



DATE DOWNLOADED: Wed May 22 16:54:33 2024

SOURCE: Content Downloaded from [HeinOnline](#)

Citations:

Please note: citations are provided as a general guideline. Users should consult their preferred citation format's style manual for proper citation formatting.

Bluebook 21st ed.

James Zahradka, Reasonably Democratic, Balkans-Style: Observations on Municipal Elections in Pax Americana Bosnia and Herzegovina, 4 U. C. DAVIS J. INT'L L. & POL'y 201 (1998).

ALWD 7th ed.

James Zahradka, Reasonably Democratic, Balkans-Style: Observations on Municipal Elections in Pax Americana Bosnia and Herzegovina, 4 U. C. Davis J. Int'l L. & Pol'y 201 (1998).

APA 7th ed.

Zahradka, James. (1998). Reasonably democratic, balkans-style: observations on municipal elections in pax americana bosnia and herzegovina. U.C. Davis Journal of International Law & Policy, 4(2), 201-236.

Chicago 17th ed.

James Zahradka, "Reasonably Democratic, Balkans-Style: Observations on Municipal Elections in Pax Americana Bosnia and Herzegovina," U.C. Davis Journal of International Law & Policy 4, no. 2 (Spring 1998): 201-236

McGill Guide 9th ed.

James Zahradka, "Reasonably Democratic, Balkans-Style: Observations on Municipal Elections in Pax Americana Bosnia and Herzegovina" (1998) 4:2 U C Davis J Int'l L & Pol'y 201.

AGLC 4th ed.

James Zahradka, 'Reasonably Democratic, Balkans-Style: Observations on Municipal Elections in Pax Americana Bosnia and Herzegovina' (1998) 4(2) U.C. Davis Journal of International Law & Policy 201

MLA 9th ed.

Zahradka, James. "Reasonably Democratic, Balkans-Style: Observations on Municipal Elections in Pax Americana Bosnia and Herzegovina." U.C. Davis Journal of International Law & Policy, vol. 4, no. 2, Spring 1998, pp. 201-236. HeinOnline.

OSCOLA 4th ed.

James Zahradka, 'Reasonably Democratic, Balkans-Style: Observations on Municipal Elections in Pax Americana Bosnia and Herzegovina' (1998) 4 U C Davis J Int'l L & Pol'y 201

Please note: citations are provided as a general guideline. Users should consult their preferred citation format's style manual for proper citation formatting.

Provided by:

UC Davis - School of Law

Essay

“REASONABLY DEMOCRATIC, BALKANS-STYLE:” OBSERVATIONS ON MUNICIPAL ELECTIONS IN “PAX AMERICANA” BOSNIA AND HERZEGOVINA

James Zahradka *

INTRODUCTION

As part of the continuing international effort to return Bosnia and Herzegovina to some form of normalcy, municipal elections were held throughout the country in autumn 1997. Officials of the Organization for Security and Cooperation in Europe (OSCE), which ran and supervised the elections, hailed them as a rousing success.¹ Indeed, in the context of a country still shattered by a vicious four-year war, even holding nationwide elections was an admirable accomplishment.²

* J. D. 1998, University of California Davis, School of Law.

1. David Foley, OSCE Mission to Bosnia and Herzegovina spokesperson, was quite strong on this point in a statement he made immediately after the elections were held: “To those who say there is no progress in Bosnia and Herzegovina, to those who say ethnic divisions are as strong as ever, today the people of Bosnia have given their answer, and they say: Think again.” Lee Hockstader, *West Proclaims Bosnian Local Elections a Success*, WASH. POST, Sept. 15, 1997, at A18.

2. As Carol Conragan, Director of Political Party Services for the OSCE Mission to Bosnia and Herzegovina, said, “OSCE is trying to facilitate an elections process in an unbelievably complicated environment, one that is still trying to sort itself out in terms of ethnic boundaries . . . This place is so raw, and [we’re] trying to bring a democratic order into a place which is culturally different. They just emerged from forty years of communist rule. Then four years of civil war. Then we ask that people in nine months should return home and vote in national elections for [a] representative government! It’s unrealistic on a purely emotional and psychological level. You’re asking them in such a short space of time to do it all differently, and want to do it all differently, and embrace it. But ‘baby-steps.’ Two years ago there was still running and fighting in the streets. [The] fact that these

The 1997 municipal elections were a vast improvement over the previous year's national and cantonal³ elections. The 1996 elections--also supervised by OSCE--were so marred with fraud that the Election Appeals Sub-Commission (the EASC) called for a complete recount of the ballots in an attempt to salvage the validity of the vote.⁴ The 1997 municipal elections were certainly flawed as well, as several observers have pointed out.⁵ However, these elections appear to reflect the will of the Bosnian people in a more accurate way than the 1996 elections did. Hopefully the next round of elections--scheduled for September 12 and 13, 1998--will be even freer than the 1997 elections.

In significant part, the validity of the 1997 elections was enhanced by the work of the Election Appeals Sub-Commission in Sarajevo, part of the OSCE Mission to Bosnia and Herzegovina. I spent several months working with the EASC during the run-up to the 1997 municipal elections. In this Essay, I will discuss the workings of the EASC, explore the nature of the issues it took up, delve into a few of its more interesting and controversial decisions, and examine the well-publicized decision which finally brought the EASC into irreconcilable political conflict with Robert Frowick, then-head of the OSCE

people can function at all considering what has happened is a miracle and a half, and to their credit. These people are in such pain, and you're asking them, 'Come on man, get on with your life!'. I mean, they can't even begin to tell you what their problem is, and you can't even begin to understand it." *Political Party Services, OSCE Mission to Bosnia and Herzegovina, A Small Step in a Larger Journey* (visited Jan. 31, 1998) <<http://www-osce.austria.eu.net/carol.html>> .

3. The Federation of Bosnia and Herzegovina is divided into cantons on the Swiss model. The Republika Srpska is not so divided—it has only a central government and municipal governments. See International Crisis Group, *Beyond Ballot Boxes: Municipal Elections in Bosnia and Herzegovina*, Sept. 10, 1997 (visited Oct. 3, 1997) <<http://www.intl-crisis-group.org/projects/bosnia/report/bh26.rep.htm>> .

4. *European Group Calls for Bosnia Recount*, Reuters, Sept. 27, 1996 (visited Oct. 3, 1997) <<http://www.yahoo.com/headlines/special/bosnia/bosnia.89.html>> (stating that appeals body called for complete recount of September 14, 1997 election because of suspiciously high number of votes).

5. These flaws were forcefully pointed out by the International Crisis Group, which concluded that the elections had "little to do with democracy. . . . It is clear . . . that with indicted war criminals still at liberty and continuing to exert influence, conditions for a free, fair and democratic poll could not exist." International Crisis Group, *Beyond Ballot Boxes*, *supra* note 3.

Mission. More generally, I will attempt to impart some understanding of the recent Bosnian elections in context and OSCE's (and, in particular, the EASC's) role in supervising them.

I. BACKGROUND

The devastation which prompted the need for OSCE's oversight of the Bosnian elections was created in the course of the Third Balkan War, which raged from 1991 to 1995. Slovenia and Croatia, two of the six republics which comprised the former Yugoslavia, declared their independence in 1991. Slovenia was ethnically homogeneous, and thus its secession posed no threat to nationalist leaders in other republics, most notably then-Serbian (and now "Yugoslav") president Slobodan Milosevic.⁶ Croatia, on the other hand, had a large Serb minority. Milosevic, eager to create a "greater Serbia,"⁷ set the Yugoslav Peoples' Army (JNA) against Croatia. His efforts were supported by Serbs living in the Krajina region of Croatia, which had declared itself an independent state in 1990. Milosevic's forces promptly took over almost one-third of Croatia's territory.⁸

Even though Serbia and Croatia were at war over large swaths of Croatian territory, their leaders tacitly agreed to divide the republic of Bosnia and Herzegovina between them.⁹ Bosnia was the most multi-ethnic of the Yugoslav republics, although Muslims (also called "Bosniacs")¹⁰ comprised

6. Pronounced "Mi-LOSH-eh-veech."

7. Milosevic's use of nationalism to try to maintain and strengthen his grip on power is exhaustively documented in LAURA SILBER & ALLAN LITTLE, *THE DEATH OF YUGOSLAVIA* (revised ed. 1996) (detailing horror and destruction of war in Yugoslavia). Silber and Little find that Milosevic's "centralizing, authoritarian leadership and calculated, clever manipulation of the politics of ethnic intolerance . . . present[ed] the other nations of Yugoslavia with a simple sinister choice: either stay in Yugoslavia on my terms, or fight a war . . ." *Id.* at 26.

8. *See id.* at 381.

9. *See id.* at 27 (stating that leaders agreed to divide without regard to interests of Muslims).

10. I shall use the term "Bosniac" in lieu of "Muslim" hereinafter. Bosniac is a non-religious term for the Southern Slavic people who profess (or, more likely, whose ancestors professed) Islam. In this way, Bosniac is parallel to the use of "Serb" for a Bosnian follower of the Orthodox faith and "Croat" for a Bosnian follower of Roman Catholicism.

the largest of the three major communities.¹¹ Much like Hitler and Stalin agreed to partition Poland during the Second World War, Milosevic and Croatian nationalist leader Franjo Tudjman¹² planned to take portions of Bosnia and annex them to their respective “motherlands.”¹³ This partition was to take place at the expense of the Bosniacs, who lacked a “big brother” to look out for their interests.¹⁴

In 1992, the JNA (by now the *de facto* Serbian Army) attacked Bosnia, again with support from local Serb nationalist forces. The war was incredibly brutal, but even its horrors paled beside the Serb forces’ use of murder, terror and deportation to forcibly remove thousands of Bosniacs and Bosnian Croats from their homes. Euphemistically called “ethnic cleansing,”¹⁵ this campaign’s death toll was much greater than the horrendous numbers of casualties sustained in the bombing of cities such as Sarajevo.¹⁶

Although they had been comrades in arms with the Bosniacs against Serb aggression, the Croat forces turned against the Bosniacs in late 1992.¹⁷ Tudjman and his Bosnian Croat allies were determined to annex the predominantly Croat areas of Bosnia, and their efforts to drive out the non-Croat populations from these areas were every bit as ruthless as those used by the Serb forces, including rape, forced eviction, and mass murders.¹⁸

11. See SILBER & LITTLE, *supra* note 7, at 208.

12. Pronounced “FRAN-yo TUDGE-mun.”

13. See SILBER & LITTLE, *supra* note 7, at 27.

14. See *id.* at 208.

15. The term “ethnic cleansing” has been commonly used to describe the terror and murder campaigns carried out in the drive to create ethnically homogenous areas of Bosnia. Since the term implies that members of ethnic groups other than those conducting the terror campaign are somehow “unclean,” I find this euphemism unworthy of validation. Thus, I will use it in quotes throughout this Essay.

