

Date Printed: 11/03/2008

JTS Box Number: IFES_2
Tab Number: 4
Document Title: Electoral Code Working Group, Bosnia and Herzegovina Activity Compendium, January
Document Date: 1996
Document Country: Bosnia and Herzegovina
IFES ID: R01536



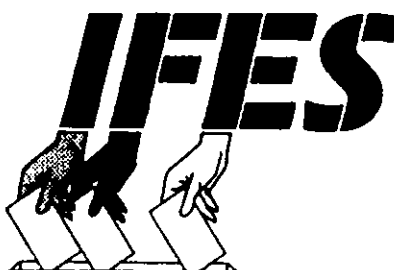
* 0 7 4 9 B 6 1 2 - 8 2 0 1 - 4 3 9 6 - 9 8 5 C - 6 6 5 C 0 F F 6 C F 5 F *



***DO NOT REMOVE FROM
IFES RESOURCE CENTER!***



ELECTORAL CODE WORKING GROUP
Bosnia and Hercegovina
Activity Compendium
January-March, 1996



Office for Democratic Institutions and Human Rights



**THE ODIHR/IFES ELECTORAL CODE WORKING GROUP (ECWG)
BOSNIA AND HERZEGOVINA
January - March 1996**

Beginning in early January 1996, the International Foundation for Election Systems (IFES), with funding from the Office for Democratic Institutions and Human Rights (ODIHR), set forth on a mission to support the legal and administrative capabilities of the Provisional Election Commission (PEC) of Bosnia and Herzegovina. As the OSCE organ responsible for furthering human rights, democracy and the Rule of Law, the Office for Democratic Institutions and Human Rights (ODIHR) shares and exchanges information on the building of democratic institutions and monitors elections in participating States. It is within this framework that the ODIHR continues to work with IFES to develop ongoing activities supporting the mandate of the OSCE Mission to Sarajevo.

From February 5 through March 1, two staff members of IFES were seconded to the PEC of Bosnia and Herzegovina as technical election advisors. Jeff Fischer, Executive Vice President, and Scott R. Lansell, Program Officer for Europe and Asia, were the staff members based in Sarajevo. While performing their role as technical election advisors to the PEC, the IFES team assisted in the facilitation of the following missions:

Phase I: Presentation of ECWG Legislative Analysis

The Provisional Election Commission's membership had been announced at the end of January and it had held one meeting before the arrival of the IFES team. At the second PEC meeting, Jeff Fischer formally addressed the Commission announcing that a group of experts, under a partnership with the ODIHR would be available to meet with the Commission at the next meeting and conduct a structured workshop on outstanding electoral code issues. This workshop supported the first objective of Ambassador Robert Frowick, the OSCE's Head of Mission, that the ground rules for the election be announced no later than February 23, 1996.

This election code initiative was conducted under the project title of the Electoral Code Working Group (ECWG). This ECWG sought to build upon the recommendations of the OSCE Electoral Assessment Team's report stemming from its visits in December 1995 and January 1996. In fact, the ECWG membership was composed of some of the same specialists as the OSCE Team.

Prior to the departure of Mr. Fischer and Mr. Lansell, a scope of work was developed and approved by the Warsaw-based ODIHR which formulated the concept and organization of the ECWG. IFES determined that recommendations on the demands that the Dayton Agreement placed on the existing

BOARD OF DIRECTORS		Barbara Boggs	Peter G. Kelly	William R. Sweeney, Jr.	DIRECTORS EMERITI
Charles T. Manatt Chairman	Patricia Hutar Secretary	Dame Eugenia Charles (Dominica)	Maureen A. Kindel	Leon J. Weil	James M. Cannon
David R. Jones Vice Chairman	Joseph Napolitan Treasurer	Judy G. Fernald	Jean-Pierre Kingsley (Canada)	Randal C. Teague Counsel	Richard M. Scammon
		Victor Kamber	Peter McPherson	Richard W. Soudriette President	

Page Two

electoral system should be examined in the context of existing laws and regulations. A series of applicable documents sent to the attention of each ECWG member included:

1. Constitution of Bosnia and Herzegovina (BiH) - Annex 4
2. Law and the Election of Members and Representatives to Assemblies of the Socio-Political Communities
3. Law on the Voter Registration
4. Decree on the Citizenship of the Republic of Bosnia and Herzegovina
5. Law on Public Information
6. Decree on the Elections in City-Municipality of Mostar
7. Annex 3 of the Dayton Agreement
8. OSCE Field Assessment Mission to Bosnia-Herzegovina, December 13 - 19, 1995
9. Report of the Second OSCE Field Assessment Mission to BiH, January 5 - 12, 1996
10. Law on Elections in the Republika Srpska

Each objective of the ECWG which provided the PEC with a series of recommendations which have had a direct impact on the PEC's adoption and implementation of rules governing the 1996 elections in Bosnia and Herzegovina, the Bosnian-Croat Federation and Republika Srpska.

Phase II: The PEC Mass Media Implementation Plan

After a successful Phase I mission to Bosnia-Herzegovina (BiH) in February, IFES representatives, in close coordination with the ODIHR, concluded that the PEC of BiH had reached the point where additional technical assistance should be provided to complement the series of legislative assistance exercises completed in the month of February by the Phase I ECWG. IFES believed that the next logical step that should be taken involves the advancement of the PEC's capability in its role as a public information outlet on the electoral codes it has begun to promulgate. Following the success of the first phase of the ODIHR/IFES mission to BiH, Phase II required the services of a voter education and public dissemination specialist to be based in Sarajevo for the first two weeks in March. Mr. Henry Valentino prepared a nationwide voter education implementation plan aimed at exposing the voting public on PEC legal codification activities. Mr. Valentino brought formidable experience in developing voter educational material throughout the developing world in addition to extensive experience working with military press organizations.

Page Three

International groups, including IFES, came to the conclusion that in order to properly and fully meet the conditions set forth in the Dayton Agreement, information on the codification of rules and regulations as they pertain to the upcoming elections in BiH must be made familiar to the public and to groups including the mass media, political parties, and NGOs. In order to accomplish such a demanding task, an administrative structure in the form of the Provisional Election Commission must be organized and financed to conduct these elections. The installation of this Commission must be the first task of many necessary if the elections are to be held prior to the mandated deadline. IFES believes that the result of Phase II of the ECWG Mission will serve a vital role as the PEC continues to fulfill one of its crucial roles in BiH as the organ responsible for codifying legislation and informing the general public of these ongoing activities.

IFES' conclusions and recommendations are included in the final section of this compendium

**ELECTORAL CODE WORKING GROUP (ECWG)
Office of Democratic Institutions and Human Rights/IFES
Legal and Technical Analysis Compendium
Phases I and II**

Phase I: January - February 1996

"Definition of OSCE Legal Authority in Elections in Bosnia and Hercegovina" and "Elements of Citizenship (Art. IV, sec.1)"	Reiner Morell (Germany)
"Certification of Conditions for the Election"	Hans Birchler (Switzerland)
"Citizen and Voting Issues in BiH Following the Dayton Peace Agreement"	Carol Batchelor (Canada)
"Law on Elections: A Technical Analysis"	Linda Edgeworth (USA)
"Electoral Systems, Districting Issues, Political Parties and Independent Candidates"	Jorgen Elklit (Denmark)
"Recommendations for Voter Registration in BiH"	Steven Nix, Esq. (USA)
"In-Person Absentee Voting"	Linda Edgeworth (USA)
"Glossary of Election Terms"	
General Field Mission Correspondence	

Phase II: March 1996

"Voter Education Plan for Pre-Election Activities" (Promulgation of PEC Pre-Election Activities: Voter Information Implementation Plan)	Henry Valentino (USA)
-----------------------------------------------------------------------------------------------------------------------------------------------	-----------------------

PHASE ONE

**Definition of OSCE Legal Authority
in Elections in Bosnia and Hercegovina**

Reiner Morell
Electoral Code Working Group (ECWG)
Bonn, Germany

February, 1996

A. Transmission of Sovereignty

The Parties request the OSCE to adopt and put in place an elections program, supervise the preparation and conduct of a number of elections and establish a Provisional Election Commission (PEC).

The topics of this request are matters of executive power. Programming and conduct of election is a direct concern of state sovereignty. The agreement to adopt and put into place an elections program by OSCE and to supervise elections in the indicated way is an act of transmission of parts of sovereignty to another entity. Regarding international law the following transmission is possible: Obligations taken over by international conventions as well as transmission of individual sovereign rights on international organizations will not prejudice state sovereignty, as long as this state does not submit itself exclusively to another state. The growing international interdependence in the economic field makes it duly necessary to transfer parts of the sovereign rights.

The transmission of sovereign rights might concern legislative, executive or judicial powers. Limits of transmission are drawn by the respective constitutional system: The identity of the constitution is "off limits;" cuts in its basic elements have to be avoided.

Looking at the transmission-question from a constitutional point of view, we find that the constitution is not touched in its basic values, so the transmission of powers to the OSCE is free of complaints.

The request must have been accepted by OSCE. It is supposed that this has happened in the past.

B. What Matter Has Been Transferred?

Art. II par. 1 and 2 gives the authority to adopt and put in place an elections program and supervise the preparation and conduct of elections.

According to Art. II par. 3: OSCE shall establish a PEC to this end. It could be asked whether par. 3 is by its wording a summing-up of par. 1 and 2 or par. 1 and 2 intend to transfer more global competencies concerning the elections program 1996 beyond the establishment of PEC with its mandate. Given the delicacy of transmission of sovereign powers there should be a restrictive interpretation of par. 1 and 2.

If we follow the restrictive interpretation then Art. III is "sedes materiae", i.e. the heart concerning the definition of the competencies being transferred to OSCE.

- The PEC is allowed to adopt electoral rules and regulations in the enumerated fields of par. 1. The Parties shall comply fully with those rules and regulations, any internal laws and regulations notwithstanding. This means that PEC shall with its rules and regulations to create even derogate internal law. This is far-reaching but not anti-constitutional. The relationship between national sovereign rights and the rights of

the entity to which power was transferred is mostly settled by the arrangement underlying. International standard gives the possibility to transfer special sovereign rights to an international institution for exclusive execution. If nothing is agreed upon concerning this relationship, the point is open to interpretation. Very often interpretation will show that a more or less far-going predominance of the right of the transferred institution was agreed upon. In the case of Annex 3, a clear agreement was made about the predominance of the PEC's rules and regulations.

- The PEC is authorized to adopt rules and regulations on the following sectors:
- Registration of political parties and independent candidates.
In this field PEC is free to establish prerequisites as to the number of support. This would be the place to stipulate, for example from every party or person to be registered to give a statement that they will stick to the principles of the constitution.

For all ideas about what could be laid out in those rules the mandate gives the background for the question of its limits, especially number 2 (a).

- Regulations about eligibility of candidates and voters : eligibility of voters is set in the Law on Election.... But those rules are not sufficient, they have to be made compatible with the rules of Art.IV. For example the election law mentions in its Art.1 not all the elections mentioned by Art.IV. So it has to be ruled out that this law will apply as well for the elections of Art.IV (enumeration).

Art.6 of the Election Law gives the right to vote only to persons having domicile on the territory. The PEC rules have to enlarge this article in a form giving the voting right as well to refugees abroad.

It must be said as well in the rules that all persons who appear in the 1991 census are eligible because this right might be broader than the right out of Art.6. The right in art.6 to be elected must be ruled out for all elections under Art.IV.

It could be asked whether the enlargement of art.6 concerning the right to vote abroad should be given as well for the eligibility of candidates.

- Role of domestic and international election observers: In this are there currently do not exist any national rules, the whole field is to be covered by the PEC.
- The ensuring of an open and fair electoral campaign: This is a general authorization to PEC to implement all measures PEC thinks necessary. It could be thought to implement a Code of Conduct with certain penalties (see down). And it could be ruled out that the political parties shall have unimpeded movement in the entire country.

The mandate gives further competence to the PEC in Art. III par.2. Especially point 2(a) gives all further authority for supervising all aspects of the electoral process. If those aspects for free and fair elections are not in place, the PEC could install the necessary rules and regulations by Art. III par.1

(rules regarding the ensuing of an open and fair campaign. Essential is the competence for determining the provisions of voter registration.

It results in thought being given to the idea of how to implement those rules and regulations adopted by the PEC. Since they are powerful rules, with the authority to even derogate internal laws they should be promulgated in an official way in the official letters of the Republic.

Elements of Citizenship
(Art. IV, sec. 1)

Reiner Morell
Electoral Code Working Group (ECWG)
Bonn, Germany

February, 1996

Citizenship (Art. IV, sec. 1)

A. The Dayton-Agreement, Annex 3, Art. IV, Section 1 reads:

"Any citizen of Bosnia and Herzegovina (BiH) aged 18 or older whose name appears on the 1991 census for BiH shall be eligible, in accordance with electoral rules and regulations, to vote".

The Decree on the Citizenship of the Republic of BiH with changes and supplements defines who is a citizen of BiH. The Decree came into force on October 7, 1992 (Official Lawletter of the Republic of BiH No. 18/92) and is still in force. This results from the regulations of the new Constitution of the Republic of BiH. Constitution came into force upon signature of the General Framework Agreement (Paris, December 14, 1995). Concerning law the new Constitution provides transitional arrangements (Art. XI). According to those all laws, regulations and judicial rules of procedure in effect within the territory of BiH when the Constitution enters into force shall remain in effect to the extent not inconsistent with the Constitution (Annex II, par. 2 to the Constitution).

Is the Decree on citizenship inconsistent with the Constitution?

Art. I, par. 7 of the Constitution contains some statements that must be taken into consideration:

- "There shall be a citizenship of BiH and a citizenship of each Entity. All citizens of either Entity are thereby citizens of BiH" (7a). At the moment there do not exist citizenship laws of either Entity so that the citizenship of the Republic cannot be arranged by those, but only by the citizenship Decree of the Republic.
- No person shall be deprived of his citizenship arbitrarily or so as to leave him stateless or because of special personal characteristics (7b).

Dismissal from citizenship may be granted only by application (Art. 15, 17 Decree).

Revocation under fixed circumstances is allowed only when the person concerned is in possession of an additional citizenship (Art. 20 Decree; the translation of this article seems not to be correct). The circumstances of revocation listed in Art. 20 of the Decree do not conflict with the criteria mentioned in Art. I par. 7b of the Constitution.

Decision on admittance of the citizenship of BiH may not be canceled, terminated, changed or declared null if the person that acquired citizenship of BiH upon that decision would remain without citizenship (Art. 13 Decree).

So far the Decree is consistent with the Constitution.

- "All persons who were citizens of the Republic of BiH immediately prior to the entry into force of this Constitution are citizens of BiH" (7c).

The citizenship Decree does not conflict with that stipulation.

- "The citizenship of persons who were naturalized after April 6, 1992 and before the entry into force of this Constitution will be regulated by the Parliamentary Assembly" (7c). This is a call for the legislative body to regulate these naturalization in future. That call does however not intervene in the present legality of those naturalization carried out by the present Decree.

- "Citizens of BiH may hold the citizenship of another state, provided that there is a bilateral agreement, approved by the Parliamentary Assembly in accordance with Art. IV 4d, between BiH and that state governing the matter" (7d).

The Decree says in Art. 2 that a citizen of the Republic of BiH may also have a foreign citizenship. But there is made no precondition of a bilateral agreement with this foreign state. So it may be supposed that there do not exist any of those bilateral agreements. As far as they do not exist Art. 2 of the Decree is inconsistent with the Constitution. As a result of that Art. 2 of the Decree is legally not valid without bilateral agreements. In consequence persons with double citizenship according to Art. 2 will be looked at as being only citizens of the Republic of BiH. On the other hand the government is free to conclude from now on those bilateral agreements with the Parliament approving those according to Art. IV 4d of the Constitution.

Legal consequences:

"Persons with dual citizenship may vote in BiH and the Entities only if BiH is their country of residence" (7d). Following the above statement dual citizens (without bilateral agreement approved) will be looked at as simple citizens with the right to vote even residing outside BiH. Real dual citizens (with agreements approved) are restricted in their right to vote from abroad.

The PEC should therefore clear up whether any those bilateral agreements have ever been concluded by the government.

The PEC should mention the situation concerning the right to vote for (real) dual citizens within its rules governing the 1996 elections in case bilateral agreements would be approved in the meantime. Registration forms would then need a box questioning for dual citizenship.

- Art. I, par. 7 (e) of the Constitution refers to protection of citizens of BiH abroad and to the issue of passports of BiH. Both titles do not relate directly to the citizenship Decree.

Résumé: The Citizenship-Decree is still in force, only its Art. 2 might not be valid for the moment.

