the political sphere has done little to help overcome insecurities and divisions, while undermining collective political bodies in which Serb, Croat and Bosniak representatives can negotiate solutions.

Conclusion

The traditional understanding of the 'rule of law' was the rule of constitutionality.⁷³ Law and justice were seen to result from autonomy and self-government. The focus on the international rule of law in our human rights age is very different from the post-1945 approach when the importance of state sovereignty vis-à-vis external rule was universally acknowledged. Today, the problematisation of the political process in many sovereign states and demand for international legislative action in the cause of human rights would seem to reflect the opposite trends, involving the reversal of decolonisation.⁷⁴

The human rights approach posits the 'rule of law' in opposition to self-government. Through viewing the political process as problematic, law appears as an external solution. In the areas considered above, the law has been imposed against the will of the population in the belief that changing the law on the basis of promoting the protection of human rights and the public interest will transform society. The experience of Bosnia would suggest that this legal idealism undermines both politics and law.

As briefly described above, the imposition of the 'rule of law' in order to enforce political moderation has merely served to discredit the political process rather than to give it greater authority, as intended. Similar unintended consequences have occurred with regard to the 'legalisation' of human rights in the areas of housing and employment. The advocates of the 'rule of law' have criticised the slowness of political reform for producing 'façade democracy' but the housing and employment laws demonstrate that the top-down imposition of human rights legislation can be equally artificial, creating a legal façade of universality while in practice institutionalising ethnic division. Finally, the danger of prioritising the 'rule of law' above the political process is the risk of unregulated and arbitrary power. Once the rule of law is separated from the democratic process the rule of law becomes the rule of tyranny rather than the rule of justice.

¹ For example, US *Newsday* journalist, Roy Gutman, states: 'The Bosnian conflict was, in retrospect, an enormous crime against humanity, masquerading as a war.' 'Twenty-Five Years of Helsinki Process: A Personal Reminder', in OSCE, *Freedom and Responsibility Yearbook 1999-2000* (Vienna: OSCE, 2000), pp.149-154. Available from: http://www.osce.org/fom/documents/books/files/yb1999_2000.pdf.

² Mary Kaldor, *New and Old Wars: Organized Violence in a Global Era* (Cambridge: Polity, 1999), pp.6-9; Martin Shaw, 'War and Globality: the Role and Character of War in the Global Transition', in Ho-won Jeong (ed), *The New Agenda for Peace Research* (London: Ashgate, 1999), pp. 61-80; see also Mark Duffield, *Global Governance and the New Wars: the Merging of Development and Security* (London: Zed Books, 2001).

³ Kaldor, op. cit, pp.10-11.

⁴ For further information see David Chandler, *Bosnia: Faking Democracy After Dayton*, 2nd ed. (London: Pluto Press, 2000).

⁵ Democratization Policy Institute, *An Agenda for Bosnia's Next High Representative*, 1 May 2002, p.2. Available from: http://www.anonime.com/dpinstitute/europe/balkans/bosnia_and_herzegovina/20020501_bosnia_agenda.pdf.

⁶ David B. Dlouhy, 'On Corruption in Bosnia-Herzegovina', Statement to the House International Relations Committee, 15 September 1999, *Bosnia Report*, New Series No.11/12, August-November 1999.

⁷ See, for example, Michael Pugh, 'Bosnia and Herzegovina in South-East Europe' in Michael Pugh and Neil Cooper with David Goodhand (eds), *Regional War Economies: the Challenge of Transformation* (Boulder CO: Lynne Rienner/ International Peace Academy, 2003 forthcoming).