16. See SILBER & LITTLE, *supra* note 7, at 251 (finding that death toll associated with forcible removal of Bosniac village population far exceeded death toll from bombardment of cities). The Serb bombing and sniper campaign against Sarajevo alone is estimated to have caused 10,000 civilian deaths. Massimo Calabresi, *Out of the Darkness: Bosnia’s Muslims Face the Fact that They, Too, Committed War Crimes*, TIME EUROPE, Nov. 24, 1997.

17. See SILBER & LITTLE, *supra* note 7, at 294.

18. See *id.* at 296 (stating that Croats committed atrocities against Bosnians in several parts of the country). Evidence of atrocities committed by Bosniacs, albeit on a lesser scale, has surfaced as well. See, e.g., Calabresi, *supra* note 16 (describing Bosniac terrorism and murder against Serb inhabitants of Sarajevo during

World outrage finally peaked with the fall of the Bosniac enclave of Srebrenica in July 1995. Bosnian Serb troops, supported by artillery from Serbia proper, committed the "largest single war crime in Europe since the Second World War."¹⁹ Over the course of a few days, 23,000 Bosniac women and children were forcibly expelled, and over 6,500 men were slaughtered by Serb forces.²⁰ News of this atrocity, combined with the United States' impatience with European and United Nations efforts to end the war, led to NATO air-strikes against Bosnian Serb forces. The Bosnian Serbs were brought to their knees by these attacks and successful Croat and Bosniac offenses. Bosnian Serb proxy Milosevic, along with Tudjman and Bosnian President Alija Izetbegovic,²¹ signed the General Framework Agreement for Peace in Bosnia and Herzegovina²² (also known as the Dayton Accords) and ended the war.

II. THE DAYTON ACCORDS

The basic agreement reached by the warring factions under United States auspices provides for a Bosnia *de jure* united, but *de facto* divided. The sovereign state of Bosnia and Herzegovina continued its existence with its internationally recognized borders.²³ However, the state consists of two "Entities" called the Republika Srpska (the RS) and the Federation of Bosnia and Herzegovina (the Federation).²⁴ The creation of the RS represented the

siege); see also JAN WILLEM HONIG & NORBERT BOTH, *SREBRENICA: RECORD OF A WAR CRIME* 79 (1996) (describing Bosniac "ethnic cleansing," including reputed murders of 1,300 people, in villages surrounding Srebrenica before Serb forces overran them).

19. HONIG & BOTH, *supra* note 18, at xix.

20. See *id.* at 65 (stating that Red Cross list of the missing from Srebrenica contained 6,546 people, virtually all men).

21. Pronounced "AHL-yuh Iz-et-BEG-oh-veech."

22. *The General Framework Agreement for Peace in Bosnia and Herzegovina*, 50th Sess., Agenda Item 28, U.N. Doc. S/1995/999 (1995) [hereinafter "Dayton Accords" or "Dayton"].

23. See Dayton Accords, *supra* note 22, annex 4, art. I, § 1 (declaring the legal existence of "Bosnia and Herzegovina" as a state under international law). Annex 4 is the Constitution of Bosnia and Herzegovina. *Id.*

24. *Id.* at § 3. The Federation, created during the war, is further divided into cantons designed to preserve self-rule for the Bosnian Croats. See International

attainment of the Bosnian Serb war gains--in effect, they were given their own mini-state. The Federation, on the other hand, was a tenuous union of Bosniacs and Bosnian Croats, who had been at each other's throats for much of the war.

The territorial division agreed to at Dayton resulted in some land changing hands, which meant that a good number of people found themselves in an Entity controlled by members of another ethnic group. However, virtually all of these people quickly relocated to the other side of the line. Today, Bosnia and Herzegovina is almost completely divided along ethnic lines.²⁵

The Dayton Accords also contain provisions regarding other subjects of the peace plan. These include: military aspects of the peace agreement (annex 1-A), regional stabilization (annex 1-B), the Inter-Entity Boundary Line (IEBL) (annex 2), elections (annex 3), arbitration on the town of Brcko (annex 5), human rights (annex 6), and refugees and displaced persons (annex 7). This Essay will focus on annex 3--the Agreement on Elections--and the institutions set up by annex 3.

III. THE AGREEMENT ON ELECTIONS

The Vienna-based OSCE²⁶ has been the point organization for the Bosnian

Crisis Group, *Beyond Ballot Boxes*, *supra* note 3.

25. Tentative attempts have been made by some Bosnians to return to their former homes, from which they were "cleansed" during the war. However, these have been small-scale efforts and have been met with fierce resistance by the "cleansers." See, e.g., International Crisis Group Bosnia Project, *House Burnings: Obstruction of the Right to Return to Drvar*, June 9, 1997 (visited Oct. 3, 1997) <<http://www.intl-crisis-group.org/projects/bosnia/report/bh24rep.htm>> (describing massive house-burnings by Bosnian Croats when displaced Bosnian Serbs attempted to return to their homes); see also Lee Hockstader, *Scattered Signs of Progress in Bosnia: Monitors Cite Local Elections, Trickle of Returning Refugees*, WASH. POST, Sept. 16, 1997, at A12 (describing attacks and house-burnings by Bosnian Croats against Bosniacs who attempted to return to their homes in Jajce).

26. OSCE was created in the early 1970s as the Conference on Security and Co-operation in Europe (CSCE). See *Organization for Security and Co-operation in Europe*, *OSCE Fact Sheet* (visited Oct. 3, 1997) <<http://www.osceprag.cz/info/facts/factsheet.htm>>. It includes 53 European nations, the United States, and Canada. Its major contribution to the international order during the Cold War was the Helsinki Final Act of 1974, which set high human rights standards for the member states.

elections since the very beginning of the post-war period. The Dayton Accords set forth an elections program for the war-torn republic and, in article IV, required each of the Parties²⁷ to "fully respect and promote fulfillment of that program."²⁸ The specifics of the program, and the designation of OSCE as the organization to "adopt and put into place" the elections program contemplated in article IV, are contained in annex 3.²⁹

Annex 3 does not put the onus of "promot[ing] free, fair and democratic elections" on the OSCE, the United Nations, NATO, or another international organization.³⁰ Rather, it is squarely on the shoulders of the Parties. Article I provides that:

The *Parties shall* ensure that conditions exist for the organization of free and fair elections, in particular a politically neutral environment; *shall* protect and enforce the right to vote in secret without fear or intimidation; *shall* ensure freedom of expression and of the press; *shall* allow and encourage freedom of association (including of political parties); and *shall* ensure freedom of movement (emphasis added).³¹

Unfortunately, the "Helsinki Accords" were never given legal force by their signatories. In 1990, following the end of the Cold War, CSCE's mandate expanded from its role as a "multilateral forum for dialogue and negotiation between East and West" to "contribut[ing] to managing the historic change in Europe and respond[ing] to the new challenges of the post-cold war period." *Id.* Recognizing this change and CSCE's status as a permanent organization, the member states agreed to change the first word in CSCE's name from "Conference" to "Organization." *Id.*

27. In the context of the Dayton Accords, "Parties" apparently refers to Bosnia and Herzegovina (i.e., the sovereign state, not the Federation), the Republic of Croatia, and the Federal Republic of Yugoslavia (i.e., the two former socialist republics which did not secede from the Socialist Federative Republic of Yugoslavia, namely Serbia and Montenegro). However, for the purposes of annex 3, the "Parties" consist of Bosnia and Herzegovina, the Federation and the RS. *See* Dayton Accords, *supra* note 22.

28. Dayton Accords, *supra* note 22, art. IV.

29. The Dayton Accords are quite short—less than two pages long. All of the substantive details are contained in the treaty's eleven annexes. *Id.*

30. Dayton Accords, *supra* note 22, annex 3.

31. Dayton Accords, *supra* note 22, annex 3, art. I, § 1. The promotion of freedom of movement is vital to free and fair elections in Bosnia because two million Bosnians were driven from their homes by the war. Many of these refugees or internally displaced persons wish to return home, and the Dayton constitution is clear

The Agreement on Elections sets forth obligations in positive terms. These obligations are in contrast with, for example, similar provisions in the United States Constitution. The Constitution *forbids* Congress from making a law abridging the freedom of speech.³² Dayton, on the other hand, states that the Parties “shall *ensure* freedom of expression and of the press; [and] shall *allow and encourage* freedom of association (including of political parties)” (emphasis added).³³ Thus, Dayton stands for the proposition that the governments of Bosnia and Herzegovina and the Entities—the Federation and the Republika Srpska—should do more than simply refrain from impinging upon the rights enumerated in the Agreement on Elections. Under Dayton, the Parties are to take affirmative steps to assure that private parties do not trample on rights such as freedom of expression and of the press. In the case of freedom of association, Dayton goes even further, exhorting the Parties to *encourage* citizens to exercise their rights.³⁴

If the Parties were to take these duties to heart and fulfill their treaty obligations, it seems self-evident that the elections would proceed in an eminently free and fair manner. However, the situation in Bosnia and Herzegovina made (and continues to make) the actual execution of these duties by the Parties, unsupervised, highly unlikely. The level of distrust and outright hatred between the former warring parties is high. Unfortunately,

that they have this right. *See* Dayton Accords, *supra* note 22, annex 4, art. II, § 5. Without freedom of movement, voters who wish to vote in their former municipalities have a difficult time doing so, and the local governments are likely to be dominated by the ethnic group which displaced those who wish to return, making it unlikely that the displaced persons will be able to resettle peacefully.