B. What are the major issues of the Citizenship Decree in relation to elections?

1. Citizenship of the Republic of BiH is mainly acquired by origin and naturalization. An acquisition by birth on the territory of the Republic will only take place if both parents are unknown or have unknown citizenship (Art. 3 (2)

and 7 of Decree).

- a) A child acquires citizenship by origin (at the moment of birth)
- b) if both parents at the moment of birth were citizens of the Republic or
- c) one of the parents at the moment of birth was citizen of the Republic and the child was born within the Republic or
- d) one of the parents at the moment of birth was citizen of the Republic, another one was a person without citizenship and the child was born abroad (Art. 4 of Decree).

If one of the parents at the moment of birth was citizen of the Republic, another one was a person with a foreign citizenship and the child was born abroad, citizenship is acquired if the child up to the age of 23 was registered for citizenship at the competent body in the Republic or abroad (Art. 5 of Decree).

Citizenship by naturalization requires a certain number of conditions (Art. 8 Decree). Minor children shall acquire citizenship together with the naturalization of their parents (Art. 11). Person that acquired citizenship shall become citizen of the Republic upon the day when the decision on acquiring citizenship comes into force (Art. 12 Decree).

There are three transitional provisions of major importance:

- A person that had citizenship of the Republic of BiH in accordance with the previous regulations is also citizen in the sense of this decree (Art. 27 Decree).
- A person that on the day of April 6, 1992 had citizenship of the former SFRY and domicile on the territory of the Republic and that was born on the territory of the Republic and had permanent residence on the territory of the Republic before April 6, 1992 for at least five years shall be considered as citizen of the Republic of BiH if within 6 months after cessation of the state of war gives statement on accepting citizenship of the Republic of BiH and submits a document on the termination of the previous citizenship (Art. 29 par. 1 Decree, Amendment Art. 5 of April 23, 1993).
- Upon requirements mentioned in Art. 29 par. 1 a citizen of the former SFRY that was not born on the territory of the Republic shall be considered as citizen of the Republic of BiH if he/she had domicile on the territory of the Republic before April 6, 1992 for at least ten years (Art. 29 par 2 Decree).

The regulations of Art. 29 par 1 and 2 of the Decree are of special importance for mixed couples, i.e., a person with citizenship of the Republic of BiH that had married a person with Croatian or Serbian citizenship in former times and had lived for a long period in BiH. Those couples get the possibility by Art. 29 to clarify citizenship within the family by means of a simple statement

(upon above listed requirements). After decision on establishing citizenship of the Republic of BiH those persons are eligible to vote.

The PEC could take advantage of the promulgation of its rules to point this out to the public.

By changes and supplements to the Decree a new fact of acquisition was introduced: Member of the Armed Forces of the Republic of BiH who is not a citizen of the Republic, shall acquire the citizenship of the Republic of BiH by naturalization even if he/she does not meet the requirements mentioned in Art. 8 (Art. 2 of Supplement of April 23, 1993). It is unknown to the author whether this article has been of any practical use so far.

2. *What sort of evidence the decree provides to prove citizenship of the Republic of BiH?*

First of all citizenship shall be proven by a valid identity card or passport (Art. 26 Decree). Citizen not in possession of those documents shall prove his citizenship by a certificate on citizenship or by an excerpt from the birth register (Art. 26 Decree). Certificate on citizenship shall be issued by a body in charge of keeping birth registers. Those registers are run on the territory as well as in diplomatic or consular missions abroad.

For persons that had not been registered within the evidence of birth register, the evidence on the citizenship shall be kept in the citizen registers (new par. 2 of Art. 24 Decree, added by Art. 3 Amendment of April 23, 1993). This evidence shall be kept by the Registrar at the place of domicile of the person (new par. 4 to Art. 24 Decree, added by Art. 3 Amendment of July 1, 1994). Minister of the Interior shall issue a form, contents of the form and modalities of keeping that evidence (Art. 30 Decree).

The PEC should examine whether these modalities exist already. Until adoption of the regulations mentioned in Art. 30 the rules on modalities of keeping evidence of the citizens of the Socialist Republic of BiH and citizens of the SFRY will be used (Art. 34 Decree).

Evidence on persons that have acquired citizenship of the Republic or whose citizenship terminated shall be kept by the Ministry of Interior (Art. 24 par. 3 Decree).

For persons that had not been registered within the birth register, that wanted therefore evidence to be kept in the citizen register but whose domicile is on the occupied territory of the Republic, the fact of citizenship of the Republic of BiH shall be temporarily registered at the police station at the place of residence of the person (Art. 37a, added by Art. 6 Amendment of July 1, 1994).

The PEC should exclude this regulation on its promulgation due to the fact that there exists no longer occupied territory of the Republic since signature of the Framework.

The same Art. 37a says that registration of the fact that it is not possible to execute due to communication obstacles shall be temporarily registered at the police station. This form of registration seems not a sufficient evidence.

The PEC should express this by promulgation of its rules.

In the case when a person, within the procedure for realization of certain rights or executing obligations is not able to present an evidence on citizenship of the Republic, or that evidence may not be acquired ex officio, he/she may at presence of two witnesses that possess the identity card, give a statement on citizenship to the police station at the place of domicile or residence (Art. 38 Decree). The police station shall keep special evidence on these cases (Art. 39 Decree).

This will be exactly the form many persons will be using to realize their right to vote.

C. Are there any changes to be carried out on the citizenship regulations with regard to the 1996 elections?

The Decree seems sufficiently built to cover all aspects:

Citizenship of the Republic of BiH acquired by members of all three ethnic groups in previous times is still valid. Persons that have citizenship of the former SFRY have the right to opt for acquisition of citizenship of BiH. Furthermore the decree is open to naturalization. Rules of evidence seem as well sufficient for the 1996 election.

Special regulations for displaced persons and refugees do not seem necessary in this respect.

Points to be considered are stressed in earlier sections A & B of this report.

Certification of Conditions for the Elections

Hans Birchler
Electoral Code Working Group (ECWG)
Switzerland

February, 1996

1. The Main Objectives of the Dayton Accord in respect to the upcoming elections are:

- a) Elections with 6 and 9 months, i.e. the latest is October 14, 1996
- b) Elections on the national level, including the House of Representatives of Bosnia-Herzegovina, Presidency of Bosnia-Herzegovina, Representatives of the Federation and National Assembly of the Republika Srpska and possibly the cantonal and municipal level elections in each entity.

2. Military-Political Status:

One has to bear in mind the Bosnia-Herzegovina is a post-war country, but without winners and losers in the technical sense of the word. Therefore, no side is entitled or enabled to dictate its solutions or ideas to the other warring parties. The international community or the international organizations can only play the role of an advisor without the power to enforce solutions without the acceptance of the parties.

The country is de facto divided into three entities (Federation, republica Srpska, and Bosnia-Herzegovina). The boundaries between these entities are in fact so-called "Hard Boundaries" in contradiction to the Dayton Accords. The 8th of February will show whether freedom of movement will be realized or not.

Furthermore, there are three independent armies and police forces which show to say the least not a very friendly attitude to each other.

There is no common legal framework except the laws of the former republic of Bosnia-Herzegovina.

3. Basic criteria for free and democratic elections are among others:

- a) Freedom of Movement (FoM)

It is from my point of view the most essential and important criterion. Freedom of Movement is the absolute precondition to conduct free elections. Voters must be free to move to the polls or rallies and so on. On the other hand, Freedom of Movement is the criterion which is probably the easiest to control. There is or there is no Freedom of Movement. In a certain sense, it is also the easiest criterion to enforce, not by military force but by the international media or simple monitoring.

- b) Free Access to Media (FAM)

Already the definition of this criterion is not without problems.

- Which media are covered - public, private, all?
- Usually one only thinks of the Electronic Media, but should the print media also be included?
- What does "free access" mean?
- Can a private editor be forced to publish the articles of his political enemy?
- Who is entitled to get access to the radio and Television?
- Only candidates and parties or also political or other groups which are not running for the different parliaments?
- Who defines the rules? Some can be found in the old Law of the Republic but they do not fully cover the actual circumstances.

One should not forget that actually a free press and radio does not exist. Due to the war it is also difficult to find independent journalists. Generally they understand their role as "fighters for the right cause" - the Serb, the Croat, or the Bosniac one. They do not even try to search for the truth, whatever truth might be, they only want to serve their respective national or political causes.

c) Freedom of Expression and Equal Opportunities (FEEO)

This criterion is tightly linked with Free Access to the Media at least as free expression is concerned. To believe that equal opportunities can be guaranteed is simply wishful thinking. In no country of the world all candidates or parties have equal opportunities. What can be guaranteed is that no one is discriminated, i.e. all candidates must be treated by the authorities and courts in the same manner.

4. Conclusion and Recommendations

- a) Despite the agreements signed in Dayton, one should concentrate on the elections on the national level;
- b) Freedom of Movement must be guaranteed at least for the candidates;
- c) The OSCE must provide its own Radio and Television station and define the rules of its use and a weekly or bi-monthly magazine edited by the OSCE should be taken into consideration; and,
- d) The existing Laws of the Republic should be used as far as possible, because there is no time for instructing the officials and the voters in new and unfamiliar rules.

(All remarks are strictly personal and do not represent any official opinion neither of the EUAM nor the Swiss Authorities.)

Citizenship and Voting Issues in Bosnia-Herzegovina
Following the Dayton Peace Agreement

Carol A. Batchelor
Electoral Code Working Group (ECWG)
Canada

February, 1996

Introduction

1. Following several years of instability, dislocation and hardship, the prospect of peace is now present for Bosnia and Herzegovina. Restructuring and rebuilding of the country will be a significant challenge. The drafters of the Dayton Peace Agreement sought to provide the basis for undertaking this task. Under Annex 3 of the Agreement, the Organization for Security and Cooperation in Europe (OSCE) has the task of ensuring free and fair elections in Bosnia and Herzegovina and the Republika Srpska within nine months of entry into force of the Peace Agreement. The OSCE is to establish a Provisional Election Commission (PEC) which will adopt electoral rules and regulations including, *inter alia*, regulations regarding the eligibility of candidates and voters.

2. Article IV of Annex 3, concerning the eligibility of voters, states that:

"1. Voters. Any citizen of Bosnia and Herzegovina aged 18 or older whose name appears on the 1991 census for Bosnia and Herzegovina shall be eligible, in accordance with electoral rules and regulations, to vote."¹

3. Article IV also indicates that the PEC may provide, in the electoral rules and regulations, for citizens not listed in the 1991 census to vote. The matter of defining who is a citizen is, therefore, a key element of establishing free and fair elections, for only those who can show they are citizens will be able to exercise a voting privilege. After several years of war and displacement, determining the "initial" body of citizens in the context of State succession is not without complication.

4. Fortunately, the Peace Agreement, particularly when read in light of international law pertaining to cases of State succession, provides the necessary tools for determining who should have the right to citizenship in Bosnia and Herzegovina. The Constitutional provisions of Annex 4, in which citizenship of Bosnia and Herzegovina is outlined, are inspired by international human rights instruments which touch on the question of citizenship. Not least of these is the Universal Declaration of Human Rights which states:

"1. Everyone has the right to a nationality.

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."²

5. Additional human rights agreements to be applied in Bosnia and Herzegovina are attached in Annex to the Constitution. While several of these include provisions relating

¹ General Framework Peace Agreement for Bosnia and Herzegovina, signed 14 December, 1995.

² UN General Assembly Resolution 217 A(III), 10 December 1948; text in *Human Rights: A Compilation of International Instruments*, Vol.1 (First Part), 1994, p.1.

to citizenship, of particular importance is the 1961 Convention on the Reduction of Statelessness.³ This Convention deals specifically with questions relating to the acquisition, loss or denial of citizenship and addresses the resolution of nationality in the case of State succession. Under Article 11 of this Convention, the Office of the United Nations High Commissioner for Refugees (UNHCR) acts as a mediator between individuals and States, providing relevant technical and advisory services.⁴ These services are provided should problems arise; however, given the provisions of the Peace Agreement, the incorporation of relevant instruments such as the 1961 Convention into the laws of Bosnia and Herzegovina, and international law on the question of citizenship in the context of State succession, citizenship issues may be resolved *before* significant problems arise. The Peace Agreement and international law may, further, be used to ascertain who should be included in the initial body of citizens.

6. In this regard, an analysis of international law, the Peace Agreement and related international treaties, and the citizenship laws of Bosnia and Herzegovina, is a necessary precursor to determination of who is, or who should have the right to be, a citizen of Bosnia and Herzegovina. This determination will be pertinent to the question of who should have the right to vote.

Sources of Law

7. "Citizenship is man's basic right for it is nothing less than the right to have rights."⁵ When Chief Justice Earl Warren made this statement he was reflecting upon two aspects of citizenship: the first, citizenship is a right, the second, that the realization of this right is a necessary precursor to the realization of other rights. Citizenship, or nationality⁶, provides the legal connection between an individual and a State which serves as a basis for certain rights including diplomatic protection and representation of the individual on the international level. The realization of an effective nationality is a stabilizing and connecting factor, decreasing the potential for population movement or displacement. Thus, while the extension of civil rights generally associated with

³ 1989 *United Nations Treaty Series* 175, text in UNHCR, *Collection of International Instruments Concerning Refugees* (Geneva: UNHCR, 1988), p.82.

⁴ UN General Assembly Resolutions 3274 (XXIX), 10 December 1974, and 31/36, 30 November 1976. For historical perspective see Batchelor, C., *Stateless Persons: Some Gaps in International Protection*, *International Journal of Refugee Law*, Vol. 7, 1995.

⁵ Earl Warren, 1958, quoted in Independent Commission on International Humanitarian Issues, *Winning the Human Race?* (1988), p.107.

⁶ The terms citizenship and nationality are used throughout this document synonymously unless otherwise indicated.

citizenship, such as voting, employment, or ownership of property, may be one means of normalizing the status of non-citizens on a State's territory, there is no replacement for citizenship itself.

8. While States grant citizenship, international law plays a significant role in determining how this right is realized. The sources for fundamental principles of international law are delineated in Article 38 of the Statute of the International Court of Justice, established by the Charter of the United Nations. Article 38 of the Court cites international conventions (treaties), international custom (state practice), and general principles of law as the primary indicators of current law. International law is not a static entity. Codified provisions of treaties are themselves interpreted with reference to custom, general principles, and other treaties when necessary. Rather, international law develops and changes over time as new conventions are promulgated, new custom is formed, new cases and arbitral decisions clarify or override previous decisions, experts deliberate and expound upon principles of law, and international and regional organizations adopt new instruments and practice. The law and the theory of law incorporate, in particular, the United Nations Charter, the Universal Declaration of Human Rights, and other significant legal developments. State practice, a primary source of international law, must reflect the principles embodied in these instruments.

9. In the case of international law pertaining to nationality, as early as 1923, the Permanent Court of International Justice (PCIJ), in its *Advisory Opinion on the Tunis and Morocco Nationality Decrees*, stated:

"The question whether a certain matter is or is not solely within the domestic jurisdiction of a State is an essentially relative question; it depends on the development of international relations."⁷

10. The 1930 Hague Convention on Nationality, held under the auspices of the Assembly of the League of Nations and the first international attempt to provide everyone with a nationality, picks up this theme in Article 1:

"It is for each State to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality."⁸

11. This reference to the three primary sources of international law, later encoded in Article 38 of the Statute of the International Court of Justice noted above, was made so as to qualify State sovereignty, an effort deliberately made throughout this century in all areas of international law in the attempt to promote stability and a cooperative spirit in

⁷ Permanent Court of International Justice, *Advisory Opinion on the Tunis and Morocco Nationality Decrees*, Ser.B, No.4, 1923, p.23.

⁸ 179 *League of Nations Treaty Series* 89, p.99.

international relations.

12. The State has the right and the obligation, therefore, to determine who are its citizens *provided* this determination does not conflict with contemporary principles of international law. While contemporary international law cannot be traced to one convenient source and does require some assembling, basic principles on nationality are contained in each of the three, primary sources of law noted. Further, nationality legislation touches upon a number of areas of law, including human rights, conflicts of law, and State succession. While the purpose of this document is not to undertake a comprehensive analysis of international law on the question of nationality, some indicators of these principles will be useful in an analysis of citizenship in Bosnia-Herzegovina.

International Legal Principles Pertaining to Nationality in the Context of State Succession

13. Nationality principles are different in the context of State succession than they are under normal naturalization procedures. This is due, partly, to the fact that State practice and treaties concluded in transfer of territory have been consistent enough for particular principles to be extracted. The development of human rights has, in the past 50 years, further qualified the grant of nationality in succession of States.