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- ⁸ International Peace Academy, *You, the People: Transitional Administration, State-Building and the United Nations* (New York: IPA, 2002), p.9.
- ⁹ Democratization Policy Institute, op. cit., p.6.
- ¹⁰ Jacques Paul Klein, 'UN Security Council Briefing', 19 June 2002.
- ¹¹ Democratization Policy Institute, op. cit., p.6.
- ¹² Speech by the Senior Deputy High Representative, Matthias Sonn, at the National Democratic Institute's Third Annual School for the Development of Democratic Leadership', Jahorina, 21 May 2002. Available from: http://www.ohr.int/ohr-dept/press/presssp/default.asp?content_id=8319.
- ¹³ International Peace Academy, *You, the People: Transitional Administration, State-Building and the United Nations*, op. cit., p.9.
- ¹⁴ Jacques Paul Klein, 'Welcome Remarks to the Scholars' Initiative', UN House, 6 July 2002.
- ¹⁵ Democratization Policy Institute, op. cit., p.2.
- ¹⁶ Dlouhy, op. cit.
- ¹⁷ International Crisis Group, 'Courting Disaster: The Misrule of Law in Bosnia & Herzegovina', *ICG Balkans Report*, No.127, Sarajevo/Brussels, 25 March 2002. Available from: http://www.intl-crisis-group.org/projects/balkans/bosnia/reports/A400592_25032002.pdf.
- ¹⁸ Speech by the Senior Deputy High Representative, Matthias Sonn, op.cit.
- ¹⁹ 'Inaugural Speech by Paddy Ashdown, the new High Representative for Bosnia & Herzegovina', BiH State Parliament, 27 May 2002. Available from: http://www.ohr.int/ohr-dept/press/presssp/default.asp?content_id=8417; *Jobs and Justice: Our Agenda*, 23 September 2002. Available from: <http://www.ohr.int/pic/econ-rol-targets/pdf/jobs-and-justice.pdf>.
- ²⁰ Dlouhy, op. cit.
- ²¹ 'Inaugural Speech by Paddy Ashdown, op. cit.
- ²² Ibid.
- ²³ 'Decision establishing interim procedures to protect vital interests of Constituent Peoples and Others, including freedom from Discrimination', 11 January 2001. Available from: http://www.ohr.int/decisions/statemattersdec/default.asp?content_id=365; European Stability Initiative, 'Imposing Constitutional Reform? The Case for Ownership: A Discussion Paper, *ESI Bosnia Report*, No.13, Berlin/Sarajevo, 20 March 2002, P.2.
- ²⁴ 'Agreement on the Implementation of the Constituent Peoples' Decision of the Constitutional Court of Bosnia and Herzegovina', Office of the High Representative, 27 March 2002. Available from: http://www.ohr.int/ohr-dept/legal/const/default.asp?content_id=7274.
- ²⁵ Dragan Bisenic, 'Interview: Wolfgang Petritsch, the High Representative in BiH: "New Solutions are not emergency measures for Balkans"', *Danas*, 10 April, 2002. Available from: http://www.ohr.int/ohr-dept/press/prespi/default.asp?content_id=7387.
- ²⁶ 'Press Conference of the High Representative, Wolfgang Petritsch, on the Completion of the Constitutional Reform Process in Bosnia and Herzegovina's Entities', 19 April, 2002. Available from: http://www.ohr.int/ohr-dept/press/prespb/default.asp?content_id=7503.
- ²⁷ 'Agreement on the Implementation of the Constituent Peoples' Decision of the Constitutional Court of Bosnia and Herzegovina', op.cit., section available at: http://www.ohr.int/ohr-dept/legal/const/default.asp?content_id=7274#2.
- ²⁸ Ibid., available at: http://www.ohr.int/ohr-dept/legal/const/default.asp?content_id=7274#3.
- ²⁹ 'Press Conference of the High Representative, Wolfgang Petritsch, on the Completion of the Constitutional Reform Process in Bosnia and Herzegovina's Entities', op.cit.
- ³⁰ See for example, International Crisis Group, 'The Continuing Challenge of Refugee Return in Bosnia and Herzegovina', *ICG Balkans Report*, No.137, Sarajevo/Brussels, 13 November 2002, p.26. For many Bosnian commentators the use of the 1991 census as a way of distributing political positions increases the legitimacy of the nationalist parties: 'As if the dead can vote. And even if they could, as if they would be voting for them again. Why then elections, after all?' Dzemal Skolovic, 'Bosnia-Herzegovina Country Report', in Wim Meurs (ed.) *Risk Reporting for South-East Europe* (Bertelsmann Foundation, 2003 forthcoming).
- ³¹ See for example, Florian Bieber, 'Croat Self-Government in Bosnia – A Challenge for Dayton', European Centre for Minority Issues, *ECMI Brief*, No.5, May 2001; International Crisis Group, 'Turning Strife to Advantage. A Blueprint to Integrate the Croats in Bosnia and Herzegovina', *ICG Balkans Report*, No.106, Sarajevo/Brussels, 20 March 2001.
- ³² Turnout was 54.68 per cent, compared to 64.4 per cent in 2000. According to the Office of the High Representative, 'young people in particular did not vote'.
- ³³ *The General Framework Agreement*, Annex 7: Agreement on Refugees and Displaced Persons. Available from http://www.ohr.int/dpa/default.asp?content_id=375.