32. *See* U.S. CONST. amend. I.

33. Dayton Accords, *supra* note 22, annex 3, art. I, § 1.

34. Presumably, encouraging freedom of association encompasses, at the very least, an obligation to prevent private parties from abridging this right. It may go further. For example, during the period preceding the 1997 elections, municipal governments were required to allow political parties equal access to office space in municipal buildings. The regulations upon political campaigning also reflect the affirmative duty of governmental officials to encourage political party activity. For example, one election rule states that “[a]ll registered political parties . . . must be granted by local officials an equal opportunity to display posters and other campaign materials in public places.” PROVISIONAL ELECTION COMMISSION, RULES AND REGULATIONS, art. 122 (1997) [hereinafter “PEC Rules and Regulations”].

the proponents of ethnic hatred have all too often maintained their grip on power and thus are in a very good position to undermine the rights enumerated in annex 3.

IV. OSCE'S MANDATE

Reacting to this unavoidable reality, the drafters of Dayton placed OSCE--an organization which had never before supervised a single election, much less one of this vital importance--in the unenviable position of making sure that the Parties adhered to their treaty obligations. In annex 3,

The Parties [1] request the OSCE to certify whether elections can be effective under current social conditions in both Entities and, if necessary, to provide assistance to the Parties in creating these conditions . . . [2] request the OSCE to adopt and put into place an elections program . . . [and] [3] request the OSCE to supervise . . . the preparation and conduct of elections.³⁵

The first part of OSCE's mandate was of little avail. The strong political push from Washington for elections to be held "on time" quashed any voices which counseled for delay. At the time of the first post-war Bosnian national elections, held in September 1996, social conditions were very far from being adequate for effective elections. Ironically, one of the most trenchant pieces on this point came from *Helsinki Monitor*, an OSCE publication:

Despite clear evidence that conditions for free and fair elections did not exist, and strong recommendations of human rights and humanitarian groups to postpone elections until such conditions could be created, general elections were held in Bosnia. . . . The elections were pushed forward largely due to the need of the Clinton administration . . . to avoid public speculation about unresolved issues in Bosnia before the American presidential elections.³⁶

The problems enumerated by Helsinki Watch and other non-governmental

35. Dayton Accords, *supra* note 22, annex 3, arts. I-II.

36. Diane Paul, *Human Rights and the Elections in Bosnia*, 4 HELSINKI MONITOR 1 (1996).

organizations (NGOs) included,

severe restrictions on movement, freedom of expression and association . . . as well as the fraud and intimidation that were the hallmark of the pre-election period . . .³⁷

It is perhaps unfortunate that OSCE was under such intense political pressure that it could not heed this sage counsel and postpone the first national elections. Instead, the elections took place a mere eleven months after the shooting stopped. However, it is also conceivable that any delay would have only led to increased intransigence on the part of the factions opposed to peace in Bosnia. These factions might have then been able to push the elections back so far that they never would have happened, leaving the often extreme war-time governments in power. In any event, OSCE's certification requirement under annex 3 was effectively abandoned for the 1997 elections.³⁸

V. THE PROVISIONAL ELECTION COMMISSION

OSCE's real work has been to implement the second and third parts of its mandate—adopting and putting into place an elections program and supervising elections. Pursuant to the agenda and goals of annex 3, OSCE established the Provisional Election Commission (PEC). The PEC is composed of the head of the OSCE Mission to Bosnia and Herzegovina (currently a retired U.S. diplomat, Robert L. Barry³⁹), the United Nations High Representative (currently a Spanish diplomat, Carlos Westendorp), and representatives of the Parties.⁴⁰ The chairperson (i.e., the head of the OSCE Mission) has the final decision in all disputes, in order to prevent paralysis and mutual mistrust among the Parties from destroying the election process.⁴¹

37. *Id.*

38. *See generally*, International Crisis Group, *Beyond Ballot Boxes: Municipal Elections in Bosnia and Herzegovina*, *supra* note 3.

39. Retired U.S. diplomat Robert Frowick served as Head of Mission throughout the 1997 elections.

40. *See* Dayton Accords, *supra* note 22, annex 3, art. III, § 3 (describing composition and functioning of Provisional Election Commission).

41. *See id.*

The PEC's mandate is very broad; it includes:

[A]dopt[ing] electoral rules and regulations . . . [with which] the Parties shall comply fully . . . (a) supervising all aspects of the electoral process to ensure that the structures and institutional framework for free and fair elections are in place; (b) determining voter registration provisions; (c) ensuring compliance with the electoral rules . . . (d) ensuring that action is taken to remedy any violation of any provision of this Agreement or of the electoral rules . . . including imposing penalties . . . and (e) accrediting observers.⁴²

VI. THE ELECTION APPEALS SUB-COMMISSION

A. *The EASC's Mandate*

The PEC established the Election Appeals Sub-Commission in May 1996 to help it fulfill its supervisory role. The PEC regulation creating the EASC defined its mandate as follows:

The function of the [EASC] will be to ensure compliance with the electoral Rules and Regulations established by the [PEC] and [to] adjudicate complaints with regard to the electoral process . . .⁴³

The PEC also provided the EASC with strong punitive powers:

The [EASC] will have the right to impose appropriate penalties and/or fines against any [person or organization] that violates the Rules and Regulations. . . The [EASC] may prohibit a political party . . . from running in the elections, decertify a political party . . . already listed on the ballot, remove a candidate from a candidates list . . . [and] may set and apply pecuniary or other appropriate penalties for actions carried out with intent to disrupt the electoral process.⁴⁴

Finally, the PEC strove to clothe the EASC in the guise of an independent

42. *Id.* at § 2.

43. PEC Rules and Regulations, *supra* note 34, at art. 138.

44. *Id.* at arts. 140-141.

judicial body.

The [EASC] will have the right to call witnesses . . . and solicit all other evidence it deems appropriate In the event that a consensus cannot be reached by the [EASC], the Chairman shall make the *final and binding* decision The decision of the EASC shall be *binding and may not be appealed* (emphasis added).⁴⁵

This final provision highlights the tension inherent in the EASC's role in the peace-building process in Bosnia and Herzegovina. Its work is political for two reasons. First, the subject matter of its purview (i.e., elections) is inherently political. Second, the world community--particularly the United States and its western European allies--attaches a great deal of importance to the success of the Dayton Accords. Thus, the EASC finds itself under pressure from time to time to placate various factions in order to keep the peace process moving forward. However, the EASC also needs to appear impartial and apolitical. Otherwise, it would lack the respect of the Parties and of the international community, which it needs in order to function effectively in resolving elections disputes. This irresolvable tension eventually led to a conflict which tore the EASC apart.

The drafters of the EASC "constitution" also attempted to lend it an air of impartiality and fairness. The chairperson is to be "a distinguished international lawyer or jurist with election experience."⁴⁶ The four EASC members are appointed by the PEC chairperson "in consultation with" the other PEC members,⁴⁷ and its ethnic makeup mirrors that of the PEC itself. One member is to be nominated by Bosnia and Herzegovina (i.e., the sovereign state), one by the Federation, and one by the RS.⁴⁸ Finally, the

45. *Id.* at arts. 139, 142.

46. *Id.* at art. 137. Throughout the EASC's existence, this post has been filled by a Norwegian judge, Finn Lynghjem.

47. *Id.*

48. *See id.* (describing composition of Election Appeals Sub-Commission). In practice, the Bosnia and Herzegovina representative is a Bosniac and the Federation representative is a Bosnian Croat, in order to maintain an ethnic balance within the EASC. These judges, like Chief Judge Lynghjem, have served throughout the EASC's existence. Mrs. Suada Selimovic, Justice of the Supreme Court of Bosnia and Herzegovina, was appointed by Bosnia and Herzegovina; Mr. Venceslav Ilic, a colleague of Justice Selimovic on the Supreme Court of Bosnia and Herzegovina, was

EASC members are served by legal counsel with the same ethnic balance.⁴⁹ All of the "national" members of the EASC have been prominent legal or governmental figures, an indication of the level of importance which Bosnian leaders attach to the work of the EASC.

The EASC has taken up a remarkably wide range of issues, many of which are not exclusively election-related.⁵⁰ It has read its mandate to "ensure compliance with the electoral Rules and Regulations" broadly, and has not hesitated to punish those who carry out "actions . . . with intent to disrupt the electoral process."⁵¹ Not surprisingly, the activist stance of the EASC has caused a great deal of friction. This friction has been felt both within OSCE itself and between OSCE and, at different times, all of the Bosnian ethnic factions.

B. *The Operation of the EASC*

In practice, the day-to-day work of the Sub-Commission is carried out by the Chief Judge, a team of lawyers⁵² and investigators,⁵³ and a staff of interpreters.⁵⁴ The Bosnian members of the EASC--who are busy with their

appointed by the Federation; and Mr. Gojko Dursun, Republika Srpska Finance Minister, was appointed by the Republika Srpska.

49. *See id.* The national legal counsel have also served throughout the EASC's existence. Mr. Sadudin Kratovic, yet another Justice of the Supreme Court of Bosnia and Herzegovina, serves as counsel for Bosnia and Herzegovina; Ms. Jasminka Putica, a Sarajevo Appeals Court judge, serves as counsel for the Federation; and Mr. Vitomir Peric, Secretary of the Republika Srpska Ministry of Legislature, serves as counsel for the Republika Srpska.