14. In the present context, State sovereignty in nationality matters must be analyzed in the light of State dissolution, focusing on the obligations of successor States. Legal opinion has developed over the years in this field. As indicated in the foregoing discussion on the evolution of international law, an opinion expressed earlier in this century must be reviewed in light of treaties, state practice, human rights and other relevant developments in the interim. In this regard, Brownlie finds the evidence overwhelmingly in support of the view that the population follows the territory in any change of sovereignty. In view of State practice analyzed by Brownlie, there is a general presumption that persons "attached" to a territory will *ipso facto* lose their former citizenship and acquire that of the new State. Citizenship changes when sovereignty changes hands. Attachment is taken to mean a substantial connection with the territory concerned as evidenced by citizenship, residence, or familial relation to one with citizenship or residence. This link of people with the territory is, he argues, in accord with human and political realities.⁹

15. Paul Weis argued that while there was no rule of international law under which the national of the predecessor State acquired the citizenship of the successor State, there is a presumption in international law that the new State would confer its nationality on nationals of the predecessor State.¹⁰ The Special Rapporteur for the International Law Commission

⁹ Brownlie, I., *Principles of Public International Law*, (4th ed., 1990), p.560.

¹⁰ Weis, P., *Nationality and Statelessness in International Law*, 2nd Rev. Ed., 1979, Sijthoff and Noordhoff.

on State Succession and its Impact on the Nationality of Natural and Legal Persons has, however, stated that:

"[I]t is no longer possible to maintain without any reservation the traditional opinion expressed by O'Connell, according to which,
[u]ndesirable as it may be that any persons become stateless as a result of a change of sovereignty, it cannot be asserted with any measure of confidence that international law, at least in its present stage of development, imposes any duty on the successor State to grant nationality."¹¹

16. Johannes Chan reasons that, upon a change of sovereignty, all persons who have a genuine effective link with the new State will automatically acquire the citizenship of the new State. It is within the competence of each State, within the parameters established by international law, to determine what constitutes a genuine effective link for purposes of granting of its citizenship, subject to the presumption of avoidance of statelessness and the duty not to apply any law on a discriminatory basis which would be in contradiction with Article 15 (2) of the Universal Declaration of Human Rights.¹²

17. Article 10 of the 1961 Convention on the Reduction of Statelessness states:

"1. Every treaty between Contracting States providing for the transfer of territory shall include provisions designed to secure that no person shall become stateless as a result of the transfer. A Contracting State shall use its best endeavors to secure that any such treaty made by it with a State which is not a party to this Convention includes such provisions.

2. In the absence of such provisions a Contracting State to which territory is transferred or which otherwise acquires territory shall confer its nationality on such persons as would otherwise become stateless as a result of the transfer or acquisition."¹³

18. This provision, reflective of the International Law Commission's and the Plenipotentiaries' assessment of the status of international law at that time, states the rule that, in principle, the population goes with the territory. Contemporary principles of international law indicate this position has been reinforced, that is, that the population

¹¹ Mikulka, V., Special Rapporteur, *First Report on State Succession and its Impact on the Nationality of Natural and Legal Persons*, International Law Commission 47th session: UN doc.A/CN.4/467, 17 April 1995, p.31.

¹² Chan, J.M., *The Right to a Nationality as a Human Right*, Human Rights Law Journal, 1991, Vol. 12.

¹³ 1989 *United Nations Treaty Series* 175, text in UNHCR, *Collection of International instruments Concerning Refugees* (Geneva: UNHCR, 1988),p.82.

follows the change of sovereignty for those domiciled on the territory in question. According to Brownlie:

"[The] concept of territory is perhaps inherent in the rule that state succession results in automatic change of nationality. The population has a 'territorial' or local status, and sovereignty here involves clear responsibilities toward the people concerned."¹⁴

19. The general principle is that there is a substantial connection with the territory concerned through residence, itself one aspect of the principle of the genuine effective link. The doctrine of an effective nationality makes reference to the reliance of treaties and municipal laws on habitual residence or domicile, the underlying theme being that "a stable community is normally related to a particular territorial zone."¹⁵ Incorporating a review of State practice, treaties, general principles of law, and the opinions of experts, Brownlie states:

"Sovereignty denotes responsibility, and a change of sovereignty does not give the new sovereign the right to dispose of the population concerned at the discretion of the government. The population goes with the territory: ... it would be illegal for the successor to take any steps which involved attempts to avoid responsibility for conditions on the territory, for example by treating the population as *de facto* stateless or by failing to maintain order in the area. The position is that the population has a 'territorial' or local status, and this is unaffected whether there is a universal or partial successor and whether there is a cession, i.e. a 'transfer' of sovereignty, or a relinquishment by one state followed by a disposition by international authority."¹⁶

20. This theme is taken up by the Special Rapporteur for the International Law Commission. In his preliminary report¹⁷, the Special Rapporteur interweaves the principles enunciated in the *Nottebohm* case in reference to relevant factors in establishing the genuine effective link. The Special Rapporteur notes that, in its decision, the Court indicated:

"International arbitrators have decided in the same way numerous cases of dual nationality, where the question arose with regard to the exercise of protection. They have given their preference to the real and effective nationality, that which accorded with the facts, that based on stronger factual ties between the person concerned and one of the States whose nationality is involved. ... [T]he habitual residence of the

¹⁴ Brownlie, I., *Principles of Public International Law*, (4th ed., 1990), p.560.

¹⁵ *Ibid.*, p.560.

¹⁶ Brownlie, *ibid.*, pp 664-5.

¹⁷ Mikulka, V., Special Rapporteur, *First Report on State Succession and its Impact on the Nationality of Natural and Legal Persons*, International Law Commission 47th session: UN doc.A/CN.4/467, 17 April 1995.

individual concerned is an important factor, but there are other factors such as the centre of his interests, his family ties, his participation in public life, attachment shown by him for a given country and inculcated in his children, etc."¹⁸

21. This is particularly pertinent in the case of the dissolution of the former Yugoslavia for when several States emerged, so did the question of which nationality was the most appropriate for the residents concerned. **The clear principles herein outlined by state practice, treaties, the 1961 Convention and expert opinion, all point to residence and the genuine effective link as the key factors for determination of nationality in the context of State succession.** In cases of dual or multiple nationality, international law refers to these factors to determine the real and effective nationality, the State with which the individual is associated in fact. If residence and the genuine effective link point to one State, this is the logical citizenship for the individual to have in the case of State succession. This may be further reinforced if, given the opportunity, the individual concerned expressly opts for citizenship of that State. In this case, it would be difficult for the State to support a finding that these individuals were not most closely connected with the territory of that State.

22. Consideration must be given to the context in which the dissolution *itself* arises. In the case of war, the United Nations Charter distinguishes between sanctioned intervention by the international community to stop aggression and wars waged by aggressor States. In the latter case, the initial act of war is considered illegal. This has an impact on the analysis of population movement which took place *as a direct result of the actions of the aggressor State(s)*. For example, if an aggressor State transplanted its own population on to the territory of another State during hostilities and formed new boundary lines, the transplanted individuals would not have a claim to citizenship on this basis alone, despite their residency on the new territory, because the residency arises out of an illegal act. If, however, the hostilities cease and the territory reverts to the control of the original State, transplanted individuals who remain resident *for generations* on the new territory, would at some point lose their genuine effective link with the former aggressor State and a new link would form. There are factors within the theory of the genuine effective link itself which indicate when a new bond has been formed.

23. In the case of civil war leading to the dissolution of one State and the creation of new States, there are principles which guide on the issue of loss of the former nationality and acquisition of a new nationality. One clear principle is that statelessness should not be created. Of necessity, when the former State ceased to exist, so did the citizenship of that entity. Article 1 of the 1954 Convention relating to the Status of Stateless Persons provides:

"1. For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its

¹⁸ ICJ Reports, 1955, p.22 as quoted in Mikulka, V., above, note 11.

law."¹⁹

24. This is the generally accepted definition of *de jure* statelessness.²⁰ Hence, if the State authority and the legislation disappear, so does the previously held citizenship. All those who held this citizenship do not, however, "disappear" and for them their domicile, legal and social links, place of birth and centre of interests do not change simply because the State ceased to exist. Residence and the genuine effective link must be used, therefore, to grant citizenship of the new State with which they are most closely connected. The successor State can no more deprive these individuals of their right to a nationality of the State with which they are most closely connected than could the predecessor State. Statelessness is not an acceptable result.

25. In determining *which* nationality is the most appropriate for individuals when several new States emerge where there was previously one State, several factors are of use. For nationals of the predecessor State, residency is the presumption in cases of State succession. This may be reinforced with factors associated with the genuine effective link. A final determining factor is the express wish of the individual. In this case, nationality of the place of residence, being the presumption, is granted with a right of option for the individual to choose, rather, the nationality of one of the other successor States. Naturally, this agreement must be coordinated amongst the States concerned.

26. Regard must be paid, moreover, to principles of human rights law. It would not be acceptable if a State introduced criteria or flatly denied citizenship to long-term or lifelong residents on the State's territory affecting one distinct minority group only. Whether such nationality legislation was determined to be directed at this group or not would not be relevant to an analysis of the legislation's negative impact on the minority group. Of concern is the result of the legislation and its consistency with fundamental principles of international law. Article 15 of the Universal Declaration of Human Rights stipulates:

"1. Everyone has the right to a nationality.

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."²¹

27. This right has been elaborated upon further in the many instruments adopted since the Universal Declaration which touch on the question of nationality. The generally accepted means of determining nationality is via the genuine effective link, as promulgated

¹⁹ 360 *United Nations Treaty Series* 117; text in UNHCR, *Collection of international Instruments Concerning Refugees* (Geneva: UNHCR, 1988), p.59.

²⁰ There are instances in which international law will ascribe nationality based upon the genuine effective link. However, this is generally done in cases where the citizenship legislation is unclear or non-existent.

²¹ UN General Assembly Resolution 217 A(III), 10 December 1948; text in *Human Rights: A Compilation of International Instruments*, Vol.1 (First Part), 1994, p.1.

by the International Court of Justice in the *Nottebohm* case. The Court stated:

"According to the practice of States, to arbitral and judicial decisions and to the opinion of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred, either directly by the law or as the result of an act of the authorities, is in fact more closely connected with the population of the State conferring nationality than with that of any other State."²²

28. There are connecting factors which indicate a tie with a particular State and, as everyone has the right to a nationality and shall not be deprived of nationality nor of the right to change it, clearly there are certain obligations incumbent upon a State to ensure this right to those who are more closely connected with it than with any other State.

29. In discussing human rights and nationality in State succession, the Special Rapporteur for the International Law Commission cites Article 8 of the Convention on the Reduction of Statelessness which provides that a Contracting State "shall not deprive a person of its nationality if such deprivation would render him stateless."²³ He goes on to note Article 9 of the same Convention which indicates:

"A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds."²⁴

30. The Special Rapporteur sums up his preliminary considerations on human rights and nationality in the context of State succession with the following observation:

"As stated by one author,

'[E]thnic options based on the subjective test of 'race', for example, may be arbitrary in the sense that they are contrary to the prohibition of discrimination based on race, sex, language, or religion, as expressed in article 1, paragraph 3, of the Charter of the United Nations and subsequent international instruments.'²⁵

Thus, the application of such criteria could be objected to on the basis of

²² ICJ Reports, 1955, p.23.

²³ Above, note 5, Article 8.

²⁴ *Ibid.*, Article 9, as quoted in Mikulka, above, note 11, p.31.

²⁵ Donner, R., *The Regulation of Nationality in International Law*, 2nd ed. (Irvington-on-Hudson, NY, Transitional Publishers, 1994), pp. 262-269 as quoted in Mikulka, above, note 11, p.31.

fundamental human rights standards."²⁶

31. In summary, it is clear that contemporary principles of international law indicate that the population follows the territory in any change of sovereignty *unless* there are factors to indicate a closer connection to another State. Should these factors exist, it is incumbent on the States concerned to resolve, via treaty or through adoption of appropriate citizenship legislation, the issue of nationality ensuring no statelessness occurs and upholding the principle of the genuine effective link. Granting a right of option is one effective means of resolving the question of the State with which the individual is most closely associated.

32. States must cooperate closely on this question, for the results would be disastrous if one State referred to the normal criteria of residency and a genuine effective link while another State referred to other criteria. For example, if Croatia introduced new criteria finding residents in Croatia to be citizens of Bosnia and Herzegovina, while Bosnia and Herzegovina referred to the standard criteria of residency and the genuine effective link, finding residents in Croatia to be Croats, the individuals would be caught in the middle with no effective nationality. This result would run contrary to international law.

33. It should be reiterated, therefore, that the clear principles outlined above by State practice, treaties concluded in the transfer of territory, the 1961 Convention and expert opinion, all point to residence and the genuine effective link as the key factors for determination of nationality in the context of State succession. As nationality acts as a foundation for realization of other rights and as a stabilizing factor, decreasing the likelihood of future displacement and increasing the desirability of return, it is an important element in the pursuit of lasting peace in Bosnia and Herzegovina.

Analysis of the General Framework Agreement for Peace

34. The Dayton Peace Agreement should, therefore, be examined in light of international law and principles relating to nationality. This was, in fact, the intention of the drafters who, throughout the Peace Agreement, reiterate principles of international law which are to serve as guiding factors in implementation of the provisions embodied in the Agreement. Hence, while there may be certain discrepancies in the Agreement itself, the drafters provided the necessary tools, read in conjunction with basic principles regarding the meaning, object and purpose of a treaty, for analysis of questions related to nationality.

I. Vienna Convention on the Law of Treaties

²⁶ Mikulka, above, note 11, p.31.

35. The Vienna Convention on the Law of Treaties of 1969²⁷ provides the basis for interpretation of treaties. Articles 26 and 27 indicate that treaties are binding on the parties and must be performed by them in good faith. A State may not invoke the provisions of its internal law as justification for failure to perform the treaty. Article 31 states:

"1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."²⁸

36. The context mentioned is to include the text, preamble and annexes, as well as relevant rules of international law applicable in the relations between the parties. Should further clarification be sought, reference may be made to the "preparatory work of the treaty and the circumstances of its conclusion."²⁹ The Peace Agreement, including the text, preamble and annexes must, therefore, be read in light of these provisions with reference to its object and purpose. Internal legislation must be interpreted in light of the provisions of the treaty. Provisions of internal legislation will be upheld only insofar as they are not inconsistent with provisions of the treaty.

II. Annex 4/Constitution of Bosnia and Herzegovina

37. Under the Constitutional provisions, the Republic of Bosnia and Herzegovina continues its legal existence as a State under international law. All laws, regulations, and judicial rules of procedure in effect within the territory when the Constitution enters into force, shall remain in effect to the extent they are not inconsistent with the Constitution. The Constitution supersedes inconsistent provisions of the law of Bosnia and Herzegovina and of the constitutions and law of the Entities.

38. Attached in Annex to the Constitution are several international instruments which touch directly upon issues regarding nationality, including the 1951 Convention relating to the Status of Refugees, the 1957 Convention on the Nationality of Married Women, the 1961 Convention on the Reduction of Statelessness, the 1965 International Covenant on Civil and Political Rights, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, and the 1989 Convention on the Rights of the Child. Hence, the citizenship provisions of the Constitution must be interpreted in light of the object and purpose of the Peace Agreement and in line with the relevant provisions of the aforementioned instruments, notably including the 1961 Convention on the Reduction of Statelessness.

²⁷ Vienna Convention on the Law of Treaties (1969); text in Blackstone's *International Law Documents*, Evans, M., 1991, p.147.

²⁸ *Ibid.*, p.154.

²⁹ *Ibid.*, Article 32, p.154.

39. In this regard, it may be useful to restate the provisions of the 1961 Convention pertaining State succession. Article 10 of the 1961 Convention states:

"1. Every treaty between Contracting States providing for the transfer of territory shall include provisions designed to secure that no person shall become stateless as a result of the transfer. A Contracting State shall use its best endeavors to secure that any such treaty made by it with a State which is not a party to this Convention includes such provisions.

2. In the absence of such provisions a Contracting State to which territory is transferred or which otherwise acquires territory shall confer its nationality on such persons as would otherwise become stateless as a result of the transfer or acquisition."³⁰

40. Statelessness shall not occur as a result of dissolution of one State and succession of one or more States. As noted in the legal analysis above, reference must be made to residency and the genuine effective link in determining which nationality is the most appropriate for citizens of the predecessor State. The usual means of ascribing nationality in these circumstances is to use the presumption of domicile, allowing the exercise of a right of option for those who may feel their genuine effective link to be elsewhere. Article 9 of the 1961 Convention stipulates that:

"A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds."³¹

41. Given the lengthy war, the ethnic tensions involved and the number of displaced persons, it is now a challenge to recapture an accurate sense of the status quo prior to the outbreak of hostilities so as to assess the degree and manner in which the war has altered the situation. Every effort should be made to determine who was resident in Bosnia and Herzegovina in 1991 and held citizenship of SFRY. The 1991 census list will be extremely useful in this regard.