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- ³⁴ Democratization Policy Institute, op. cit., p.12.
- ³⁵ Ibid.
- ³⁶ See '[High Representative's] Decision suspending decision-making on claims to apartments in the Federation for which a permanent occupancy right was issued after 30 April 1991, and imposing a moratorium on sale of apartments to persons who acquired their occupancy right after 30 April', 5 November 1998. Available from http://www.ohr.int/decisions/plipdec/default.asp?content_id=151; '[High Representative's] Decision cancelling all permanent occupancy rights issued in the RS during and after the war in BiH and converting them into temporary occupancy rights', 14 April 1999. Available from: http://www.ohr.int/decisions/plipdec/default.asp?content_id=161.
- ³⁷ In 1999 no less than 38 separate acts of legislation were imposed by the High Representative in the field of Property Laws, Return of Displaced Persons and Refugees and Reconciliation. See further: <http://www.ohr.int/decisions/plipdec/archive.asp?m=&yr=1999>.
- ³⁸ International Crisis Group, 'The Continuing Challenge of Refugee Return', op. cit., p.9; *A New Strategic Direction: Proposed Ways Ahead For Property Law Implementation In A Time Of Decreasing IC Resources*, Property Law Implementation Plan, 12 September 2002. Available from: http://www.ohr.int/plip/key-doc/default.asp?content_id=27904.
- ³⁹ International Crisis Group, 'The Continuing Challenge of Refugee Return', op. cit., p.1.
- ⁴⁰ Daniela Heimerl, 'The Return of the Refugees: Fiction and Reality', paper presented at Fifth International Seminar, 'Democracy And Human Rights In Multiethnic Societies', Institute For Strengthening Democracy In Bosnia, Konjic, Bosnia-Herzegovina, 8-12 July 2002.
- ⁴¹ International Crisis Group, 'The Continuing Challenge of Refugee Return', op. cit., p.11.
- ⁴² 'Amending the Law on Sale of Apartments with Occupancy Rights', 17 July 2001. Available from: http://www.ohr.int/decisions/plipdec/default.asp?content_id=129.
- ⁴³ International Crisis Group, 'The Continuing Challenge of Refugee Return', op. cit., p.11.
- ⁴⁴ Ibid., p.10.
- ⁴⁵ Ibid., p.11.
- ⁴⁶ Ibid.
- ⁴⁷ Ibid., p.2
- ⁴⁸ There have also been major demographic shifts brought about the war and economic transformation which have little connection to concerns of being in a position of an ethnic minority. For example, many people from rural areas who moved to towns and cities for safety during the war have decided to stay put.
- ⁴⁹ Dzemal Sokolovic, op. cit., Sokolovic cites a large Swedish government research project, undertaken in 2000. Bosnian refugees in Sweden were asked: 'Do you want to return home?' Only six per cent gave a positive response, 94 per cent said they want to stay in Sweden. When the Swedish government offered the six per cent an attractive financial support package to return, half of them refused. Of the three per cent who returned many had returned to Sweden within the year.
- ⁵⁰ International Crisis Group, 'The Continuing Challenge of Refugee Return', op. cit., p.13.
- ⁵¹ Ibid.
- ⁵² Ibid., p.12.
- ⁵³ Ibid., p.39.
- ⁵⁴ 'Agreement on the Implementation of the Constituent Peoples' Decision of the Constitutional Court of Bosnia and Herzegovina', op. cit., section available at: http://www.ohr.int/ohr-dept/legal/const/default.asp?content_id=7274#4.
- ⁵⁵ International Crisis Group, 'Policing the Police in Bosnia: A Further Reform Agenda', *ICG Balkans Report*, No.130, Sarajevo/Brussels, 10 May 2002.
- ⁵⁶ European Stability Initiative, op. cit., p.5.
- ⁵⁷ Jacques Paul Klein, 'UN Security Council Briefing', 19 June 2002.
- ⁵⁸ International Crisis Group, 'The Continuing Challenge of Refugee Return', op. cit., p.16.
- ⁵⁹ Ibid., p.17; p.28; the International Crisis Group states: 'The practice of not issuing firearms to 'minority' officers appears to be widespread. In Vlasenica, where there are 83 Serb police officers and four Bosniaks, none of the later has received side arms. The RS MUP argues that this is due to lack of funds, but has rejected a suggestion by IPTF to rotate firearms among officers on duty.' (International Crisis Group, 'Policing the Police in Bosnia: A Further Reform Agenda', op. cit., p.41.)
- ⁶⁰ See for example, Gemma Collantes Celador, 'International Civilian Police Missions in War-Torn Societies – From Theory to Practice in Bosnia and Kosovo'. Paper presented at the fifth International Seminar 'Democracy and Human Rights in Multiethnic Societies, Institute for Strengthening Democracy in Bosnia, Konjic, Bosnia, 8-12 July 2002.