50. For example, the EASC has dealt with abuses of the media, war criminals, "ethnic cleansing," and the return of displaced people.

51. *See supra* notes 43 and 44, and accompanying text.

52. During my tenure with the EASC, English attorney Stephen Bowen served as chief counsel, and American lawyer Sandra Mitchell served in an equally responsible position. American lawyer Jeffrey Buenger also worked as counsel to Judge Lynghjem. American lawyer Timothy Hughes and I rounded out the legal team for the intense period leading up to the elections.

53. Two retired American policemen—Michael Ilaria and Mark Hunter—served as the EASC's investigative team during my tenure there. They were part of the United Nations' International Police Task Force and were seconded to OSCE.

54. The EASC's staff was remarkably multiethnic. It included Bosniacs, Bosnian Serbs and Croats, a Croat from Croatia, and a Muslim from Serbia.

regular work as important members of the judiciary and government--are called in only when the Chief Judge and his staff have identified and investigated a complaint or report and have reached a tentative decision. At the formal meeting of the EASC, the Bosnian members of the EASC may, and often do, suggest changes to the decision. To aid the members' decisions, they are also presented with the investigative reports and other evidence pertinent to the case at issue.⁵⁵

The EASC makes decisions based on reports from many sources. One of its primary functions, as outlined in Article 138, is to adjudicate complaints on a whole host of election-related issues. These complaints generally come from the leadership of local political party units, although individual voters also bring complaints to the EASC. Additionally, the EASC opens files based upon OSCE Field Office⁵⁶ reports. Often, members of the EASC legal team follow up complaints from a political party or an individual by soliciting reports from one or more Field Offices. If these reports bear out the allegations in the complaint, the EASC may undertake its own independent investigation of the matter, or may simply issue a decision based upon the Field Office reports and the original complaint.

The substance of the allegations which the EASC received during my time there spoke volumes about the state of the peace in Bosnia and Herzegovina. While there were some intra-ethnic complaints⁵⁷ and some complaints against

55. One innovation which was implemented during my tenure with the EASC was a meeting with the national counsel the day before the formal meeting. This less formal meeting allowed the national counsel to brief the voting members about what to expect at the full meeting.

56. OSCE maintains twenty Field Offices across Bosnia and Herzegovina under Regional Centers at Mostar, Banja Luka, Tuzla, Bihac, and Sokolac. *See* Mission Security OSCE, OSCE Regional Centers & Field Offices (visited Jan. 31, 1998) <<http://www-osce.austria.eu.net/images/opstina.gif>>. It also has centers for the cities of Sarajevo and Brcko. Until the end of the elections period, OSCE also maintained five Election Offices. Most of the Field Offices are staffed by a Human Rights Officer, a Democratization Officer and (until the elections ended) an Elections Officer. The EASC's investigations can be triggered by reports from one or more of these officers.

57. One intra-ethnic complaint during my tenure concerned a dispute between members of two Serb ultra-nationalist parties -- the Serb Democratic Party (SDS) and the Serb Radical Party (SRS) -- over the use of office space. After investigating, the complaint turned out to be merely a fight between two Serb brothers in a backwater

OSCE itself,⁵⁸ most complaints involved allegations by one of the national parties against the other. The accusations often centered around attempts by one national party to commit election fraud in order to tilt a given local election in its favor.

VII. THE EASC IN CONTEXT

The EASC's work does not take place in a vacuum, but is profoundly affected by contemporary Bosnian society and politics. The country is, to a very large extent, *de facto* segregated.⁵⁹ Dayton notwithstanding, the three ethnic groups have, in large part, partitioned themselves. The "official" position that Bosnia and Herzegovina is an undivided nation-state does not reflect the reality on the ground.

The split is particularly pronounced between the Federation and the RS. When I crossed the Inter-Entity Boundary Line (IEBL) from the Federation to the RS, I truly felt as if I were entering a foreign, hostile country.⁶⁰ At that time, the Bosnian Serbs had their own currency, police force, flag, license plates, courts, army, and virtually every other incident of statehood.⁶¹

village in the RS.

58. Most of these complaints involved parties who were dissatisfied with the results of an OSCE action rather than any meritorious complaints against OSCE. For instance, the Mostar branch of the Liberal Bosniac Organization (LBO) complained that the OSCE official conducting the lottery to decide the composition of the Local Election Commission had allowed other party representatives to see beforehand the names which they drew out of the box. *In re a complaint filed by the Liberal Bosnia Organization (LBO) alleging irregularities surrounding the lottery seats on the Local Election Commission (LEC) in Mostar*, EASC Case No. ME-064 (June 23, 1997). The LBO made this complaint with no corroborating evidence, apparently simply because it lost the lottery. *Id.*

59. *See supra* notes 24 and 25 and accompanying text.

60. Amazingly, the IEBL cuts across the Sarajevo suburbs only about five miles or so from the city center and a stone's throw from the airport.

61. Officials from OSCE and other international organizations charged with implementing Dayton have made efforts to standardize these symbols and institutions. However, their efforts had met with little success until recently. *See, e.g.*, R. Jeffrey Smith, *Bosnia's Ethnic Groups Accept Neutral Auto Tags*, WASH. POST, Feb. 3, 1998, at A14 (describing new license plates "devoid of all religious or ethnic symbols" which were accepted by the three ethnic factions); *see also*, Anna

Within the Federation, the division was less pronounced, but it could definitely be felt. On the way from Sarajevo to Dubrovnik, my travel companions and I crossed into Bosnian Croat territory. I noticed that here, Bosnian Croats also had their own license plates, currency, flags, police stations, and army bases. In addition, billboards for Croatian president Tudjman, leader of the Croatian Democratic Union (HDZ), lined the roadways in Bosnian Croat territory. This, though Tudjman was not standing for election in Bosnia, but was running for re-election as president of Croatia. Bosnian citizens of self-declared Croat heritage were allowed to vote in the 1997 Croatian presidential elections. The fiction of statehood and sovereignty for a "nation-state" whose citizens vote in the elections of another nation-state seems transparent at best.

This degree of segregation did not exist before the war. Actually, the incredible suffering endured by many Yugoslavs during the Second World War, much at the hands of ethnic supremacists, seemed to have soured most Yugoslavs on nationalist politics. For fifty years, a "Yugoslav" identity, captured in the slogan "Unity and Brotherhood," was imposed from above and ruthlessly enforced by Tito and his underlings.⁶² This ideology did not merge the ethnic groups in Bosnia into a true Yugoslav people. However, tolerant co-existence, at the very least, ruled the day until the collapse of Communism in 1991.

The difference today is the result of the "ethnic cleansing" campaigns conducted during the war, primarily by Bosnian Serb forces. Driving from Tuzla to Sarajevo, I encountered mile upon mile of empty, burned-out houses, neighborhoods, entire villages. As Laura Silber and Allan Little have noted, these villages' inhabitants,

were not fleeing the war zones. They had been driven from their homes on the grounds of their nationality. They were not the tragic by-product of a civil war; their expulsion was the whole point of the war.⁶³

Husarska, *Sarajevo Diarist: If Pigs Could Fly*, NEW REPUBLIC, Mar. 9, 1998, at 50 (giving vivid and witty depiction of new ethnically neutral license plates, flag, and currency).

62. Both Tudjman and Izetbegovic were imprisoned for nationalism during the Tito years. See SILBER & LITTLE, *supra* note 7, at 29, 36).

63. SILBER & LITTLE, *supra* note 7, at 244.

In short, the goal of the instigators of the war--Tudjman and, to an even greater extent, Milosevic--was to establish "statelets" within Bosnia to be exclusively inhabited by members of their respective ethnic groups.

They and their henchmen have largely succeeded, and Dayton's promise to reverse these "gains" has proven extremely difficult to fulfill. After several years of hard-line nationalist propaganda from their leaders, both Serbs and Croats foresee and desire ethnic partition and "unification" with their respective motherlands, by large majorities.⁶⁴ Bosniacs, on the other hand, look toward a Bosnia where all ethnic communities live together, despite the unspeakable cruelty which the armed forces of the other two groups wreaked upon many of them.⁶⁵

The degree of post-war ethnic division, created and enforced from above, makes fair and free municipal elections all the more critical. Local governments--and thus the "big three" ethnic parties--have a stranglehold upon virtually all aspects of life in most Bosnian communities, particularly in Bosnia's vast hinterland. The SDA,⁶⁶ SDS or HDZ control the police, housing, media, industry, agriculture, and almost every other important part of life. These governments have been very reluctant to allow members of other ethnic communities to return to their homes, making the prospect of multi-ethnic neighborhoods unlikely.⁶⁷ The local leaders' campaigns to maintain their ethnic superiority have been successful; as of February 1998,

64. An August 1996 poll by the U.S. Information Agency ("USIS") revealed that 96 percent of Serbs agreed that the RS should be part of Serbia; 75 percent of Croats said the same about the Croat-dominated part of Bosnia (called the "Croat Republic of Herzeg-Bosnia" by nationalists). *See Poll: Serbs, Croats Oppose Unified Bosnia*, REUTERS, Aug. 22, 1996 (visited Oct. 3, 1997) <<http://www.yahoo.com/headlines/special/bosnia/bosnia.71.html>>. Also, 96 percent of the Serbs and 90 percent of the Croats said that it was inevitable that the country would be partitioned into three ethnic communities. *Id.*

65. In the USIS poll, 97 percent of Bosniacs expressed support for a unified Bosnia. *See id.* Eighty percent felt that ethnic partition was not inevitable, and that "we will ultimately be able to live in peace together." *Id.*

66. Party of Democratic Action--the main Bosniac party, and the party of Izetbegovic.

67. *See, e.g.,* R. Jeffrey Smith, *Ethnic Cleansing Acquires Force of Law*, WASH. POST, Feb. 2, 1998, at A15 (describing laws and regulations adopted by Federation and RS "meant to freeze communal concentrations and obstruct the return of minority refugees to their prewar homes").