42. There is an additional factor which must be clearly understood in assessing citizenship issues in the former Yugoslavia. This is the matter of the "internal" nationality designation. The terms citizenship and nationality have been used synonymously in this paper as, indeed, they are used in international law and international legal instruments. Citizenship and nationality, under international law, refer to an individual's attachment to a State, carrying with it implications on the international level. Some countries, particularly Socialist Federal Republics, have used nationality to refer to an internal designation, an internal attachment to a particular Republic inside the Federal Republic. Nonetheless, practical rights and privileges were, for the most part, connected to one's place of residence. Hence, an individual might have the internal "nationality" of one Republic, while residing,

³⁰ Above, note 13.

³¹ Above, note 13, Article 8.

voting, collecting benefits, raising a family, working and performing other civil, political, social and economic acts in another Republic.

43. It is critical to note that the internal nationality designation is of no import at the international level. Whatever the internal designation was, all citizens of the SFRY were, in the eyes of international law, in relations between States, and by the individuals themselves, considered to have a common nationality, that of the Socialist Federal Republic of Yugoslavia. It is this citizenship which must be referred to in the context of State succession for purposes of ensuring no citizen of the former SFRY becomes stateless as a result of the dissolution, and for determining the most appropriate nationality of the successor States to grant former SFRY citizens. As indicated, residency is the presumption. Given the fact of war and the ethnic tensions involved, a right of option should also be granted for individuals to choose the citizenship of an alternative State, as many of them will no longer feel their former place of residence to represent "home".

44. Naturally, this is not for Bosnia and Herzegovina alone to determine, but must be worked out in agreement with other successor States. For purposes of this paper and the need to determine citizenship as a precursor to the right to vote, it is sufficient to note that Bosnia and Herzegovina, as a successor State, has an obligation towards those who were resident on its territory or who had their genuine effective link with this territory at the point of dissolution of the former Yugoslavia. In this regard, the census list of 1991 is a valuable reference point.

45. Article I (7) of the Constitution under Annex 4 of the Peace Agreement, provides for citizenship of Bosnia and Herzegovina as a State, and for citizenship of each of the Entities of the State. The designation of a State and an "Entity" citizenship can be a source of confusion concerning fundamental principles regarding nationality. Thus, as regards the *former* internal nationality designation of SFRY, it should be noted that those who were domiciled in Bosnia and Herzegovina prior to the outbreak of hostilities should be presumed to have the right to citizenship of Bosnia and Herzegovina. Those who were not resident who had, nonetheless, a genuine effective link with the territory of Bosnia and Herzegovina prior to the outbreak of hostilities, through factors of birth, residency, or descent and who would, in particular, otherwise be stateless as a result of the dissolution, should have the opportunity to opt for citizenship of Bosnia and Herzegovina. In the eyes of international law, the former internal "nationality" designation was derivative of citizenship of the Federal State which, alone, was the relevant factor. This is understood in the Peace Agreement itself which, despite perpetuation of the concept of an internal nationality designation, states that all citizens of either Entity are thereby citizens of Bosnia and Herzegovina. It will be the citizenship of Bosnia and Herzegovina which is relevant at the international level.

46. Article I (7)(c) of Annex 4 states that all persons who were citizens of the Republic of Bosnia and Herzegovina immediately prior to the entry into force of the Constitution remain citizens of Bosnia and Herzegovina. This provision in the Constitution indicates that the 1992 Citizenship Act is considered effective law and the citizenship granted under it remains effective both for the initial body of citizens, as well as for those who were naturalized under the Act. The citizenship of persons who were naturalized after 6 April

1992, and before the entry into force of the Constitution, is to be regulated by the Parliamentary Assembly. [It should be noted that regulation by the Parliamentary Assembly or by the Entities cannot, in the context of the 1961 Convention and related instruments and the object and purpose of the Peace Agreement, be interpreted in such a way as to arbitrarily revoke nationality, to negatively influence ethnic groups through nationality, or to deny nationality to those who would otherwise be stateless. Regulation is to read in its administrative sense, as indicated by the non-discrimination clause of Article I (7)(b) which includes sex, race, color, language, religion, political or other opinion, nationality or social origin, association with a national minority, property, birth or other status.³²]

47. The 1992 Citizenship Act established the initial body of citizens of Bosnia and Herzegovina following the dissolution of the SFRY. Article 27 provides that those who held the internal nationality of the Republic of Bosnia and Herzegovina under the previous regulations are considered citizens of the "new" Republic. For voting purposes, it should be noted that not all of these citizens will have been resident in Bosnia and Herzegovina when the 1991 census was taken. Hence, consideration must be given to this group in determining who shall have the right to vote in the 1996 elections.

48. Article 29 of the 1992 Citizenship Act provided that a person who was a citizen of some other Republic of the SFRY, who was born on the territory of Bosnia and Herzegovina and was resident for a continuous 5-year period, until 6 April 1992, will be a citizen of Bosnia and Herzegovina provided that within 6 months of the end of the state of war, this individual submits a statement accepting citizenship and documentation proving the termination of the former citizenship. Those who were not born in the Republic will be citizens if resident for 10 continuous years prior to 6 April 1992.

49. This version of Article 29 presented problems and conflicted with the principles embodied in the Constitution and the related international instruments, including the 1961 Convention on the Reduction of Statelessness. Article 29 was, however, amended in 1993 to the following:

³² In this regard, Annex 6, the Agreement of Human Rights, is also of importance. Chapter One, Article I states:

"The Parties shall secure to all persons within their jurisdiction the highest level of internationally recognized human rights and fundamental freedoms, including ... international agreements listed in the Appendix to this Annex."

International instruments listed in the Annex touching directly upon issues regarding nationality include those mentioned above, attached in Annex to the Constitution. Of particular interest is the 1961 Convention on the Reduction of Statelessness which provides insight on State succession and the grant of nationality. The Agreement on Human Rights also stipulates, under Article I (14) and Article II, that the rights referred to in the documents attached to the Peace Agreement are to be secured without discrimination on any ground, including sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

"Person that on the day of April 6, 1992 had citizenship of the former SFRY and domicile on the territory of the Republic."³³

50. This amendment brings the Article into compliance with previously stated principles of international law in the context of State succession. Thus, those with the internal nationality of Bosnia and Herzegovina under the SFRY, and those with citizenship of the predecessor State who were domiciled in Bosnia and Herzegovina on 6 April 1992, have the right to citizenship of Bosnia and Herzegovina. It must be ensured that no displacement due to hostilities took place *prior* to 6 April 1992. In this regard, a comparison might be made of those on the 1991 census list and those who would qualify as citizens under the 1992 Citizenship Act, as amended in 1993.

51. Another point of concern is Article I (7)(d) of the Constitution, which stipulates that, while dual citizenship is permitted through bilateral agreement with another State, persons with dual citizenship may vote in Bosnia and Herzegovina and the Entities only if Bosnia and Herzegovina is their country of residence. This provision is not exceptional in general terms; however, given the unstructured dissolution of the SFRY, several years of war and displacement, there may be cases in which individuals are presumed by one former Republic to hold the citizenship of another former Republic without definitive evidence in this regard. In other cases, citizenship may have been extended by operation of law, without the express consent of the individual, and without consideration of residency or the genuine effective link (for example, solely by reference to the former internal nationality designation). Scenarios such as these may block individuals, not resident in Bosnia and Herzegovina, from voting in the country to which they intend to return and in which they should have an effective nationality. Consideration should be given to those who may be ascribed two nationalities and are not currently resident, but wish to return and re-establish their lives in Bosnia and Herzegovina.

52. The intention of the drafters of the peace Agreement was to extend the right to vote to citizens of Bosnia and Herzegovina. The tools necessary for determining who should have the right to citizenship in the Republic have been included in the Peace Agreement. Certain categories of persons may require attention, and administrative loopholes should be carefully considered in the determination of the right to vote. Therefore, it should also be ensured that administrative practice does not frustrate the intention of the drafters and the right to citizenship for those who should, under the law, be citizens. For example, those who may have been unable to receive citizenship under the 1992 Citizenship Act *prior to amendment* in 1993 should have their cases reviewed. Citizenship by legislation is without meaning if, due to administrative difficulties, it cannot be realized in practice.

53. Finally, discretion should be used in application of the Law on Voter Registers of the Republika Srpska, the Decree on Elections of the city of Mostar, and the Law on Voters Registers of Bosnia and Herzegovina. In each of these cases, rights associated with the

³³ Decree with a Legal Power on Changes and Supplements to the Decree with Legal Power on the Citizenship of the Republic of Bosnia and Herzegovina, 23 April 1993 as translated.

elections are tied to domicile. Domicile should not be used in a restrictive sense to exclude those who have changed residence involuntarily. Hence, domicile in 1991 prior to the outbreak of hostilities should be the relevant factor.

Conclusion

54. Article IV of the Elections Annex, regarding eligibility of voters, indicates:

"Any citizen of Bosnia and Herzegovina aged 18 or older whose name appears on the 1991 census for Bosnia and Herzegovina shall be eligible, in accordance with electoral rules and regulation, to vote."³⁴

55. This provision seeks to extend the right to vote to citizens who were resident in Bosnia and Herzegovina in 1991. Clearly, the goal was to include those who became refugees and displaced persons and to, as far as possible, reverse any negative effects of the war, making participation in the restructuring of the country available to all those who had a genuine effective link with the territory prior to the outbreak of war. It is generally assumed one key element of an effective nationality is the right to vote.³⁵

56. Comparison of the 1991 statistics regarding eligible voters, citizens, and census figures would prove useful in determining which categories of persons the drafters of the

³⁴ Above, note 1.

³⁵ See Annex 7, the Agreement on Refugees and Displaced Persons. This Annex stipulates that the Contracting Parties have agreed that all refugees and displaced persons, including those who have been accorded temporary protection by third countries, have the right freely to return to their homes of origin. Return is to take place under conditions of safety, and without risk of harassment, intimidation, persecution, or discrimination, particularly in relation to ethnic origin, religious belief, or political opinion.

In facilitation of the above and to demonstrate their commitment to securing full respect for the human rights and fundamental freedoms of all persons within their jurisdiction, the Parties shall, among other, undertake the following:

"(a) the repeal of domestic legislation and administrative practices with discriminatory intent or effect;...

(d) the protection of ethnic and/or minority populations wherever they are found and the provision of immediate access to these populations by international humanitarian organizations and monitors."

Thus, remaining domestic legislation should be interpreted in the light of the provisions of the Peace Agreement under which non-discrimination principles are outlined. The goal is to facilitate the return of refugees and displaced persons and, in so doing, to recognize the position of those who were resident in Bosnia and Herzegovina prior to the onslaught of war.

Peace Agreement *intended* to be eligible for voting who may not, due to gaps in law or practice, be able to exercise this right. The Provisional Election Commission has the authority, under the terms of the Peace Agreement, to provide in the electoral rules and regulations for citizens not listed in the 1991 census to vote. Paragraph 7 on the Human Dimension of the OSCE, Copenhagen, 1990 meeting, attached to Annex 3, states that the goal of elections is:

"To ensure that the will of the people serves as the basis of the authority of government."³⁶

57. The following steps should be taken to ensure that the will of the people serves as the basis of the authority of government in Bosnia and Herzegovina:

1. Determination of those who were citizens of the SFRY and were resident in Bosnia and Herzegovina in 1991, defining the initial body of citizens.
2. Determination of those who had their genuine effective link with Bosnia and Herzegovina in 1991 and are, or should be, among the initial body of citizens but may not have been resident when the census was taken.
3. Determination of any displacement due to hostilities which may have taken place prior to the adoption of the 1992 Citizenship Act, to define those resident in 1991 who may have fled before the opportunity to obtain citizenship.
4. Determination of dual citizenship status which could adversely impact those who consider their effective link to be with Bosnia and Herzegovina and who, while not currently resident, would like to return.
5. Determination of any administrative practices which would block those with a right to citizenship from actually receiving it. In particular, there may be gaps in the grant of citizenship between the administration of the 1992 Citizenship Act and the adoption of the 1993 Amendment of the Act. During this time, some individuals may have been denied citizenship within the initial body of citizens which they later gained the right to acquire.
6. Determination of other administrative factors which might have frustrated the right to citizenship, including exorbitant fees, inability to locate documents, proof of residence, etc.
7. Ensure that domicile, as outlined in the respective laws on voter registers, does not prohibit those who have involuntarily fled and are outside the country or internally displaced, from exercising their right to vote because they are not currently resident at their 1991 place of residency.

³⁶ Peace Agreement, Annex 3, above, note 1.

58. Each of these categories should be reviewed for inclusion on the list of eligible voters. In each case, there may be individuals who have a right to citizenship, who intend to establish their home in Bosnia and Herzegovina, who should be able to exercise the right to vote.

59. While the Provisional Election Commission cannot grant citizenship itself, since this is an action performed by a State, the Commission can, nonetheless, advise the government on the appropriate steps to take in ensuring all those with a right to citizenship are able to realize this right. The Commission may, further, take steps, under the administration of the elections and the provision for rules and regulations, to ensure that all those who have the right to citizenship also have the right to vote.

Law on Elections: A Technical Analysis

Linda Edgeworth
Electoral Code Working Group (ECWG)
USA

February, 1996

Table of Contents

Preliminary Comments	5
Annex 3. Agreement on Elections	5
Article I: Assurance that Elections Can Be Effective	5
Article III: Mandate of the Provisional Election Commission	6
Technical Analysis of Law on Elections of Members to the Assemblies of Socio-Political	
Communities	8
General Provisions, Articles 1-3	8
Article 3	8
The Right to Elect and Be Elected, Articles 4-7	9
Article 4	9
Article 5	9
Article 6	9
Article 7	10
Termination of Mandate, Article 8	11
Announcement of Elections, Articles 9-10	11
Electoral Bodies, Articles 11-29, 130 and 134	12
Articles 12-13	12
Article 14	12
Articles 16-17 and 25	12
Articles 19-22	13
Article 23-24	13
Articles 26-27	13
Article 130	13
.....	14
Article 134	15
Article 29	15
Nomination and Confirmation of Candidates, Articles 30-54	16
Articles 30-34, 47-48 and 52	16
Articles 35-37, and 43	16
Articles 38-45	17
Presentation of the Candidates, Articles 55-57	18
Article 55	19
Campaign Funding and Disclosure, Articles 135-137	20
Polling Places, Voter Lists and Duties Before Voting Begins, Articles 58-64	21
Article 59	21
Article 61	22
Article 62	23
Article 63-64	23
Processing of Voters, Articles 65, 66, 71, 75 and 76:	24
Article 65	24
Article 66	25
Article 75	26
Ballots, and Manner in Which They are Marked, Articles 67-73	26
Article 72-73	28
Observer Presence at the Polls, Article 74	28
Establishing Poll Returns, Articles 77-80	30

Article 77	30
Article 78	31
Article 79	31
Article 80	32
Voting at Military Installations, Articles 81-83 and 85	33
Article 81	33
Article 84	34
Establishment of Election Results, Article 84-93	34
Article 86	34
Articles 88-91	35
Article 92	35
Article 93	35
Irregularities and Repeat Elections, Articles 94-98 and 126-129	35
Articles 127-129	36
The Election Calendar	37
Establishing Eligibility and Reaching Displaced Voters	39
Creation of a New Registration Roll	39
Registration Based on 1991 Census Data	40
Suggestions for Creating a Strategic "In-Person" Absentee Voting System	40

1

Preliminary Comments

In the aftermath of the devastating war and delicacy of the tenuous peace negotiations, free, fair, safe and orderly elections in Bosnia and Herzegovina will be most difficult to achieve. Given the short time frame in which new elections are required under the negotiated terms of the Agreement on Elections under Annex 3 of the Dayton Accords it is unlikely that there will be full opportunity for the fundamental laws enacted in 1990 to be substantively overhauled to more accurately suit the new circumstances which will raise compelling issues. In fact, preliminary objectives expressed by varied participants suggest an interest in maintaining reliance on existing foundations to the extent possible.