⁶¹ Alexandra Stigl Mayer, Head of the OHR Press Office, 'Constitutional Reform in BiH: RS is becoming multi-ethnic', Editorial, *Jutarnje Novine*, 15 April 2002. Available from: http://www.ohr.int/ohr-dept/preso/presa/default.asp?content_id=7397.

⁶² 'Press Conference of the High Representative, Wolfgang Petritsch, on the Completion of the Constitutional Reform Process in Bosnia and Herzegovina's Entities', op. cit.

⁶³ International Crisis Group, 'The Continuing Challenge of Refugee Return', op. cit., p.38.

⁶⁴ Ibid., figures based on the contrast between 1991 census figures and current numbers of Bosniak inhabitants, assuming the overall population of the towns remains constant.

⁶⁵ Democratization Policy Institute, op. cit., p.15.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ A. V. Dicey, *Introduction to the Study of the Law of the Constitution* (London: Macmillan, 1959), pp.202-3.

⁷⁰ James Heartfield, 'Rights and the Legal Subject'. Unpublished Freedom and Law discussion paper, 1996.

⁷¹ Hannah Arendt, *The Origins of Totalitarianism* (new edn) (New York: Harvest, 1979), pp.300-301.

⁷² Norman Lewis, 'Human Rights, Law and Democracy in an Unfree World', in Tony Evans (ed.) *Human Rights Fifty Years On: A Reappraisal* (Manchester: Manchester University Press, 1998), p.85.

⁷³ See, for example, Robert H. Jackson, *Quasi-states: Sovereignty, International Relations and the Third World* (Cambridge: Cambridge University Press, 1990), pp.95-98.

⁷⁴ The report of the International Commission on Intervention and State Sovereignty (ICISS) notes that the shift towards international administrations and the weakening of the doctrine of state sovereignty, particularly for smaller, non-Western powers, is 'comparable to decolonization, but operating in reverse gear', ICISS, *The Responsibility to Protect: Research, Bibliography, Background* (Ottawa, International Development Research Centre, 2001), p.199.