“[L]ess than 9 percent of the 400,000 refugees who have returned to their homes since 1995 are minorities in their immediate communities.”⁶⁸

Additional problems involve the state-dominated media, which have been feeding a steady diet of ethnic intolerance to their people. This is particularly true in the RS, but the media in parts of the Croat-dominated regions have engaged in reprehensible behavior as well.⁶⁹ Local governments exert almost total control over the media. Therefore, the *sine qua non* of the development of fair, balanced reporting by the media is the election of governments which include representatives of different viewpoints.⁷⁰

Thus, the ability of refugees and internally displaced persons to vote in

68. *Id.*

69. *See, e.g., In re noncompliance by HTV-Mostar with regard to orders from Media Experts Commission*, EASC Case No. ME-127 (Aug. 15, 1997) (describing speech of Croat ultra-nationalist attacking Serbs and Bosniacs using racially derogatory terms, which was broadcast by Bosnian Croat television station in Mostar).

70. The issue of freedom of expression and its limits in the context of ethnic animus in post-war Bosnia is brought to the fore in this context. In the annex on elections, Dayton exhorts the parties to “ensure freedom of expression and of the press.” Dayton Accords, *supra* note 22, annex 3, art. I, § 1. The Dayton constitution also provides for freedom of expression. Dayton Accords, *supra* note 22, annex 4, art II, § 3 (g)-(h). However, the PEC rules require media and journalists to “avoid inflammatory language which encourages discrimination, prejudice, or hatred, or which encourages violence, or contributes to the creation of a climate in which violence could occur.” PEC Rules and Regulations, *supra* note 34, art. 133. This regulation might fairly be read as a permissible one, based on the European Convention on Human Rights (“ECHR”). Article 10 of the ECHR permits restrictions on freedom of expression provided they are “prescribed by law and are necessary in a democratic society in the interests of national security or public safety . . . or for the protection of the rights and freedoms of others.” European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 312 U.N.T.S. 222, art. 10(2). The Dayton constitution specifies that the European Convention and its protocols “have priority over all other law.” Dayton Accords, *supra* note 22, annex 4, art. II, § 2. There is strong evidence that the Bosnian war was brought about in large measure by the inflammation of ethnic passions by state-run media. *See, e.g., SILBER & LITTLE, supra* note 7, at 120, 142 (describing Serb and Croat media whipping up public anger against other ethnic groups). Under these conditions, it is surely reasonable to limit expression of ethnic hatred, given the clear and present danger it poses.

their former communities if they so choose is critical. Unless displaced persons vote in elections in their former hometowns, it is virtually assured that the nationalists who caused them to flee their homes will remain in power. These politicians will maintain the policies of ethnic hatred which brought them to power in the first place and will refuse to allow refugees and displaced persons to return. The engineers of "ethnic cleansing" will have their way.

It was to these brutal realities that the EASC reacted during the run-up to the municipal elections. It strove mightily to assure refugees and displaced persons, as explicitly guaranteed in Dayton, the right to vote in their former places of residence.⁷¹ It also fought the architects of "ethnic cleansing," who sought to consolidate their genocidal acts by electoral fraud, as well as by manipulating the media with false and hateful propaganda.

Many of the most important and contentious issues with which the EASC wrestled involved conflicts with the HDZ and the SDS over voter registration. Two municipalities, in particular, were the focus of major disputes--Zepce⁷² and Brcko,⁷³ respectively.⁷⁴

71. "A citizen who no longer lives in the municipality in which he or she resided in 1991 shall, as a general rule, be expected to vote . . . in that municipality." Dayton Accords, *supra* note 22, annex 3, art. IV, § 1.

72. Pronounced "(the sound of the 'J' in 'Rio de Janiero') EP-cheh."

73. Pronounced "BRRCH-coh."

74. The EASC has also severely penalized the SDA on several occasions, most notably after an assault upon Dr. Haris Silajdzic, president of a then-rival Bosniac party which has since become a coalition partner of the SDA. See EASC Press Release, *Subcommission Penalizes SDA for Attack on Silajdzic*, July 12, 1996 (visited Oct. 3, 1997) <<http://www.oscebih.org/press/pr0712e.htm>>. The SDA has also been implicated in attempts to swing close elections its way, for example in the town of Zepce. See *In re alleged registration irregularities in the Zepce and Capljina municipalities*, EASC Case No. ME-073 (June 25, 1997) [hereinafter "EASC ME-073"]. However, the difference in the number and seriousness of substantiated complaints against the SDA relative to those against the HDZ and the SDS is quite significant. In addition, the SDA leadership—and especially President Izetbegovic—have publicly held fast to the idea of a multi-ethnic Bosnia, unlike the often secessionist rhetoric spouted by the HDZ and SDS leaders. *Id.*

A. Zepce I

Three times during the run-up to the 1997 municipal elections, the EASC faced serious allegations of attempted manipulation of voter registration in the small but hotly disputed opstina⁷⁵ of Zepce. It is so avidly contested because of its ethnic makeup, which was evenly divided between Bosnian Croats and Bosniacs both before⁷⁶ and after⁷⁷ the war. The local HDZ leadership saw a golden opportunity to strengthen its tenuous hold upon the municipal government by tilting the election its way.

To achieve this goal, HDZ-Zepce decided to abuse the PEC-created exception to the general Dayton rule that all voters are expected to vote in their pre-war municipalities. This exception was intended to allow displaced persons to vote in their current places of residence and was an acknowledgment of the unfortunate inability (or fearfulness) of many displaced persons to return to their former homes. Known as rule 10(b), it provides as follows:

As exceptions to the general rule, the [PEC] will grant the right to change the place of registration in the following circumstances:

. . . .
(b) Persons who were citizens of Bosnia and Herzegovina on 6 April 1992, but who have changed their place of residence [within Bosnia and Herzegovina] since that date, either voluntarily or forcibly as a result of the war, may . . . vote in the municipality in which they now live . . . only if they present documentary proof of continuous residence in the

75. Pronounced "OP-shteen-uh." The localities in Bosnia and Herzegovina are known as "opstinai," (or "opcinai") which is loosely translated as "municipalities." In American political parlance, an opstina would be something like a county, a city, and a voting district rolled into one, with all of the functions of each.

76. See NATO Implementation Force, BH Majority Ethnic Distribution 1991, July 27, 1996 (visited Oct. 3, 1997) <<http://www-osce.austria.eu.net/images/ethnic91.jpg>> (showing a map of majority ethnic distribution of Bosnian-Herzegovinian opstinas before the war, with even distribution between Bosniacs and Bosnian Croats in Zepce).

77. See BH Ethnic Distribution (Majority) 1996 (last accessed Jan. 31, 1998) <<http://www-osce.austria.eu.net/images/ethmaj96.jpg>> (showing map of majority ethnic distribution of Bosnian-Herzegovinian opstinas after war, with even distribution between Bosniacs and Bosnian Croats in Zepce).

current municipality since 31 July 1996 or before.⁷⁸

The EASC received a complaint from the SDA-Zepce that Croat officials were suborning violation of this rule.⁷⁹ The HDZ was busing in Croats who had not lived in Zepce before July 31, 1996, but who lived in villages near the opstina⁸⁰ to register to vote in Zepce.⁸¹ The villages lay in opstinas where the HDZ had no realistic chance of winning. Thus the loss of some Bosnian Croat voters there would be of no real consequence. However, given Zepce's precarious ethnic balance, the HDZ appeared to be going all out in an attempt to swing the election its way.

The SDA allegations were substantiated by OSCE spot checks of specific voters.⁸² All of these individuals' displaced person cards--one of the forms of "documentary proof" which is acceptable under rule 10(b) to prove residence in a new municipality--listed addresses in Zepce. However, virtually all of the individuals checked were living in villages outside of the opstina.⁸³ All of these documents appeared on their face to be genuine but upon OSCE investigation, were determined to have been falsified. Significantly, the false documents bore the official stamp of Zepce authorities. This indicated that the municipal authorities--i.e., the HDZ--were directly implicated in this fraud. The EASC struck the first two candidates from the HDZ party list⁸⁴ in Zepce as punishment for the party's involvement

78. PEC Rules and Regulations, *supra* note 34, art. 10.

79. See EASC ME-073, *supra* note 74 (describing SDA complaint of registration irregularities in Zepce and Capljina and confirming irregularities).

80. The villages *in quo* were Maglaj and Zavidovici. *Id.*

81. See *generally, id.* (finding many displaced persons interviewed by EASC felt intimidated into registering in Zepce).

82. See *id.* (describing spot checks conducted by OSCE showing most displaced persons still living in prior residences).

83. See *id.* (describing nearly 100 percent of those registering in Zepce still living at prior residences in Maglaj or Zavidovici).

84. See *id.* Bosnia's electoral system is one of proportional representation, rather than the "winner-take-all" system used in the United States. See PEC Rules and Regulations, *supra* note 34, art. 91. Basically, Bosnians vote for a party list, and the seats on the municipal board are divided according to the percentage the party attains. Since the party wishes to assure that its leaders attain office, these people are placed high on the party list. Thus, the EASC action was a direct shot at the HDZ-Zepce leadership, who presumably orchestrated or at least authorized the rampant

in these acts.⁸⁵

B. *Zepce II*

Despite this rather harsh penalty, some of the Croat leadership in Zepce seemed determined to ensure the HDZ would take a majority of seats on the municipal council. Since many of the individuals who registered as displaced persons in Zepce were using falsified documentation, OSCE ordered all voters registered as displaced persons during that time to re-register.⁸⁶ During re-registration, a large group of young Bosnian Croat men attempted to disrupt the process and forced OSCE personnel to close the registration center.⁸⁷ This time, apparently fearing further strikes by the EASC against the HDZ candidate list, an HDZ official helped defuse the situation and no penalties were assessed against the HDZ.⁸⁸ Nonetheless, the air of intimidation of OSCE personnel was clear and re-registration had to be postponed.⁸⁹

C. *Zepce III*

Finally, re-registration was allowed to occur on August 7 after the intervention of national and local HDZ officials, including Kresimir Zubak, the Bosnian Croat member of the Joint Presidency of Bosnia and

fraud which took place there.