On the basis of this assumption, I was asked to review various documents including, in particular, Annex 3, Agreement on Elections, and the 1990 Law on Election of Assemblymen and Deputies to Assemblies of Social-Political Communities. The purpose of such a review was to develop an article-by-article analysis of the law and to discuss overall conclusions and recommendations as they pertain to its potential use for the anticipated elections in 1996. The major focus of my attention was directed to administrative and procedural aspects of the process although in some instances it is difficult to separate practical applications from questions of fundamental democratic principles.

The primary purpose of this exercise is to offer comments on legal issues and options that might contribute to deliberations of the OSCE as they take on their leadership role in establishing the regulations and supervising the conduct of the 1996 elections.

Annex 3, Agreement on Elections

Although the law may serve as a general framework for the elections, it is clear from Annex 3, Agreement on Elections, that it is intended that the Provisional Election Commission (PEC) will have a great deal of latitude in developing policies and strategies for carrying out the spirit of the terms to which participants have so far agreed. Depending on the PEC's ultimate decisions and the degree to which they are supported by governing bodies, parties and candidates, the law itself could be a secondary factor in administration of the elections. Although the complete terms of the agreement were not readily available, certain issues raised questions in the brief portion reviewed for the purposes of this commentary. They will need clarification if the leadership and administrative organization of the elections are to move ahead smoothly.

Article I: Assurance that Elections Can Be Effective

Under the terms of the agreement the parties agree to ensure that conditions exist for free and fair elections. The scope of conditions cited are complex. They include, for example, assurance that there is a politically neutral environment. Other conditions which the OSCE is requested to certify are that the right to vote is protected from fear or intimidation, that freedom of expression and the press are guaranteed, and that freedom of association including political parties is allowed and encouraged. Under Section 2, a request is made that the OSCE certify that current social conditions and the environment in both territories are conducive for the holding of elections that are "effective." If necessary, the agreement requests assistance from the OSCE to ensure that the desired conditions can be achieved.

It would be advisable to develop the specific criteria or measures by which a certification could be granted. Even if cooperating parties can agree as to the evaluation criteria and limitations, special provisions should be considered as to how the OSCE is to respond should circumstances deteriorate to the point that the environment is no longer acceptably conducive to the conduct of "effective elections." It may prove difficult for the OSCE delegation to maintain its "certification" over a sustained period of time. A question will have to be addressed as to whether, for example, election plans would be halted to accommodate arising circumstances which would hinder efforts to proceed. It would be equally important to have a fall back position if adverse circumstances arise in only certain areas, but not in others. It would be preferable for everyone involved to know in advance how the agreeing parties will participate in any future negotiations which may be necessary should conditions warrant reevaluation and remedy.

Article III: Mandate of the Provisional Election Commission

Fundamental to the OSCE's oversight of the election is the creation of a Provisional Election Commission (PEC). Through the Provisional Commission, the OSCE is delegated authority to establish the rules and regulations under which the election will be conducted. The scope of their regulatory authority is extensive covering the registration of political parties and independent candidates, the eligibility of voters and candidates, the role of domestic and international observers, ensuring an open and fair electoral campaign, and the certification of definitive election results. The parties have agreed to comply with the regulations established by the OSCE "any internal laws and regulations notwithstanding."

The establishment of regulations should prove manageable, especially if an attempt is made to build on existing laws to the greatest extent possible. However, it is not clear to what extent the OSCE will have the legal authority to countermand a provision of existing law or to implement procedures for which there is no legal foundation under the Constitution or the laws of the Republic. In addition, it is difficult to understand the authority under which the OSCE will be able to enforce its regulations in the face of any resistance on the part of government officials or lawmaking bodies.

There is one aspect of the agreement that serves to illustrate the kinds of questions which are likely to arise. Section 2 (e) of Annex 3 suggests that the Provisional Election Commission will ensure that action is taken to remedy any violation of any provision of the agreement or of the electoral rules and regulations pursuant to it, "including imposing penalties against any person or body that violates such provisions..." While the Provisional Commission may be able to adopt regulations, it is not clear how it would be in a legal position to impose penalties. What would be the mechanism by which the Provisional Commission, in and of itself, could assess fines or imprison violators?

It will be very important to investigate the depth and breadth of the domestic and international legal umbrella under which OSCE/Provisional Election Commission can exercise its authority independently. It will also be critical to establish practical, and dynamic cooperative relationships with appropriate state bodies within the Republic to ensure that the policies and regulations adopted by the Provisional Election Commission can be enforced.

2

Technical Analysis of Law on Elections of Members to the Assemblies of Socio-Political Communities

The following represents an article by article analysis of the law governing elections to the assemblies of socio-political communities as it was enacted in 1990. The analysis of this particular law has been undertaken based on the premise that, to the extent possible, an attempt will be made to utilize the current law as the foundation on which an appropriate election system for the 1996 elections will be built. This analysis is offered from a strictly administrative and technical perspective. No attempt is made to anticipate what transitional policies might be established by the Provisional Election Commission or on the basis of additional negotiations which may ensue. Throughout this analysis issues are raised as are discussions of apparent omissions or problem areas which have the potential to leave critical aspects of the process unclarified, open to inconsistent interpretation, or subject to abuse. Where possible comments are also offered regarding suggestions as to how some deficiencies might be overcome.

Although the law also covers recall of elected officials, the primary focus of these comments are limited to the initial election process through which they become members and representatives of the socio-political communities.

General Provisions, Articles 1-3

This law attempts to cover a wide range of elections under a single legislative umbrella. For example, under its general provisions assemblymen and deputies are elected to or recalled from municipal assemblies, the chambers of the Assembly of the Socialist Republic of Bosnia and Herzegovina (SRBH), as well as the presidents and vice presidents of the assemblies of the socio-political communities. In addition, the law was designed to cover the election or recall of delegations of the Assembly of the SRBH to the Chamber of Republics of the SFRY. Article 2 dictates that elections are on the basis of a general and equal voting right, and that they will be conducted by a direct and secret vote.

Article 3

This article dictates the requirement that officials are elected from "constituencies." From the vague wording of law as it has been translated it is not totally clear how the term "constituency" is being used, since the provisions imply that the "constituencies" are to be determined by a decision of the assemblies of opstinas, or municipal assemblies, and the Assembly of the City of Sarajevo. Given the broad spectrum of elections this law is meant to govern, it is difficult to understand how a municipal assembly would be positioned to make decisions regarding delimitation for elections which encompass broader territory. It is possible that in this context the intent is to lay the responsibility for delimitation only to the territory relevant to the specific assembly.

Potential Problem Areas:

The text goes on to require that constituency determinations be made by these entities "and by law, respectively." The specific law being referred to is not cited or identified. As written, this law fails to apply any direction with regard to equal representation, "one voter, one vote" principles. Nor does it make any stipulations such as constituencies or their subdivisions

requiring contiguous borders, or conforming with administrative boundaries, which are commonly applied to delimitation requirements.

The Right to Elect and Be Elected, Articles 4-7

These provisions generally describe the rights of citizens to elect and to be elected. As constructed, there seems to be a subtle distinction between the general right to "elect", and the specific right to "vote."

Article 4

Article 4 stipulates that the right of a citizen to elect and be elected must be recorded on a general registration list. Taken with the articles that immediately follow, the right to vote appears to be contingent on a persons' inclusion on the list.

Article 5

It is under Article 5 that the person's *right to vote* is secured. According to Article 5, once identified on the general voter registration list, a person may not be deprived of the *right to vote* and may not be prevented from voting. Article 5 also emphasizes freedom of election and that secret voting is guaranteed. The article also makes it clear that a voter has the right not to vote; having voted a citizen cannot be required to divulge how he voted.

Potential Problem Areas:

This article stipulates that no one "on any foundation whatsoever" may call a voter to account for voting, or "demand from him to say for whom he voted for, or why he did not vote." A policy decision should be considered as to how this provision would be interpreted with regard to exit polling, although exit pollsters do not characteristically "demand" a voter to respond. Instructions for monitors, and in particular domestic monitors and journalists should cover this issue.

Article 6

This provision stipulates the requirements to be eligible to vote and to be elected. A person must have reached the age of 18, and have "domicile" on the jurisdiction for which the election is being conducted.

Potential Problem Areas:

Clearly, the devastation left in the wake of war will have a dramatic impact on establishing eligibility based on residency for the hundreds of thousands of people who are currently displaced.

For Consideration:

Special provisions will have to be designed to accommodate those who are not able to return to their places of residence. It may be advisable, for example, to formally define "residency" or "domicile" for the purposes of voting in the 1996 elections, even if the definition is temporary, and has a sunset clause. For example, if the basis of the registration roll is to be the 1991 census,

a definition might specify eligibility based on the person's residence address in 1991, unless the person has affirmatively changed his residence or domicile through the authorized registration authorities. This approach would ensure that even people who fail to make any formal application for a change of constituency or cannot be immediately located would not be disenfranchised altogether. As a safety net, provisions could be developed through an expanded "absentee voting system" designed to provide an alternative way to account for ballots distributed to and cast by voters who fall into this special circumstance. Such a system should include the following elements:

- broad access to polling by the greatest segment of displaced and refugee voters as possible;
- accountability and security for distribution and use of ballots used for these purposes;
- assurance that the secrecy of each voter's vote be maintained;
- segregation of ballots cast by persons away from their voting jurisdiction with a verification of eligibility process prior to their ballots being commingled for counting ;
- a mechanism whereby these ballots can be counted within the jurisdiction for which the ballots are cast;
- transparency surrounding the entire "absentee voting" process.

(See Section 4, Absentee Voting: Reaching Displaced Voters)

Article 7

According to the law, various levels of government officials or appointees are precluded from also holding office as a member or representative of the same socio-political community. The posts covered by the restriction include judges, prosecutors, managing workers or others with special authorities in state bodies, or other workers appointed by the assemblies, the president, or government of SRBH, or executive bodies of municipalities. Under this provision they cease their functions in these positions as of the date their mandate is verified. They are not precluded, however, from being candidates.

Potential Problem Areas:

While the law precludes officials from simultaneously holding these designated posts and serving as elected officials, the law is silent as to their disposition during the campaign and pre-election period should they be nominated. Among the types of officials listed, some may have a functional role in the carrying out of various aspects of the electoral process. For example, municipal administrative authorities propose locations for polling sites, election committees are appointed from judges, and judges may play a part in the adjudication of grievances. There may be instances in which a conflict of interest could arise when a person serving in one of these identified posts is also a candidate.

For Consideration:

It may be helpful to provide some legal guidelines where necessary to preclude any real or

perceived conflict of interest. In some jurisdictions, officials must resign their posts when they become candidates, even if they are only suspended and eligible to resume their posts if they fail in the election. In many socialist republics, they are put on leave and receive subsidies equal to their pay for the duration of the campaign period. Even if these measures are too burdensome given the difficult circumstances facing the Republic, it should be possible to develop guidelines that remove these officials from any duties or responsibilities for the conduct of the elections themselves even if generally they retain their posts.

Termination of Mandate, Article 8

This provision states the conditions under which the mandate of an elected official loses ceases prior to the end of his or her normal term. Most of the conditions cited are to be expected, including resignation, recall, conviction of a crime warranting a verdict without appeal and commanding a jail sentence exceeding 6 months, or if the person takes a post with which membership in the assembly is incompatible under the Article 7 restriction. Article 8 also cites as grounds for termination of a person's mandate any reason the elected official "loses the right to be elected."

Potential Problem Areas:

There are a few other causes of premature cessation of a mandate which may need review or clarification. The right to be elected is based on being at least 18, being a citizen, and residing in the jurisdiction to which the mandate is related. While it is reasonable to end a mandate for a person who leaves or changes residency to a place outside the jurisdiction after his election, the issue of domicile will also have to be reviewed to not preclude someone displaced by the war. It may be necessary to set aside or make special allowances with regard to the issue of domicile under certain circumstances. There is also a provision that a mandate will be terminated if the person is "deprived of business capacity by a court decision." Presumably, there is some legal interpretation of this status that is not evident in the context of this law. Whether it is a matter of inadequate translation is not clear, however, this provision should be reviewed to ensure that it is not a restriction which could be used to preclude candidates on prejudicial or discriminatory grounds.

Announcement of Elections, Articles 9-10

These provisions call for elections of all members or representatives to be conducted every 4 years. Interestingly, it is the Assembly of the SRBH which is responsible for undertaking the decision on the announcement of elections, presumably for its own elections as well as for the elections in the socio-political communities. In addition to determining the election date, it is also they who establish the election calendars. Under the law, the shortest time between the call for elections and election day is 30 days, while the longest period is 160 days.

Potential Problem Areas:

Except for the most extraordinary circumstances or for the smallest of jurisdictions, most election administrators would agree that 30 days is too short a time for organizing a competent election. This is especially true for an election involving the election of officials. Aside from the administrative and logistic problems that too short a pre-election period can cause, it makes it virtually impossible to provide for a meaningful campaign period during which voters can become fully informed. Under the provisions of this law, from the call for elections to the deadline for submitting nomination documents is would only be ten days. Candidates would have insufficient

time to complete their filing requirements potentially eliminating meaningfully competitive elections. During normal election cycles, 90 days should be considered the minimum window for preparation of candidate elections. For the purposes of the 1996 elections, the law is superseded by Annex 3 of the Agreement which sets a schedule for the elections to be held within 6 months of the signing of the agreement. An extension is allowed increasing the window to 9 months.

Electoral Bodies, Articles 11-29, 130 and 134

The administrative structure for the conduct of elections involve the work of electoral committees and polling committees. According to Article 11 the committees are independent in their functioning and are supported by state bodies for practical assistance. Lower level electoral committees are divided into two types: Municipal Electoral Committees, and Electoral Committees in the electoral units for the election of representatives to the Houses of Assembly of SRBH. At the top of the hierarchy is the State Electoral Committee. For each type of election Polling Committees are appointed to carry out election day activity at the polling sites.

Articles 12-13

Under Article 12 members of all committees must be eligible voters. Candidates are precluded from serving on an election committee and must resign their post should they be nominated for election. An exception is made for candidates who serve as a member of a committee which is not involved in the particular election for which he is a candidate. Article 13 sets the terms of members of electoral committees at 4 years and allows members to serve for no more than two consecutive terms.

Article 14

According to this provision the proceedings of electoral committees are open to authorized representatives of the media as well as representatives of other bodies and organizations who may be present. The electoral committees authorize those who wish to be present. Representatives seeking access to the proceedings may not be candidates. Presumably "other organizations" would cover political parties.

Potential Problem Areas:

- The law is unclear as to how observers apply or otherwise become "authorized" to be present or on what grounds an electoral committee could refuse such authorization. Perhaps it is merely a formality of getting permission to attend. However, if "authorization" has a formal connotation then the requirements should be disclosed. It appears that separate authorization would have to be sought from each electoral committee whose proceedings a representative wanted to observe.
- No provisions exist for these kinds of observers to attend proceedings of polling committees on or before election day. (See Article 74)

Articles 16-17 and 25

According to the law each electoral committee includes a chairman, secretary and 5 members, each of whom have deputies. It is required that the composition of the electoral committees and any

changes in their membership be published in the official journal for the jurisdiction in which they will serve. Chairmen of electoral committees must be appointed among judges while all other members must be lawyers. Their deputies must have the same qualifications as the members themselves. In addition to these qualifications, the law requires that membership on electoral committees reflect proportional participation of the peoples and nationalities who live on the territory of the electoral unit. Electoral committees at all levels are appointed by the assemblies covering the jurisdictions in which they will serve.

Under Article 25 committees prepare reports regarding the elections and their results to the bodies which appointed them. They are also responsible for providing accurate and timely delivery of the statistical data required for the processing of overall results.

Articles 19-22

These articles generally describe the duties and areas of authority of the municipal electoral communities and the electoral communities in the electoral units for the election of representatives to the Assembly of SRBH. Relative to their jurisdictions electoral committees at all levels have many of the same responsibilities. They include:

- fulfilling the requirements of law in the conduct of elections for which they are responsible;
- confirming the lists of candidates and creating the collective list;
- summarizing and publishing election results and the names of candidates who were elected;
- issuing the certificates of election to the winning candidates;
- fulfilling the administrative functions and preparations for the elections.

In addition to these functions, Municipal Election Committees are charged with responsibility for establishing the polling places and appointing the polling committees not only for elections within the municipalities, but also for the election of representatives to the Assembly of the SRBH. In fact, under Article 19 the Assembly of SRBH may delegate the functions of electoral committees in the electoral units for its elections to the Municipal Election Committees altogether.