85. See ME-073, *supra* note 74 (striking two names off HDZ party list and terminating such candidacies from public office).

86. See *In re Allegations against the Party of Democratic Action (SDA) and additional allegations against the Croatian Democratic Union (HDZ) for improper conduct in the registration of voters in the municipality of Zepce*, EASC Case No. ME-087, ME-103 (July 17, 1997) [hereinafter "EASC ME-087/103"].

87. See *id.* (noting that due to presence of 25-30 young Croat men who created air of intimidation, OSCE permanently closed the registration site.)

88. See *id.* (describing how order was restored by an HDZ party representative and dismissing allegations against the HDZ).

89. In another decision issued the same day as the EASC ME-087/103 decision, the EASC struck two candidates from the SDA party list in Zepce for violations apparently taken in response to the HDZ actions at issue. See EASC ME-073 *supra* note 74 (deciding to remove the second and third names from the SDA's coalition list).

Herzegovina.⁹⁰ Incredibly, even after two EASC decisions on the matter, intervention from the highest political levels, and direct warnings from Chief Judge Lynghjem that further violations would not be tolerated, this re-registration was marred by *exactly the same* type of fraud that resulted in the nullification of the first registration period.

Again, OSCE officials found that hundreds of Bosnian Croat voters whose documents listed Zepce as their place of residence since before July 31, 1996, were actually residents of Zavidovici or Maglaj.⁹¹ And the displaced person cards the voters presented were the same type determined to be fraudulent in the original registration period.⁹² Further, when HDZ officials were called in to discuss possible irregularities in the re-registration, the local HDZ president responded with a death threat against a local OSCE official rather than action against the fraud.⁹³

Unsurprisingly, the EASC reacted with swift and tough action against the HDZ for flouting the EASC's authority and the electoral rules and regulations. The EASC found that

[t]he HDZ has not promoted a climate of democratic tolerance in which political activity can take place during the election period without fear of coercion, intimidation or reprisals. Article 119 [of the PEC Rules and Regulations]. The HDZ has repeatedly and flagrantly violated the Electoral Code of Conduct⁹⁴ and has made no attempt to redeem itself or to correct past violations.⁹⁵

90. *See In re 230 individual appeals to register to vote in Zepce and allegations of irregularities during re-registration of voters on 7-9 August*, EASC Case No. ME-073A (Aug. 15, 1997) (describing appeal by President Zubak to reopen registration center) [hereinafter "EASC ME-073A"].

91. *See id.* at 3 (describing how many applicants informed OSCE personnel that they were from Zavidovici or Maglaj and had been picked up at their homes and brought to Zepce to vote).

92. *See id.* (finding cards presented at the re-registration were the same cards previously found to be false).

93. *See id.* at 2 (describing conversation between OSCE officials and president of Zepce HDZ, where he made a death threat veiled as a joke).

94. The Electoral Code of Conduct for Political Parties, Candidates and Election Workers is the title of articles 119 through 124 of the PEC Rules and Regulations. *See* PEC Rules and Regulations, *supra* note 34, art. 16.

95. *Id.* *See also* EASC ME-073A, *supra* note 90, at 7.

The EASC then struck the next seven candidates off the HDZ list.⁹⁶ The effect of the decision was left unstated; however, since two candidates had been struck in the EASC's prior decision, the HDZ now had just enough candidates remaining on its list to allow it to form a majority on the municipal council if it won enough votes. The HDZ was up against the wall and could not afford another adverse decision lest it be assured of losing the municipality to the SDA.

While the EASC's decisions in Zepce obviously did not always command the highest degree of compliance from the HDZ, it seems certain that the EASC's decisive action made the prospect for fairer and freer elections greater. Certainly all political parties were put on notice that the price of defiance could be quite high.

D. *Brcko*

While Zepce was a hot-spot in its own right, the municipality which dominated much of the news coverage and the attention of the EASC during the registration period was the northern village of Brcko. Before the war, this small, quaint town on the banks of the river Sava was a multiethnic community with no one ethnic group predominating.⁹⁷ Due to an accident of geography, it became a critical strategic area and a site of fierce fighting and "ethnic cleansing" during the war.

Brcko became a key territory (for the Bosnian Serbs in particular) because it lies at the narrowest point of the land corridor—known as the Posavina Corridor—which connects the western and eastern halves of the RS. At its narrowest point, this corridor is only three miles wide.⁹⁸ To the south lies the Federation, and to the north, just across the river, lies Croatia. With a single quick strike, the Bosniac or Croat armies could take this town and the land surrounding it, cutting the western half of the RS (including the RS's largest city, Banja Luka) off from the eastern RS and "mother Serbia."⁹⁹ It is "the

96. *Id.*

97. In 1991, Brcko had significant populations of all three ethnic groups. See NATO Implementation Force, *supra* note 76.

98. See SILBER & LITTLE, *supra* note 7, at 376.

99. Speculation about a renewed Bosniac offensive if NATO pulls out centers around such a strike at the Brcko corridor.

Serb state's Achilles heel."¹⁰⁰

The issue of whether Brcko would become part of the RS or of the Federation was so contentious during the Dayton negotiations that it was simply put off for a later date.¹⁰¹ Instead of allowing Brcko's fate to derail the whole peace process, the Parties agreed to submit the issue to binding arbitration.¹⁰² The date for the final decision of the arbitrators has been postponed several times, and both sides await the final decision with great anticipation. In the interim and pursuant to Dayton, the RS maintains control over the town of Brcko and the corridor.¹⁰³

A great number of Bosnian Serbs were forced to leave their homes in the areas south of the town during and after the war. This was due to both the heavy fighting around Brcko, and the policy of the RS leadership to intimidate or force Bosnian Serbs who lived in the Federation to move to the RS.¹⁰⁴ Most of these Bosnian Serbs moved into the town of Brcko, and took over the apartments of Bosniacs or Bosnian Croats who had been driven out or killed by Serb forces.

The SDS leadership in Brcko, much like the HDZ leadership in Zepce, was intent on maintaining the segregation which their policies had created and which kept them in power. Thus, it took actions--in violation of Dayton,

100. See SILBER & LITTLE, *supra* note 7, at 256. OSCE is well aware of the importance of Brcko. "With its river port, its rail link between Croatia and the interior of Bosnia, and its bottleneck location between the two halves of the Republika Srpska, Brcko remains a source of potential conflict." OSCE, *Registration Ends--but Not Without Hiccups* (visited Jan. 31, 1998) <<http://www-osce.austria.eu.net/artclob.html>>.

101. See SILBER & LITTLE, *supra* note 7, at 375.

102. See Dayton Accords, *supra* note 22, annex 2, art. V, § 1.

103. *Id.* at § 4. See also, BH Ethnic Distribution, *supra* note 77, and SILBER & LITTLE, *supra* note 7, at 376 and accompanying text. A final decision on this issue has been deferred until early 1999. *Brcko Arbitral Tribunal for Dispute Over the Inter-Entity Boundary in Brcko Area, Supplemental Award*, March 15, 1998 (visited June 17, 1998) <www.ohr.int:81/docu/d980315b.htm>.

104. This policy was also followed in the Serb-held Sarajevo suburbs which came under Federation control pursuant to Dayton. Rather than see any part of Bosnia be multiethnic, the RS leaders forced their "own" people to become displaced persons. See, e.g., RICHARD HOLBROOKE, *TO END A WAR* (1998) 360-61 (describing "large-scale arson and police intimidation" by forces loyal to Karadzic, which drove most local Serbs from Sarajevo).

PEC Rules and Regulations, and basic notions of human dignity--designed to ensure that Brcko remained a Bosnian Serb stronghold. Again, the EASC was forced to take measures against the forces of ethnic supremacy and voter manipulation.

The EASC's involvement in Brcko took two forms. One was the investigation and punishment of serious violations of the electoral code by the local SDS, the police, and the municipal authorities. The other was the adjudication of thousands of individual appeals from voters denied their right to vote in Brcko at their voter registration center.

In Brcko, like in Zepce, OSCE discovered widespread irregularities during the first registration period and was forced to conduct a second registration.¹⁰⁵ OSCE personnel found that the local police maintained a list of names, separate from the typical police register of residents.¹⁰⁶ Not a single person on this list could be confirmed as a resident of Brcko¹⁰⁷--thus, this list presumably represented people who were to vote fraudulently as residents of Brcko. Also, the local police were uncooperative with OSCE personnel who sought to confirm the addresses of displaced persons during spot checks. When spot checks did take place, the ostensible residence of the voter being checked was often discovered to be a ruined, uninhabitable house.¹⁰⁸ Numerous voters admitted, after being questioned, that they did not live in Brcko despite their documentation stating otherwise.¹⁰⁹

105. See *In re 3,688 individual appeals to register to vote in the Brcko municipality and allegations of irregularities during the re-registration period in the Brcko municipality*, EASC Case No. ME-113 (July 21, 1997) (describing EASC investigation, opinion and decision regarding voters' appeals) [hereinafter "EASC ME-113"]. Since Chief Judge Lynghjem was in Norway at the time the evidence of this widespread fraud came to light, Frowick himself made the decision to cancel the first registration period.

106. See *id.* at 2 (finding SDS, local police and municipal authorities actively participated in creation and dissemination of invalid documentation).

107. See *id.* (noting that local police maintained register of 1,104 names none of whom could be verified as living in Brcko).

108. See *id.* (noting inspections finding police and local authorities listed addresses which had been destroyed or were uninhabitable). As a result of warfare and "ethnic cleansing," mile after mile of ruined, uninhabited houses surround Brcko.

109. *Id.* Fortunately, due to the increased number of OSCE staff committed to Brcko after the first registration was canceled, the fraud was caught and corrected in time during the second registration. One cannot help but wonder what level of fraud

In addition to the registration irregularities, severe pressure was brought to bear upon Serb voters in Brcko to register and vote. The Brcko Red Cross, which is run by the local authorities (i.e., the SDS), required displaced persons to provide a voter registration receipt before the Red Cross would disburse humanitarian aid.¹¹⁰ Two media broadcasts suggested Brcko residents who did not register to vote were traitors and made vague threats against these individuals.¹¹¹ The registration irregularities and intimidation led the EASC to strike the first three candidates from the SDS list in Brcko.¹¹²

After the second registration, the EASC received an overwhelming number of appeals from individual Serb voters in Brcko who were denied the right to vote in that municipality because they could not produce the correct documentation.¹¹³ These voters were not disenfranchised by this denial, since they could vote in their 1991 places of residence. Actually, as Dayton itself provides, voters are *expected* to vote in their 1991 place of residence.¹¹⁴ In order to facilitate the return of displaced persons to their former residences and to re-forge a multi-ethnic Bosnia, the framers of Dayton and the PEC Rules and Regulations left only a narrow exception to this general rule.¹¹⁵ Only a very small category of documents would allow individuals to vote in their current places of residence.¹¹⁶

Virtually none of the voters who appealed to the EASC could meet this burden, and so they were not allowed to vote in Brcko.¹¹⁷ While at first blush

was reached in other municipalities, most of which had far fewer resources than the Brcko registration center had.

110. See EASC ME-113, *supra* note 105 (finding locally-run Brcko Red Cross Center conditioned humanitarian aid upon proof of registration).

111. See *id.* (finding at least two announcements in local media suggesting residents who did not register were "traitors" and would suffer unspecified negative repercussions).

112. See *id.*

113. I was personally involved in adjudicating many of the appeals, which formed a formidable mountain of paper for weeks in the EASC's small offices.

114. See Dayton Accords, *supra* note 22, annex 3, art. IV, § 1.

115. See PEC Rules and Regulations, *supra* note 34, and *supra* notes 79 and 80 and accompanying text.

116. See PEC Rules and Regulations, *supra* note 34, rule 10(b).

117. In its original opinion, the EASC adjudicated 3,688 appeals from Brcko. See, EASC ME-113, *supra* note 105. The EASC granted 181 appeals, denied 3,270, and referred 237 for consideration of the voters' citizenship by the Citizenship

this may seem harsh, many of these voters are only living in Brcko due to the attempted genocide carried out by Serb paramilitary units during the war and the SDS refusal to allow Serbs to live in the Federation after the war. Thus, while these citizens were denied the right to vote in their new town, it is entirely consonant with the intent of Dayton--particularly the right of return for members of all ethnic groups--that such voters be required to vote in their former places of residence. To have allowed all voters who so chose to vote in their current place of residence would have put the international community's seal of approval upon the results of "ethnic cleansing."

The SDS leadership in Brcko was outraged at the scant numbers of appeals granted and demanded meetings with both the PEC and the EASC to review them. While these meetings were granted, OSCE officials made it clear to the SDS-Brcko leadership that the decisions of the EASC were not subject to revision. However, these face-saving meetings enabled the SDS leaders to go back to their constituents and tell them they made a strong effort on the voters' behalf. The EASC and PEC were also shown to be open, fair-minded organizations with nothing to hide. In fact, SDS officials were allowed to review all of the appeals themselves, which assured them that there was no misconduct.

VII. THE PALE DECISION: THE LAST STRAW FOR THE ATTORNEYS OF THE EASC

The EASC has made controversial, independent-minded decisions--some of which were less than pleasing to the OSCE leadership--throughout its existence. It maintained its stature and was held in such high regard for exactly these reasons by many influential members of the international community, including highly placed members of the Clinton administration. However, immediately after the elections, the EASC issued a decision which placed it at irreconcilable odds with Ambassador Frowick and led to the reversal of the decision. This, in turn, led to the resignation of the two most important members of Chief Judge Lyngghjem's team and reduced the EASC's influence considerably.

The background to the decision is one of the most talked-about issues in post-Dayton Bosnia--the continuing influence of former Bosnian Serb

president and indicted war criminal Radovan Karadzic¹¹⁸ upon the SDS and the RS. Karadzic is one of the founding members of the SDS. He served as its president, as well as the president of the Bosnian Serb administration based in the Sarajevo suburb of Pale,¹¹⁹ throughout the war.

As such, Karadzic was indicted, along with the Bosnian Serb commander Ratko Mladic,¹²⁰ by the International Criminal Tribunal for the Former Yugoslavia (ICTFY) on a horrifying array of charges. These charges include genocide, crimes against humanity, and many breaches of the customary laws of war.¹²¹ Karadzic is accused of being criminally responsible for, *inter alia*, the internment of thousands of Bosniac and Bosnian Croat civilians, including many children, in concentration camps. Internees were murdered, raped, tortured, beaten, and robbed. Thousands of Bosniac and Bosnian Croat civilians were deported. Civilian gatherings were shelled, including a soccer match in Sarajevo where 146 civilians were killed or wounded, and a student gathering in Tuzla where 195 civilians were killed or wounded. Extensive looting, appropriation, and destruction of Bosniac and Bosnian Croat property took place, and dozens of Catholic and Muslim sacred sites were destroyed. Snipers attacked Sarajevo citizens which resulted in hundreds of casualties, including the death of two-year-old Elma Jakupovic on July 20, 1993. And UN personnel were used as "human shields" against NATO air-strikes in May 1995.¹²²

However, this indictment has gone woefully unimplemented. While Nazi leaders--the architects of German genocide--met a swift and often deadly fate at the Nuremberg Tribunal, the main architect of Serb genocide has remained ensconced in his compound in Pale. Karadzic was forced to formally relinquish the RS presidency and his position as president of the SDS¹²³--

118. Pronounced "kuh-RAH-jeech."

119. Pronounced "PAH-lay."

120. Pronounced "ml-AH-deech."

121. *See generally*, International Criminal Tribunal for the Former Yugoslavia, Indictment of Karadzic and Mladic (Prosecutor of the Tribunal v. Radovan Karadzic and Ratko Mladic) 4 (Nov. 16, 1995).

122. *See id.* at 4-21 (describing atrocities against Bosniacs and Bosnian Croats).

123. *See* Ralph Begleiter, *Karadzic Signs Agreement to Step Down: Campaigning for Bosnian Elections Can Begin*, July 19, 1996, (visited Oct. 3, 1997) <<http://www.cnn.com/WORLD/9607/19/karadzic.resigns/index.html>> (describing statement of U.S. envoy Richard Holbrooke announcing that Karadzic relinquished his office of president and describing document signed by Karadzic agreeing to step

however, it was abundantly clear to those who dealt with the RS leadership that he still maintained a firm grip on the reins.¹²⁴

This dirty little secret was openly condemned by international leaders from many of the OSCE nations, including the United States. But despite the bold words of these politicians, the SDS was, in effect, allowed to maintain its position as the leading party in the RS while being led by a man who was accused of the most heinous crimes imaginable.

While Bosnian Serb President Biljana Plavsic's¹²⁵ public break with Karadzic over economic issues provided a crack in his armor, it was the EASC which finally took a direct shot at his *de facto* leadership of the SDS and said, "enough." The EASC marshaled an array of evidence concerning Karadzic's continuing leadership of the SDS¹²⁶ and ruled that the party could not hold office in the municipality of Pale, the "capital" of the RS and home to its most important figures.¹²⁷ This ruling was based upon article 46(b) of the Rules and Regulations, which provides that

[n]o person who is under indictment by the [International Criminal

down as head of political party); *see also* HOLBROOKE, *supra* note 104, at 340-44 (detailing negotiations which led to Karadzic's agreement to step down).

124. *See, e.g.*, Lee Hockstader, *American Voids Order Barring Serb Candidates*, WASH. POST, Sept. 17, 1997, at A1 (noting that Karadzic "continues to exert considerable influence in the Serb Republic"); *see also* HOLBROOKE, *supra* note 104, at 355 (describing Holbrooke's meeting with President Clinton, at which he warned that "as long as the leaders who had started the war remained in power in Pale, the country would not be out of danger . . .").

125. Pronounced "beel-YAH-nah PLAHV-sheech."

126. The evidence included statements by international leaders, SDS campaign materials highlighting Karadzic, and statements by SDS leaders attesting to Karadzic's continuing importance to the party. *See In re allegations that the SDS through its headquarters in Pale has maintained a person under indictment by the International Criminal Tribunal for the Former Yugoslavia (ICTY) in a party position or function in violation of Article 46(b) of the PEC Rules and Regulations*, EASC Case No. ME-156 (Sept. 15, 1997) (giving evidence of Karadzic's involvement in SDS and opinion of EASC) [hereinafter "EASC ME-156"]. One poster distributed by the SDS immediately before election day and posted throughout the RS bore Karadzic's face and the SDS logo, giving "a very clear message: Vote for the SDS, vote for Radovan Karadzic." *See* Senita Sehorcehajic, *Sandra Mitchell: Why Did I Resign: Between Politics and Law Frowick Chose Politics*, SVJET, Sept. 28, 1997.

127. *See* EASC ME-156, *supra* note 126.