Article 23-24

A State Electoral Committee (SEC) is also appointed by the Assembly of SRBH. The SEC is comprised of a Chairman, Secretary and 7 members, each of whom have their deputies. Members of the SEC must be selected among judges of the Supreme Court SRBH. According to Article 24, the SEC is responsible for the uniform application of the law and serves in a coordinative capacity supervising the functioning of the lower level electoral committees. It is in their purview to provide explanations and instructions to lower level committees and to provide the forms and protocols necessary for the conduct of the elections. It is the SEC who is also responsible for publishing the confirmed lists of candidates and the election results for elections involving the Assembly of SRBH.

Articles 26-27

Polling committees serve at the polling station level and are responsible for the processing of voters

and counting of vote on election day. Appointments to these committees are made by the electoral committee responsible for the territory in which the polling station is located. They serve only for the duration of the election. Each polling committee has a chairman and two members. Appointments must be made not later than 15 days prior to the election. Under Article 27 if municipal elections and election of representatives to the Assembly of SRBH are being held simultaneously joint polling committees may be established for the polling places.

Article 130

Electoral committees receive their administrative support from state administrative bodies, state administrative organizations and technical services departments of state authorities within their jurisdictions. Coordination of the support services provided by these agencies and authorities is a function of the technical services arm of the Assembly of SRBH.

Potential Problem Areas:

- No provision has been made for representation of political parties on election committees at any level. Party participation on election committees is commonly used as a means of elevating public confidence in the fairness of the process, and can reduce perceptions of bias or partisanship in the decisions affecting political competitors.
- The procedure by which the relative assemblies appoint electoral committee members is not addressed in the law. For example, the manner in which nominations for membership are proposed is not described. Does the appointment of members require a vote of the assembly?
- It is not clear how assemblies establish the proportional ethnic and national basis of membership on the electoral committee they are responsible to appoint. Under the present circumstances involving the vast swings in population caused by the war, this responsibility will more than likely become a sensitive issue.
- While the qualifications of other committee members are prescribed, there are none identified for member of polling committees.
- No directive is given as to how the various committees organize themselves or the requirement of a quorum during proceedings. Nor is there any indication as to how decisions are to be taken. Do decisions require a vote of the members or does the chairman have the ultimate say? What are the functions and authorities of the deputies? Although the assemblies appoint committee members, the law is silent as to how deputies are selected. No mention is made as to whether or not election committees are paid.
- The law does not clearly delineate the line of authority between the various levels of committees. Nor does it describe definitively to whom the various committees are accountable. Committees are appointed by the assemblies and prepare their reports for delivery to them. Municipal electoral committees are dependent on municipal administrative authorities for their logistical support. Even the SEC does not appear to have its own administrative staff. The question arises as to whether the committees supervise the work of administrative support agencies during the election, or whether

administrative staffs supporting election committees fall under the supervision within their normal bureaucratic structures.

In the same vein, while the SEC "coordinates" and "supervises" the functioning of lower level committees, it is not clear as to whether they have the authority to overturn decisions made by lower committees. The same question can be raised with regard to municipal committees who appoint and supervise polling committees. The answer to these questions are extremely important when objections and challenges are raised and when complainants seek adjudication of grievances. Nowhere does the law suggest that persons aggrieved by a decision or action of an election committee to appeal to a higher committee. Ideally, there should be an avenue for remedial action through normal administrative channels up through the chain of command to the SEC. To the greatest extent possible, grievances should be addressed and resolved within the electoral structure itself. Adjudication through the courts should a last resort.

Article 134

Resources for covering election costs come from the budgets of the jurisdiction in which the election is held, and are put at the disposal of the related election committees.

Article 29

The law establishes a seemingly independent State Electoral Supervising Committee (SESC) who monitors the campaign activities and the conduct of participants throughout virtually every aspect of the election process. They are apparently intended to be the "watchdog" overseeing the process to ensure that the rights of participants are protected. The seven member committee appointed by the Assembly of SRBH is charged with "supervision" over the actions of political parties and organizations and candidates during their campaign activities. This committee may propose measures designed to ensure equal opportunities for candidates to present their programs, and will monitor the actions of public media, parties, organizations and administrative bodies in the interest of exposing violations threatening the equal rights of candidates. Should any participant promote violence or sexual discrimination, or spread religious or racial hatreds, the SESC is responsible for initiating proceedings through "competent state bodies."

Potential Problem Areas:

- The concept of having an independent body to intervene in the event of violations or unfair practices can be a positive element in the overall conduct of an election. However, it is not clear from the text of the law exactly who the SESC serves or to whom they are accountable. Are they representatives of the state, an extension of the electoral administrative structure, or are they intended to function as a kind of ombudsman? It appears that they initiate their own proceedings and investigations. Nowhere does the law suggest that aggrieved persons may appeal to the SESC. Even if the SESC were to

present findings and formulate decisions, there is no indication that they would be binding on anyone.

- The law does not set any qualifications for membership in the SESC or identify the method by which nominations for their membership is proposed. Nor does it specify the term during which the SESC sits.
- The SESC is charged with proposing measures with respect to equal access for candidates to present their programs. The law does not make it clear to whom their proposals are to be directed, or whether they are mandatory on the agency or entity to which they are related.
- Of particular concern is the potential for the SESC to interfere with the open and competitive campaigns of the parties and candidates. One function with which they are charged is to "communicate to the public opinion in order to protect the personal moral integrity of the candidates." They are also charged with pointing to the actions of various participants that "violate correctness" of the campaign. There is always a danger that in such vague terms, interpretation could be arbitrary and subjective. Subsequent intervention could be particularly injurious to a free and open campaign. Ideally, judgmental and potentially biased interference by official bodies in the open and free competition between candidates should be avoided to the greatest extent possible. More reliance should be put on the electorate to make their own decisions about the integrity, character and competence of the candidates and the merits of the programs they present.

Nomination and Confirmation of Candidates, Articles 30-54

With the exception of elections of representatives to the Assembly of SRBH, elections in all other jurisdictions are based on lists of candidates submitted by citizens or political parties. When voters cast their ballots in these election, they vote for an entire list as a whole. Candidates for the Assembly of SRBH run as individuals.

Articles 30-34, 47-48 and 52

Regardless of the type of election, candidates are nominated by citizens or by political parties through a petition process. A candidate can accept a nomination in only one electoral unit within a socio-political community, and can appear on only one list. The manner in which candidates are selected to be included on a candidate list is defined in the rules of the citizens group or political party which choose to nominate them. Political parties which have been officially registered are eligible to present their lists of candidates or nominate candidates within any and all electoral units.

Under Article 33 citizens and parties are allowed to organize themselves for the purposes of gathering the required signatures. The forms used for gathering the signatures must include the name identifying the candidate list to which the voters are subscribing. Each signer of the petition must include his name and surname, address and citizen identification number. Each subscriber to the petition must be an eligible voter and have a domicile within the electoral unit for which the candidate list is being submitted.

Article 47 requires that 1000 signatures be gathered for in support of individual candidates for the

House of Citizens. Under Article 48, candidates for the House of Municipalities must be supported by 300 signatures. The number of signatures required for candidate lists in other elections are established by the municipal statutes according to Article 52. Although it is not totally clear, it appears that the number of signatures required apply to the list as a whole rather than for each candidate on the list.

Articles 35-37, and 43

Candidate lists must be submitted to the appropriate electoral committee not later than 20 days prior to the election. Candidates may resign from the slate by submitting their resignations in writing to the electoral committee and to the initiator of the petition. The deadline for resignations is 15 days before the election. In the event a candidate resigns dies, or is determined to be ineligible, the nominating citizens or party has the opportunity to fill the vacancy up until 10 days before the election.

Under Article 43, if no lists are submitted by the deadline, the electoral committee may extend the filing period for 7 days. If after that still no list have been submitted, the process must be started over again.

Article 37 identifies the required contents of a candidate list. One of the more demanding requirements is that each list must contain the names of as many candidates as there are mandates being filled at the election. The list must be identified by a name selected by the political party that is submitting it. If two or more parties are presenting a joint list, they must define the name by which they want the list identified. If the list is being submitted by citizens, the list must be identified as an "independent" list.

Each list must identify the name of the assembly to which the candidates seek election and the name of the electoral unit in which they seek office. For each candidate the name and surname must be identified along with the candidates national affiliation and domicile. The list must be signed by the authorized "holder" of the list. In addition, the date of the confirmation of the list must be recorded on the list.

Potential Problem Areas:

- The deadline for the submission of petitions is so near election day that there is little time for the public familiarize themselves with the parties and candidates sufficiently to make informed choices at the polls. Nor does it allow electoral committees any flexibility in the time table for the preparation and distribution of ballots.
- There are no provisions that prescribe the condition or content of the list at the time the petition forms are being circulated. For example, there is no specifically stated requirement that the petition forms be accompanied by the full slate of candidates and the name of the political party soliciting support. Must the party or group have selected all the candidates prior to the petition being circulated? Without such information, voters would have little information on which to make an informed decision as to whether or not to sign the petition.
- There is no mention of a requirement that candidates acknowledge their acceptance of the nomination and willingness to serve. It is generally customary to require that a document of acceptance signed by the candidates be submitted with the petitions.

- The fact that a list must contain a number of candidates equal to the number of mandates to be elected may discourage citizens from proposing candidates. This requirement diminishes the concept of "independent" candidates. While they may be non-affiliated with a political party, they are, nonetheless, associated with an organization of citizens no matter how loosely they are structured.
- In the case of several parties submitting a joint list it is not clear how voters will know which parties are involved since they can select any name they all agree to. It might be advisable to require that the list identify all parties forming the bloc. As a legal matter, is the bloc required to register itself or otherwise identify itself as an entity? For the purpose of campaign contributions and expenditures and reporting, does the bloc act as a single entity, or does each party within the bloc operate independently? The same questions will have to be addressed in terms of media access and campaign opportunities.

Articles 38-45

Immediately upon receipt of a submission, the relevant electoral committee must determine whether the list is complete and whether it has been submitted on time. According to Article 39, if the committee determines that a timely petition for individual candidate or a candidate list is not in the proper order they must refuse to confirm the submission. The sponsors of a petition that has not been confirmed are allowed 3 days to correct the deficiency. On the other hand, a petition that is submitted after the deadline or if sponsors fail to remedy a deficient petition within the 3-day supplemental period, the list is canceled altogether. Under Article 41 a nominating petition that has been submitted on time and is found to have no deficiencies is promptly confirmed and notification is given to the sponsors.

Potential Problem Areas:

The provision that allows sponsors of petitions to correct deficiencies found in their nomination documents is a positive element. However, the manner in which nomination petitions are reviewed is not sufficiently defined to ensure that in all jurisdictions uniform procedures are followed. Without uniform guidelines the degree of scrutiny with which petitions are reviewed could be subject to a wide range of interpretation by individual electoral committees. The approaches taken by individual committees could range from liberal to extremely conservative. Some committees may perceive their review as strictly ministerial to ensure that on its face the petition includes all required information and that there are a sufficient number of signatures. Other committees may approach the task more strictly and decide that each signature must be evaluated to determine the signer's eligibility and the authenticity of the signature. It is most important that the manner of evaluating petition does not become a mechanism for rejecting some list while favoring others. Whatever procedures are adopted it is critical that they are applied to each list equally. Without uniform and consistent application of the well documented procedures the confirmation process can become one of the most sensitive elements of the election and one which is particularly vulnerable to challenge.

For Consideration:

Regardless of which approach is ultimately chosen, it is recommended that evaluation procedures be formalized and published so that nominating groups, candidates and committee members alike thoroughly understand how such the review will be accomplished. In particular, the grounds

on which a petition will be rejected should be clearly defined. If, indeed, committees are to undertake an evaluation and verification of the individual subscriber signatures, the basis on which they will make their determinations should be described. In addition, it is important that a policy be established that the rejection of certain signatures does not cause the petition to be rejected so long as the required number of valid signatures remain.

Once deadlines have past and the submitted lists have been confirmed, the electoral committees create a collective list identifying all the lists or candidates who will compete in the election. Under Article 42 the order in which the lists will appear is determined by lottery. The first candidate identified on a list is delegated the "representative" of the list and his name will appear on the ballot next to the name of the list.

Articles 50 through 54 apply conforming rules for nominations and confirmations to the elections in the various jurisdictions.

Presentation of the Candidates, Articles 55-57

Within this section of the law only vague provisions outline the rights of political organizations and independently nominated candidates to freely campaign. Under the law they are afforded equal access to the public media for the promotion of their programs. As written there is an implication that in the first instance such campaign opportunities are only afforded to the political parties, but not to the individual candidates on their lists. Only as it relates to independently nominated candidates does the law specify equal access for candidates. Conversely, the groups of non-affiliated citizens who nominated candidates are not identified as being eligible to media opportunities to support their candidates. Article 57 provides that "agitation" is prohibited on election day, and in the 24 hours before election day.

Generally speaking, this law is vacant on a number of key issues normally expected in an election law. Omissions include:

- the kinds of campaign activities in which nominating groups or candidates may and may not engage;
- rules regarding public demonstrations, authorities or permits, or securing of public forums and locations for rallies and other political events;
- requirements related to identification of sponsors of campaign messages;
- defining acts that constitute violations subject to penalty.

If any of these subjects are covered in other laws or in regulations, they are not cited or identified in this law.

Shortcomings within this section are symptomatic of the general problems with this electoral

law as a whole. It is too sparse and thinly drawn to establish adequate guidelines governing candidate campaigns to allow participants to thoroughly understand their rights, opportunities and restrictions.

Article 55

This article attempts to provide nominating parties equal access to the public media for promoting their programs and candidates. The only directive given as to how equal access is to be secured is a stipulation that access is confined to periods within the same daily time segment. One of the most stringent provisions of this article is that campaign publicity through commercial advertising or paid transmission of other forms of "commercial publicity" in the public media is forbidden.

Potential Problem Areas:

- Key to the issue is that, as written, the law places critical decisions regarding campaign outreach within the hands of the public media itself. It states that "public media shall establish the rules.....in accordance with this law." Except for the limited influence afforded the State Electoral Supervising Committee by Article 29 to "propose measures for the respect of equality of candidates in presenting their programs," there is little direct oversight in how those rules will be established and enforced.
- In addition, it is not clear how "public media" is being defined in this context. Specifically, it is not clear whether the term "public media" as it is used in this law refers to "state media." If that is the case, it is possible that the rules for equal access could be uniformly defined and implemented. However, in the Law on Public Information published in the "Official Law Letter" in July of 1990, the term public media is broadly defined to cover print, broadcast and film in general, founded and published by the State or by a private entity.

Under this broader definition, if it applies to the election law, each individual publisher or broadcast medium would be responsible to independently develop its own policy in establishing "rules according to which objective information and equal treatment of nominated candidates" will be secured as required. And under the restriction against commercial advertising, they would be precluded from charging fees to parties or candidates for their air time or newspaper space.

- Of equal concern is that the law narrows the scope of established rules to be devised to cover "objective information" and equal treatment of nominated candidates. The question arises as to what forum will exist for dissemination of partisan information in the public media. It is often through the exposures of partisan interests and views that the public can inform itself about the differences between candidates and determine the basis on which to make informed decisions

at the polls. If the intent of the focus on "objective information" is to limit editorial content on the part of the media itself, it is not stated clearly enough. Even then, restrictions on editorial comment nudges against guarantees of freedom of expression.

In addition, the law is vulnerable to an interpretation that would allow a publisher or station to side step candidate access by declining all request for individual media time, in favor of station or publication sponsored reporting of their biographical profiles and program statements.

- The limitations cited in the law severely limit the opportunities of parties and candidates to establish their own campaign strategies and spending priorities. In addition, no reference is made in the law with regard to the rights of citizens or non-political, non-affiliated organizations to campaign on behalf of or against parties or candidates. Nor is their participation specifically prohibited. However, restrictions against any commercial advertising or paid transmission of publicity severely limit opportunities for participation by private citizens and interested activists. The prohibition against spending for commercial messages might also put independent candidates and some party lists at a disadvantage in competing with parties that publish their own newspapers.
- Under this provision the public media is "obliged" to act in accordance with the equal access provisions from the time the election is announced until the new assemblies are established. Presumably the equal access provisions are extended until the new assembly is established in order to cover the period required for any second-round elections which may ensue. Through this requirement the law indirectly sets the time period for the campaign. This is the only reference that even implies when the campaign period actually begins. It can be inferred that the campaign period could be for a period covering more than 4 months, the longest period allowed between the announcement of an election and election day under Article 10.

According to Article 35, the lists of candidates do not have to be submitted until 20 days before the election. Then, there is time allowed for confirmation of the lists by the electoral bodies. Final announcement of the collective lists is not required until 5 days before the election. The question arises as to whether parties or candidates are allowed to campaign even before their lists of candidates and their access to the ballot is confirmed. The law only vaguely addresses this issue by stating that the right to "inform citizens on their programs and candidates" is afforded to political organizations that "have announced their candidates." That means that the official campaign period could start at a different time for each nominating group, depending on their readiness to announce their candidates. There is no indication within the law as to what constitutes an "official announcement" or whether a party can make its announcement before a full slate is selected or in advance of the collection of all

the required signatures. Nor is there any indication as to how such an announcement is documented.

Campaign Funding and Disclosure, Articles 135-137

Political organizations are responsible for covering their own electoral activities and may collect contributions from citizens. The manner in which contributions may be solicited are cited in

Article 135. Collecting donations may occur at the offices of the parties, in public places subject to the permission of the appropriate authorities, at gatherings and meetings or through payments into the accounts of the nominating organization. Individual candidates may also accept donations from private citizens. Each party and candidate is required to submit a report of donations and expenditures to the a working committee of the assembly of the jurisdiction in which they are running. The reports must be submitted after the close of the election, although no specific deadline is established. Under Article 136 contributions from foreign persons are prohibited.

Under Article 137, candidates who are ultimately elected are entitled to reimbursement of an amount of funds defined by the assembly in the relative jurisdiction to cover costs expended in the period from the time his nomination is confirmed until election day. Each elected candidate is entitled to equal recompensation, the amount of which is to be announced by the assembly no later than 30 days prior to the election. Campaign donations and compensations are free of taxes.

Potential Problem Areas:

- The law sets no deadline for the submission of campaign disclosure documents. There is no directive as to what should be done if a party or candidate fails to submit the required report. Nor is their any direction as to the format or information that must be included.
- Under this law, only elected candidates are eligible for recompensation.

Polling Places, Voter Lists and Duties Before Voting Begins, Articles 58-64

According to Article 58, polling places are to be established by the municipal electoral committees based on proposals of the municipal administrative authorities responsible for the general voters' register not later than 15 days before the election. Each site is to be identified by number and must be announced not later than 5 days before the election. At the same time the list of voters assigned to that site is also supposed to be announced.

Article 59

This article provide general guidance regarding the criteria which must be applied for determining where polling sites should be established. According to the law the number of voters and the convenience of the location in terms of distance are to be considered. However, the law establishes no limits as to the maximum number of voters which may be served at a single site.

The law specifies that each polling site must provide a "special space" in which the voter can mark the ballot paper out of the anyone's view. At each site, and within the secrecy voting space, the collective list of candidates must be posted. The law is very specific about defining the polling place to include the outdoor facilities of the building in which the polling station is located.

For Consideration:

- It might be helpful to establish a maximum limit of 1000 to 1200 voters to be served at any one polling site to ensure a smooth flow over voters throughout the polling day.
- It is recommended that the specific wording of the article not be taken so literally as to restrict officials from providing more than one secrecy area in which voters can mark their ballots. To accommodate an efficient flow, there should be enough secrecy areas or booths to avoid long waits and lengthy queues. As a general rule, officials can apply a simple formula to determine how many booths would be ideal. Out of a 12 hour day, there are a maximum of 720 minutes available for use of a single voting booth. If each voter takes 2.5 minutes to mark his ballots (which is not unreasonable if there are simultaneous elections), the booth can only accommodate 288 voters. Dividing this number into the total number of voters estimated to turn out can help officials determine how many booths should be provided. Obviously adjustment can be made to accommodate high traffic hours and greater or lessor turnout estimates.
- The obvious omission in this law are provisions which guide municipal authorities regarding voting for people in institutions, whether they be medical facilities, schools, or prisons. Under the law governing eligibility to vote, there are very few restrictions as to who is precluded from voting. With the exception of military installations covered in Articles 81-83, the law is silent as to the allowability of setting up polling stations in these environments, and special processing or handling which may be required.

Article 61

Under this article municipal electoral committees in cooperation with the municipal body is required to deliver the ballots, voter lists, commodities and voting materials to the polling site on the eve of the election. Before voting begins on the day of the election the polling committee is required to verify whether the appropriate materials have been properly

received. This is the only procedure identified in the law that officials are required to fulfill before voting begins on election day.

For Consideration:

It is important that a directive be formalized as to what security measures are to be taken to ensure the ballots and materials are adequately safeguarded from the time they are delivered to the polling committee until they are ready for use on election day. Ballots and other important documents should be secured under lock and key and under the protection of the committee members or appropriate security personnel.

In addition, it would seem more appropriate if an inventory list be supplied at the time of delivery so that verification could be accomplished at that time, rather than waiting until the morning of the election. On the eve of the election there would still be time to correct any deficiencies noted. In addition, if there is no count of the number of ballots received on the spot, there is no point of comparison of the number of ballots actually on site at the time voting begins. The potential for misuse of ballots is increased. Polling committee members should be required to sign the receipt after they verify the number of ballots received and review the other materials to make sure they have everything they will need. One copy of the receipt should be retained by the polling committee and one copy of the signed receipt should be maintained by the electoral committee providing the materials. This document should become part of the permanent audit trail.

The law makes no other mention of duties to be undertaken by polling committees before the polls officially open and the first voter votes. However, there are a number of tasks that should be formalized to ensure the audit trail is adequately maintained and that sufficient transparency is provided to engender confidence in the accountability of the process. In addition, it should be required that they are accomplished in the presence of all members of the polling committee and any authorized observers or representatives of candidates who may be present. At a minimum, these tasks should include:

- display and sealing of the empty ballot box(es);
- counting and announcement of the number of ballots received;
- counting and announcement of the total number of voters appearing on the voter list;
- display of the sealed envelop containing the extra ballots to be used only for eligible voters inadvertently omitted from the voter list and announcement of the number of voters reported to be contained inside;
- recording of initial entries on the report of election activity including the name and number of the polling site, the number of voters on the list, and the number of ballots received.

These pre-poll steps are critical in establishing the accountability record and audit trail and providing the level of transparency required to promote confidence in the process.

Article 62

According to this provision polling committees will receive the excerpt from the voters' register identifying the voters who will vote at their polling place. In addition, they will receive a special certified list of voters from their jurisdiction who are temporarily abroad or in military service. The article specifies that the number of ballots to be issued to the polling site should be equal to the number of voters on the regular list plus those on the special list.

Each polling site also receives a sealed envelope containing an additional number of ballots which are to be used for voters who are found to be eligible to vote at the polling site, but who for some reason was omitted from the list. The number of ballots inside the envelope is written on the front of the envelope.

For Consideration:

It is not clear how individuals who are temporarily away from the polling area are identified, or whether they have already been removed from the normal list. In the case of military voters and students, there are special provisions for them to vote where they are based. Presumably their inclusion on the supplemental list means that these individuals may vote at their polling site should they be able to return to their polling area on election day. It would appear, then that there is a potential for their names to appear on two lists, at their regular polling place, and at their military base, school or other temporary duty station where a polling station is established.

It is commendable that voters who were wrongfully omitted from the voters list can still vote on election day. It may not be necessary to supply each station with a special packet of ballots for this purpose, since it is unlikely that there would be a 100% turnout. Usually the ballots from the standard supply are enough to accommodate these voters, as well as for replacement ballots for those damaged or mistakenly mismarked by voters. It is not uncommon for regulations to establish a standard percentage of overage above the actual number of voters on the list (such as 1% or 2%) to be supplied to each polling place as a normal procedure. This approach would alleviate a separate ballot accounting for the separate sets of ballots. If the current system is retained, there should be a standard number of ballots prescribed that will be contained in the envelope. As an added audit trail, the envelop might also provide space for the signatures of the individual and witness who packed the envelope attesting to the number of ballots which are inside. While this article speaks to providing extra ballots for eligible voters who were omitted from the list, it does not describe the process whereby these voters are accounted for. Are their names added to a special list? To the regular list? (See Article 66) Does the front of the envelop also provide space to document the number of ballots

extracted and the number remaining in the envelope unused?

Article 63-64

These articles establish the hours of the polls from 7 a.m. to 7 p.m., and make allowances for interruption in the polling should disruptions occur. For any interruption greater than an hour in length, the polling hours can be extended by an equal amount of time. Such circumstances are required to be noted in the minutes maintained during the operation of the poll.

Article 64 requires that voting be done in person and restates the mandate that ballots be voted in secret using ballot papers.

Processing of Voters, Articles 65, 66, 71, 75 and 76:

These articles outline the procedures for the general processing of voters in the normal course of polling day activity. The law specifies that the voters vote in person at the polling place for which his name is included on the voter list. Under Article 76 any significant event or situation requiring special handling must be noted in the minutes or report of polling activity. If any polling committee member or representative of a candidate list may provide his or her own notations or remarks in the report.

Article 65

According to this article, the following steps are undertaken in processing the voter:

- the voter identifies himself and, if necessary, announces the address or location of his domicile;
- the chairman may check identification documents;
- upon finding the person's name on the voter list, the official circles the ordinal number next to the voter's name;
- the official explains the rules for voting and issues the ballot paper to the voter.

The official is required to repeat the instructions should the voter request it. The official is prohibited from influencing the voter's decision. In addition, the provision specifically states the officials' responsibility in ensuring the voter is in not hindered in any way, and that the voter's vote is secret. Under Article 71, the voter is required to fold or cover the voted ballot to ensure that the manner in which it is marked cannot be seen as it is deposited into the ballot box.

For Consideration:

While these steps are consistent with normally accepted procedures, the could be strengthened to provide greater security to the process.

- Under the specific wording of the law, presentation of identification is not mandatory. The official "may" check identification documents. Presentation of identification should be required of every voter as a general rule. In addition, the types of identification which are acceptable should be defined. In such a description alternatives should be offered, as long as they include specifically defined information.
- The law is silent on stipulating the grounds on which a voter may be turned away. Instructions to polling committees should cover details as to how to deal with potentially eligible voters who are not identified on the list, voters whose identification shows them to be ineligible to vote in the jurisdiction, voters who do not have appropriate identification, etc.
- It is also recommended that in the future the voter be required to sign the voter register rather than having the official simply circling the number. The affirmative action taken by the voter when signing can help reduce the potential for error, and makes the register a little less vulnerable to possible manipulation. The importance of this element is amplified by the very stringent rules under which the voting can be invalidated on the basis of a single extra ballot being found in the ballot box compared to the number of voters who participated.
- No guidance is offered in the law as to a procedure that should be followed should a voter spoil, damage or inadvertently mismark his ballot. Since these circumstances are likely to occur, instructions should guide officials in how to handle them. The best course would be for officials to retrieve the spoiled ballot, deface it, and segregate it from other ballot. The voter should be issued a new ballot in the normal way. The spoiled ballots should be packaged separately and accounted for on the accountability report of results at the completion of the count.
- Given the difficulties that are likely to be encountered in preparing voter lists that are accurate in the troubled environment there may be an increased need for security against voters being able to vote more than once. In view of the tensions and mistrust that are likely to surround the elections, it may be advisable to investigate the advantages of applying an additional security measure such as affixing a stamp on the person's identification to indicate that he has voted, or requiring the finger of each voter to be inked when they are issued their ballots.
- The law provides no guidance with regard to the general set up of the polling site. For example, there is no directive that the ballot box must be sealed, or that it must be positioned so that it remains in plain view of the voters, officials and observers throughout the day. No mention is made of arrangements for

observers so that they have a clear view of the proceedings. Except for the general stipulation that voting will be secret, there is no stated prohibition that only one person may be in the secrecy place at a time. Often voters fail to understand the significance of the secrecy of their vote when it comes to family members or friends.

Article 66

This article is fundamentally an "election day registration" provision. This allowance will be particularly beneficial since the registration process is likely to be very difficult in the post-war environment. A voter whose name is not on the voter list may seek confirmation of his eligibility through the municipal administrative authorities. The municipal office is required to be open from 7 a.m. to 7 p.m. to accommodate voters in this predicament. Presumably the official issues a confirmation document to the voter who can then return to the proper polling site and vote. Under the provisions of this article, when a voter votes in this manner, a record of it is to be maintained in the minutes of the polling activity. (See Article 62)

For Consideration:

- It would be helpful if the law stipulated the manner in which the eligibility of the voter is confirmed, and steps which the municipal official must take to ensure that the omission of the person's name is rectified on the master roll for future elections.
- The law does not specify the information which must be included on the confirming document. At the very least, it should include the same information which is required for each voter on the roll itself. To authenticate the document, it should include the signature of the confirming municipal official, and if they exist, the official stamp mark of the municipal administration.
- With regard to the processing of these voters at the polling place, it might be more efficient if they were added to a supplemental list attached to the envelope in which the ballots provided for this purpose are contained for ease of accountability. The law should describe what is done with the confirmation document. Is it retained by the voter? Preferably, the document should be turned over to the polling committee to become part of the overall accountability record.

Article 75

Under this provision handicapped or debilitated voters may receive assistance from a person accompanying them in marking their ballots and depositing them into the ballot box(es). A record of each case is made in the minutes. The law does not indicate what kind information must be included in the notation. It is not uncommon that the name of the assisting person is required in addition to the name of the voter. Such information can alert officials to a

situation where the same person is found to be assisting a suspiciously high number of voters. In some laws, limitations are imposed. For example, prohibitions against assistance by an official or representative of candidates are imposed.

Ballots, and Manner in Which They are Marked, Articles 67-73

According to the law, ballots are "prepared and certified by the competent electoral committees." These articles describe the format of the ballot, how they are to be marked by the voter, and the grounds on which a ballot would be invalidated during the counting process. Each ballot is to identify the jurisdiction and the electoral unit to which it applies.

Listed on the ballot are the names of the candidate lists and the names of the representatives identified with each list. Each candidate list is identified by an ordinal number. The ballots are also required to include an instruction advising voters how to mark their votes, and that only one list is elected in its entirety.

According to Article 69, the voter is to mark his choice by circling the ordinal number next to the name of the candidate list he prefers. Voters are only allowed to mark on list, and only the candidate lists printed on the ballot may be marked. No write-ins are allowed.

Ballots for repeals are similar except that they identify the member or representative being recalled and offer two choices, "for repeal" or "against repeal." In the case of elections to the House of Municipalities of the Assembly of the SRBH, individual candidates are identified, and voters indicate their choice by circling the ordinal number next to their preferred candidate's name.

Potential Problem Areas:

The primary concern regarding the preparation and distribution of ballots is the apparent lack of security to ensure that they can be adequately accounted for throughout the process. There is no indication as to what the "certification" process, for which the electoral committees are responsible, actually entails. Perhaps steps are taken in that process to add the measure of security that is warranted. Ideally the audit trail for full accountability for each and every ballot paper that is prepared should begin at the point it is printed, and procedures should be implemented to ensure that through every stage of handling that audit trail is not broken. It is not evident from the law how security of the ballots is maintained.

For Consideration:

In view of the economic conditions facing the Republic and the shortages of commodities

which will undoubtedly burden officials as they carry out these elections, it is unlikely that some of the common security measures used in printing ballots around the world can be applied for these upcoming elections. However there are a few suggestions that may be worthy of consideration, if they are not already being employed as a matter of tradition.

- The manner in which ballots are printed should minimize the ease with which they are vulnerable to fraudulent duplication. One option which would reduce the risk of fraud is to use a quality of paper which includes an exclusive watermark. As an alternative a faint special ink screed could be applied as background for the normal text at the same time printing is accomplished. Some techniques would allow the security screen pattern and the ballot text to be applied with one pass through the printing presses so that the cost and time factor would not be significantly increased.
- Consideration should be given to ensuring that ballots are bound or padded in uniform quantities to provide greater ease in packaging for distribution purposes. Standardized packaging and padding of ballots would also provide officials with better control over the ballots under their supervision.
- It would be helpful if ballots were sequentially numbered with a special range of numbers being assigned for each electoral unit. Sequential numbering of each ballot in a pad would allow electoral committees to maintain a centralized accountability record documenting not only the quantity of ballots provided to each voting site, but also the numeric ranges assigned to each site.
- As an additional measure, the list of ranges assigned to each site could remain secret until the ballots are actually distributed.
- The record prepared by each polling committee on which the accountability is reported could provide space to identify the range of sequence numbers of the used ballots, individual sequence numbers of ballots which were damaged or spoiled, and the range of sequence numbers of the ballots which remain unused.
- Ideally, ballots should include a counterfoil or stub from which the ballot could be separated as it is issued to a voter. The numbered stubs of issued ballots could remain a part of the formal documentation of activity at each polling site in support of overall results and accountability for the ballots originally delivered to the site.
- A strategy for secured transport of ballots should be formalized identifying what police or security force will be assigned to accompany election materials.
- At every stage when ballots are delivered and change hands, a formal receipt should be signed by both the deliverer and the receiver acknowledging the

number of ballots being transferred. During transfer, at least two officials should be present. If at all practical, representatives of the candidate lists should be allowed to accompany ballots and election materials as they are transported to the relevant to the competent electoral committee at the completion of the vote counting.