Tribunal for the Former Yugoslavia] and who has failed to comply with an order to appear before that Tribunal may stand as a candidate or hold any appointive, elective or other public office . . . As long as any political party maintains such a person in a party position or function, that party shall be deemed ineligible to participate in the elections.¹²⁸

The EASC represented its decision to bar the SDS from holding seats in Pale as a compromise, since the evidence it had accumulated warranted the disqualification of the SDS throughout Bosnia and Herzegovina.¹²⁹

Ambassador Frowick, however, did not appreciate the EASC's attempt to strike at the heart of the SDS leadership and force them to pay for Karadzic's continuing influence. In September 1997, Frowick reversed the EASC decision and reinstated the SDS in Pale, asserting that he was "balancing integrity and momentum."¹³⁰ The two most senior counsel for the EASC--Sandra Mitchell and Stephen Bowen--resigned immediately. Judge Lynghjem and the other legal counsel stayed on to complete the work of the EASC; however, after Frowick's reversal, the EASC's influence waned considerably. As Judge Lynghjem said, the decision "undermine[d] our authority by using our decisions as a bargaining card."¹³¹ Frowick's response was a verbal shrug of the shoulders. "You can't expect free and fair and democratic elections. We try to make it as democratic as I can."¹³² It seems that little has changed since the report by the *Helsinki Monitor* on the first post-Dayton elections:

As it became obvious that the situation on the ground provided a very poor backdrop for elections, OSCE's rhetoric describing the conditions shifted from 'free and fair' to 'reasonably democratic' to 'reasonably democratic, Balkans-style.'¹³³

Surely no reasonable observer expects an election in the post-war Bosnian

128. PEC Rules and Regulations, *supra* note 34, art. 46.

129. See EASC ME-156, *supra* note 126.

130. See Hockstader, *supra* note 124, at A1.

131. *Id.*

132. *Id.*

133. Paul, *supra* note 36, at 1.

context to be perfectly devoid of fraud. However, the lowered expectations that seemed to have taken hold of OSCE and its leader, Frowick, were justifiably criticized by many.¹³⁴ These observers viewed Frowick's *ultra vires* annulment of the EASC's attempt to sanction the SDS for being led by a war criminal as shortsighted and as a capitulation to the engineers of "ethnic cleansing."¹³⁵

Frowick's decision also undermined OSCE's position as a promoter of the rule of law, since the PEC's Rules and Regulations provide that EASC decisions are final and not appealable.¹³⁶ Frowick's executive override of a (at least quasi-) judicial opinion set a poor example for Bosnian politicians, who may be inclined to do the same when their judiciary make decisions with which they disagree.¹³⁷ As Mitchell said in an interview after her resignation,

[T]his situation shows a classic conflict between law and politics. The time comes when politicians simply do not like the rule of law, because by strict implementation of the rule of law certain political situation[s] . . . are made more difficult. I understand Frowick's reasons and I can accept the conflict which exists between politics and law. But again, I am the lawyer who trains Bosnian lawyers how to apply the law¹³⁸ and I will continue to lobby for the changing of this decision . . . [b]ecause every single day the SDS continues to violate [rule 46(b)].¹³⁹

134. See Hockstader, *supra* note 124, at A1.

135. *Id.*; see also Sehorcehajic, *supra* note 126.

136. See PEC Rules and Regulations, *supra* note 34, and accompanying text.

137. As the International Crisis Group put it, "[i]f the PEC can violate its own rules for the sake of political expediency, what example does the international community give to the Bosnian people and what will be the value of any rules, regulations, or indeed the rule of law itself?" International Crisis Group, *Statement on Municipal Elections*, Sept. 15, 1997 (visited Oct. 3, 1997) <<http://www.intl-crisis-group.org/projects/bosnia/report/bh26add.htm>>.

138. In addition to her (former) duties as counsel to the EASC, Mitchell serves as head of the International Human Rights Law Group's project in Bosnia. A large part of the Law Group's work involves training Bosnian lawyers, both in the Federation and the RS, on human rights and the rule of law.

139. Sehorcehajic, *Sandra Mitchell: Why Did I Resign*, *supra* note 126.

POST-MORTEM

Final election results were released on October 14, 1997. As expected, the big three--SDA, SDS, and HDZ--won a clear majority of the seats.¹⁴⁰ However, parties representing displaced persons fared surprisingly well, winning majorities in six municipalities.¹⁴¹ Notably, the SDA won 52 percent of the seats in Srebrenica, as well as an impressive 93 percent of the seats in Zepce.¹⁴²

Two hopeful conclusions can be drawn from the results. One is that OSCE supervision, especially the tough stance taken by the EASC, had a significant effect on the validity of the vote. Municipal authorities (e.g., the HDZ authorities in Zepce) had the most incentive to commit fraud in municipalities where they might lose their power to displaced persons who chose to cast their ballots in their 1991 places of residence. Several municipalities went to parties representing displaced persons, a positive sign that the EASC's efforts to prevent the consolidation of "ethnic cleansing" through the elections were successful to a degree.¹⁴³

Another positive inference is that "[t]his outcome puts to rest the myth that the people of Bosnia and Herzegovina do not wish to return to their pre-war

140. See International Crisis Group, *Press Release: ICG Analysis of 1997 Municipal Election Results*, Oct. 14, 1997 (visited Oct. 29, 1997) <<http://www.intl-crisis-group.org/projects/bosnia/report/bhxpr10.htm>>.

141. See *id.*

142. See *id.* The result in Zepce is somewhat ironic, since the HDZ went to such lengths there to attempt to swing the election its way. See *supra* notes 77 through 98 and accompanying text. Despite this positive development, there have been severe problems in installing minority governments. See, e.g., R. Jeffrey Smith, *Local Government Hits Snag in Bosnia: Refusal to Share Power With Minorities Leads to Boycotts, Violence*, WASH. POST, Jan. 29, 1998, at A24 (describing massive Bosnian Serb resistance to installation of Bosniac legislators in Srebrenica, which led to violence against OSCE Deputy Head of Mission Robert Ellerkmann).

143. Even strong critics of OSCE such as ICG have noted the positive effect of the EASC's decisions. See, e.g., International Crisis Group, *Beyond Ballot Boxes: Municipal Elections in Bosnia and Herzegovina*, *supra* note 3 (noting that EASC ruling in Drvar resulted in substantial reduction in house-burnings by Croats there).

homes and . . . live with people of different religion[s].”¹⁴⁴ Dayton was premised on the idea that a return to the “old,” multi-ethnic Bosnia was possible. If Bosnians are willing to put aside past grievances and move back to their old homes, the international community must help them to do so. This help should take the form of military assistance, if necessary, since part of the Stabilization Force (SFOR)’s mandate is to help enforce Dayton. Policymakers have been reluctant to commit troops to this task in the past, in effect giving up hope for a multi-ethnic future.¹⁴⁵ Such cynicism must not win the day if the right of return set forth in Dayton is to be more than a hollow promise, and if the people of Bosnia and Herzegovina are to have a chance for a peaceful, unified future.

In the more immediate future, OSCE itself should learn some valuable lessons from the 1997 elections and the trials and tribulations of the EASC. OSCE is fully supervising the next round of elections, scheduled for September 12 and 13, 1998.¹⁴⁶ It was patent in the 1997 elections that the EASC’s tough stance against those who violated the elections rules dampened the level of fraud considerably, especially in those areas in which the EASC took direct action by striking candidates’ names from party lists.¹⁴⁷ Despite the diminution of its independence in the wake of Frowick’s reversal of its

144. International Crisis Group, *Press Release: ICG Analysis of 1997 Municipal Election Results*, *supra* note 140.

145. The international community has given considerable attention, though no significant military resources, toward helping ensure the right of return within the Federation. See Hockstader, *Scattered Signs of Progress in Bosnia: Monitors Cite Local Elections, Trickle of Returning Refugees*, *supra* note 25. “However, when it comes to refugees returning to Serb-held areas, officials have thrown up their hands.” *Id.* One unnamed international official said that “It’s like trying to persuade Hitler to take the Jews back. It’s not going to work. They think they fought a pretty good war and got rid of all these Muslims and Croats and that it’s a preposterous idea to take all of them back.” *Id.* See also HOLBROOKE, *supra* note 104, at 222 (acknowledging that “right of refugees to return . . . may be the key” and bemoaning lack of commitment by U.S. military leaders to this goal).

146. *OSCE Mission to Bosnia and Herzegovina, 1998 Elections* (visited June 18, 1998) <<http://www.oscebih.org/elect98.htm>>. These elections will be for the Presidency, the Presidents of the Entities, members of the Federation and RS Assemblies, and members of the Cantonal Governments. Municipal elections will also be held in ten municipalities where no voting took place in 1997. *Id.*

147. See *supra* note 143 and accompanying text.

Pale decision, the EASC took strong measures in the implementation period against the purveyors of ethnic hatred.¹⁴⁸ As the long, hot Bosnian summer approaches, the Head of Mission and the whole international community would do well to allow the EASC the room it needs to regain its stature and do what it does best--strike at the perpetrators of electoral fraud and the would-be consolidators of ethnic cleansing wherever they are to be found.

148. See, e.g., *OSCE Mission to Bosnia and Herzegovina, Decisions Taken by the EASC in 1998* (visited June 18, 1998) <<http://www.oscebih.org/dec1998.htm>> (describing EASC Case No. IMP-48, in which EASC removed five Serb councillors from their offices in reaction to violent demonstrations in Srebrenica in January 1998 which prevented Bosniac municipal councillors from taking their seats). However, it should be noted that this decision was taken at the behest of the OSCE Head of Mission, Robert Barry. See, e.g., *OSCE Mission to Bosnia and Herzegovina, Decisions Taken by the EASC in 1998, IMP-48*, April 17, 1998 (visited June 18, 1998) <<http://www.oscebih.org/imp-48.htm>> (describing Head of Mission's referral of problems in Srebrenica to EASC for further action). It was Barry's predecessor, then-Head of Mission Frowick, who overturned the EASC's Pale decision. See *supra* notes 130-39 and accompanying text. Thus, the EASC's independence is still in doubt, despite its strong decision regarding Srebrenica.