- Formal directives should be issued as to where ballots are to be stored and how they are to be secured by polling committees from the time the ballots and voting materials are delivered to the committee until voting begins on election day.

Article 72-73

Grounds for invalidation of the ballot are clear and concise. Ballots must be rejected if:

- they are not marked;
- the intent of the voter cannot be determined;
- the voter wrote in a list or candidate not printed on the official ballot;
- more than one list or candidate is marked;
- the voter marked his choice by any other method than circling the ordinal number next to the candidate list;
- the voter has signed his or her name to the ballot.

For Consideration:

The law is clear that a ballot must be rejected if the voter's intent is not clear. However, the provision that a ballot must be rejected if it is marked in any other way than by circling the ordinal number may result in some ballots being rejected even if the voter's intent is abundantly clear. For example, if the voter were to circle the entire name of the candidate list and it were the only mark on the ballot, there would be little question as to the voter's choice. However, under the law the ballot would have to be rejected anyway.

Observer Presence at the Polls, Article 74

Under the provisions of Article 74, it is required that all members or deputies of the polling committee must be present. The law also provides that a representative of each list of candidates may be present during the "whole course of voting." The names of these representatives must be submitted to the appropriate electoral committee at least 3 days

before election day. The committee issues a confirmation to each representative who, in turn, presents the document to the polling committee on election day. The law dictates that each candidate may only have one representative at each polling site.

Under this provision, the polling committee is authorized to remove any person who disrupts the order at the polls, and may solicit the police to assist as necessary. The removal of a person must be recorded in the minutes. The law also prohibits any weapons to be brought into the polling site except by police officers called upon to restore order. While the police are present, polling is halted.

Potential Problem Areas:

While the law makes provision for the interests of each candidate list to be represented at the poll, it is a serious deficiency that no other observers are authorized to be present. That means that the only observers present are those with partisan interests. Neutral observers are excluded. There appears to be no allowance for journalists, foreign observers or domestic observers. However, it is curious that under Article 14 there is a very open allowance for representatives of the media, "other bodies, organizations or citizens" to be present at "proceedings of electoral committees" as long as they are not candidates.

In addition, the wording of the law as it relates to the candidate list representatives at the polling place is awkward. It requires that "during the whole course of voting the representatives.....shall be present." As worded it is implied that their presence is mandatory. The question arises as to what would be done should a nominating group fail to submit the names of enough representatives to cover every polling site. This might be particularly difficult for citizens submitting independent lists. Under the strict wording it is also implied that representatives would be prohibited from leaving the polling site at any time during the poll, even temporarily.

Another concern is that the term "during the whole course of voting" could be interpreted to mean that these representative are not allowed to be present for preparations before the voting begins, such as the display and sealing of the ballot boxes. It also leaves a very serious question as to whether they may be present for the counting of votes. Clearly, these are critical elements to which observers should have access. Exclusion of observers from these important aspects of the process leaves the entire election process vulnerable to allegations of impropriety and general mistrust.

For Consideration:

To provide the level of transparency that is normally associated with free and fair democratic elections the law should be expanded to allow journalists, and domestic and foreign observers to be present throughout election day proceedings. As instructions or regulations are developed to guide their activities, rights and responsibilities, consideration should be given to providing a generous latitude while at the same time

ensuring that their participation is not disruptive and that they do not interfere with the proceedings or the authority of election officials. Generally speaking regulations might include allowing observers to:

- observe all steps in the procedure for the opening of the polls, including the display and sealing of the ballot boxes;
- have a clear view and observe all steps in the processing of voters and issuance of ballots;
- remain present and have a clear view of the counting process and completion of the reports of the results;
- leave and re-enter, and move quietly about the polling site to observe the procedures being followed;
- quietly ask questions and bring questionable activities to the attention of the Chairman;
- make notes, ask to be shown documents and reports, and if they choose, write down the results for their own record.

Observers should be restricted from disrupting or interfering with the voting process, attempting to influence voters, or attempting to instructing, giving orders or countermanding decisions of election officials. As a general rule, it is often advisable to restrict observers from handling any ballots.

It is also advisable to review requirements imposed on representatives of the candidate lists in terms of their having to remain within a single polling station. For example, consideration might be given to allowing representatives of individual candidate lists to be free to visit more than one site within a constituency even if they are restricted from having more than one present at any given time. The list of representatives presented to the electoral committee could be for the constituency at large. Confirmation documents could be used to identify the person as an authorized observer at any polling site within the constituency. These measures would allow the nominating groups to have the broadest coverage even if they are unable to recruit enough representatives to provide an observer for every polling station.

Establishing Poll Returns, Articles 77-80

The counting of votes takes place at the polling station immediately upon closure of the polls. The counting is accomplished by the polling committee. The basic procedures outlined in these articles are fairly standard.

Article 77

This article lists the basic order in which the steps in counting are to be accomplished. The first task to be undertaken is to count the unused ballots and package and seal them in a special envelope provided for that purpose. The polling committee is then instructed to

count the number of voters who actually came to vote. Only then are the ballot boxes to be opened so that the counting of votes can begin. In addition to determining how many votes were cast for each candidate list, the committee also determines how many ballots had to be rejected based on the criteria cited in Articles 72 and 73.

Potential Problem Areas:

- On disconcerting element of the provision is that the voting within the polling place must be nullified if the number of ballots found in the ballot box exceeds the number of voters who have participated. No parameters are set so that even if there is only a single extra ballot found, the polling committee would be dismissed so that a new one could be appointed and the election could be held again. This requirement leaves no room for inadvertent human error. While significant differences could point to deliberate attempts to defraud the integrity of the process, it is usually sensible to build in a tolerance for minor discrepancies for which there could be any number of reasonable explanations. For example, in the rush of peak polling hours, a tired official could have simply neglected to circle the ordinal number of a voter. Two ballot papers could have been stuck together when issued to a voter. The harsh mandate of the law requires nullification of the voting at the polling place even when the discrepancy is insufficient to have any impact or influence on the results. For example, with a vote spread of 100 votes separating the top two lists, a discrepancy of a couple of ballots would not make any difference to the outcome within the polling results. It is important to weigh out the severity of the law against the disenfranchisement of not only the candidates, but also of the voters who voted in good faith and were in no way responsible for the inadvertent error. This provision should be re-evaluated to eliminate unwarranted nullification of the voting with no meaningful benefit.

It is also noted that the strict wording of this section does not appear to be consistent with Articles 126 and 128 which deal with similar issues. In the former, if irregularities are noted in the conduct of the election, electoral committees are to cancel the polling at the jurisdiction involved, if the irregularities "have significant influence on the election results." In Article 128 similar language is applied to the rulings of electoral committees in deliberating objections regarding irregularities in the nomination process. If it is ruled that the irregularities "have significantly influenced or could influence establishment of the list of candidates," the electoral committee is to cancel the proceedings and start them again.

- The procedure for actually going through the manual process of counting the ballots is not defined. With no guidance every polling site is left to its own devices as to how the actual counting will be done. Procedures should be formalized so that they can be uniformly applied throughout the jurisdiction of the election. It is likely that the ballots are simply sorted, placed on stacks for

each candidate list with a separate pile created for invalid ballots and then counted. While this is certainly one of the easiest ways to count, there are still some procedural guidelines that should be implemented to ensure that there is a sufficient level of checks and transparency to safeguard the accuracy of the count.

Consideration should be given to formalizing a tallying method of counting ballots to be used consistently and uniformly at all polling sites. A method by which marks are made on a special form as each vote is read and recorded offers efficiency while at the same time providing an improved and tangible audit trail to substantiate the results which are ultimately reported.

- It is critical that representatives of the lists and other observers be allowed to be present for the counting. These observers should be offered a clear view of the proceedings without hindrance and should be allowed to make copies of the results for their own record.

Article 78

This article augments procedures related to the special voter list on which persons known to be temporarily away from the jurisdiction are identified (Article 62). Based on these two articles taken together, it appears that these voters' names remain on the regular list for the precinct. However, in reporting the total number of voters for the polling place, a review of the special list is done to determine how many on the list have indeed failed to appear to vote. That number is then subtracted from the total number of voters on the regular list. The resulting number becomes the basis for determining the total number of voters assigned to the polling place. It is this number that is recorded on the report of activity.

Article 79

This article describes the report that is to be completed on which the polling results are summarized and accountability for the ballots is recorded. On the report are the number of voters on the list (resulting from the calculations required under Article 78), the number of voters on the regular list who actually voted, how many "confirmed" voters voted who were originally omitted from the list, how many votes each candidate list received, and how many ballots were invalid. The number of "confirmed" voters is taken from the minutes in which the instances were recorded throughout the day. Member of the committee and representatives of the candidate list are allowed to include their remarks or opinions in the report.

Potential Problem Areas:

- As described in this article the form is suitable for reporting results of the polling but is deficient in reporting full accountability for the ballots issued to the polling

station. Several items of information are not listed in the law but which are fundamental for the audit trail. That information which is notably missing are:

how many total ballots were received;

how many ballots remain unused;

how many special ballots for confirmed voters were received;

how many special ballots for confirmed voters remain unused;

how many ballots were spoiled by voters or were otherwise damaged.

If the ballots are ultimately sequentially numbered, there should also be space on the report for reporting the range of for the total ballots received, and the range remaining.

- There is no directive that the report be completed in ink.
- There is no suggestion as to how many copies of the report should be generated. At the very minimum there should be 3 copies produced and signed by all committee members. One copy should be sent to the electoral committee, one should be retained by the Polling Committee Chairman, and one should be posted outside the polling site.

For Consideration:

- Upon the opening of the polls and before the first voter votes, procedures should be implemented to require election officials to initiate the ballot accountability process by making the preliminary entries on the report of polling activity. At the very least, these entries should include the number of voters on the regular list, the total numbers of regular ballots received, and the total number of special ballots received in the envelope for confirmed voters. These entries should be announced and recorded in the presence of the committee members and observers. They should serve as the base figures against which all subsequent ballot usage should be balanced. The information should be recorded in ink.
- As an additional measure it is recommended that representatives of the candidate lists also be allowed to sign the report. It provides greater transparency and helps to limit allegations of impropriety on the part of election officials when representatives are also signatories on the report of polling results.
- If it is not possible for the copies of the report to be given to the representatives

of the candidate lists, they should at least be afforded the opportunity to write down data for their own record.

Article 80

After the counting has been completed, the law requires the polling committee to deliver their reports, the used ballots and separately packaged unused ballots, the voter register, and the confirmations of the voters who had been omitted from the list to the electoral committee. All other materials are to be delivered to the administrative body of the municipality.

Potential Problem Areas:

- The law requires that materials be delivered "immediately and no later than 18 hours from closing the polling place." Eighteen hours seems to offer an inordinate delay which could raise a level of mistrust. Perhaps there are some sites so distant from their electoral committee that this amount of time is necessary for transport. However, the law should then stipulate the conditions under which the allowed delay in delivery is applicable.
- There is no guidance as to how the materials are to be transported and who must accompany the materials. If police or other security forces are to be utilized, they should be identified.
- It would be helpful if the manner in which materials are to be packaged and labelled were regulated to ensure uniform compliance. Such measures would facilitate handling and retention at the electoral committee level.
- The list of materials that go to the electoral committee may be incomplete. For example, there is no mention of the special packet in which ballots for confirmed voters are contained. All materials directly related to ballot accountability, voters and the report of results should be sent to the electoral committee so that the entire audit trail can be maintained together.

Voting at Military Installations, Articles 81-83 and 85

These articles provide for persons in the military to vote within their military installations. To prepare for their participation, municipal bodies develop a list of those voters who are away in the military and send them to the electoral committees in their jurisdictions. In turn, the electoral committees send the required number of ballots needed to serve the number of persons on the military lists and arrange delivery of them to the appropriate installation. Accompanying the ballots are envelopes identifying the return address of the electoral committee. Eventually, when the voter votes, the marked ballot is placed in the envelope provided instead of going into a ballot box. The sealed envelop is returned to the issuing officer who is then responsible to see that it is returned to the appropriate electoral committee. The military ballots must be received by the electoral committee no later than 3 p.m. on the day following election day. It is the electoral committee that is responsible for counting the

military ballots recieved and including them in the summarized total for the constituency.

Article 81

According to the law the "mode of voting" is to be defined by the "competent authority." The only limitation on their authority is that the voting must be direct and secret.

Potential Problem Areas:

The major problem with these provisions is that it is so sparcely drawn that virtually any method of conducting the poll at military installations is acceptable. While it may be necessary to provide some flexibility, the issues of accountability, transparency and freedom from intimidation must be safeguarded, nonetheless . And, uniformity of application should be regulated no matter where the polling takes place.

For Consideration:

Even if there are modifications in the procedures, the conduct of the polling on military installations should require the setting up of a specific time and place for voting where the process is visible, even if it has to be accommodated in shifts or over a number of days. Secrecy areas should be arranged at the voting place so that the actual marking of ballots occurs at the assigned location. Officers or servicemen assigned to conduct the process should be "appointed" and held accountable for proper conduct of the poll. Identification of these officials should be part of the premanent record. At the very least administrative procedures should include specific and auditable steps.

- When the ballots are received from each electoral committee, they should be counted and a receipt should be signed by the officer responsible for the conduct of the voting. An accountability report should be initiated identifying the number of voters who will vote in each constituency, and the number of ballots received for each election district.
- A voter list identifying the names of the servicement to whom ballots are being sent for each constituency should accompany the ballots from the appropriate electoral committee. As ballots are issued, the voter should be required to sign the respective list just as would be required at any other polling station.
- When the polling is completed, the voter lists, completed accountability report identifying the number of ballots that were not used, and the unused ballots should be packaged and returned to the appropriate electoral committee with the individual envelopes containing the voted ballots.

Article 84

In summarizing the results of the voting throughout the election district, the electoral committee is responsible to count the votes cast by military voters so that they can be included in the overall results.

For Consideration:

The law makes no provision for formalizing how and when this counting will be accomplished. It is recommended that the date and time at which the counting of these votes will take place be announced to the representatives of the candidate lists and other authorized observers so that they can be present to watch the proceedings. A decision must be made as to the disposition of the counting when only one ballot is received thereby making secrecy impossible to secure. Presumably, an electoral committee could receive ballots from a number of military installations. A question is raised as to how results of the counting of the military ballots should be reported on the accountability record. It is preferable if, after the accountability is verified for the materials received from each installation, the military ballots are commingled for the purposes of counting. As a group, their results could be recorded under a single "special polling site" category ultimately added to the reported results identified for the the list of regular polling stations.

Establishment of Election Results, Article 84-93

Article 86

For the results of an election to be considered valid, a threshold is applied requiring a voter turnout of at least 50% of the registered voters. If less than 50% of the voters in an electoral unit participate, the election in that unit must be repeated with the same candidate lists being offered to the voters. If in the second election the threshold is still not met, the whole election process must be redone.

Potential Problem Areas:

The use of a threshold serves a laudible purpose in ensuring that the popular will is adequately reflected in the election results. However, with at least 1/3 of the total number of eligible voters estimated to be displaced, the threshold may be very difficult to achieve. In addition, the destruction of the infrastructure will undoubtedly make it more difficult for people to participate. For the purposes of these elections it may be advisable to reconsider the validity of the threshold and how it might be modified temporarily.

Articles 88-91

In determining the ultimate winners of an election, uniform rules are applied for all elections except those related to the election of representatives to the House of Municipalities. Except for the latter, mandates are awarded among the candidate lists on the basis of proportional representation.

The mathematical formula to be applied is set forth in Article 89. The number of votes required to warrant a single seat is determined by dividing the total number of valid votes cast by the number of mandates. For each candidate list, the number of votes received is divided by the number of votes required for a seat. Seats are awarded equal to the number of times the required votes can be divided into the number of received votes evenly. If at the end of this phase some mandates have not been awarded, the remainders of the prior calculations are used in determining to whom the left over mandates are to be distributed. If two or more candidate lists are tied for an additional seat, the mandate is awarded to the list that earned the greatest number of total votes. Individual candidates who will hold the seats are determined by their position on the list.

Article 92

For the House of Municipalities, candidates run for election as individuals. To be declared the winner a candidate must receive an absolute majority of the votes cast. If no candidate achieves the required number of votes, a run-off election is held within 14 days between the top two candidates. In the second round the candidate earning the most votes is elected.

Article 93

Under this provision official results are to be published by the relevant electoral committee.

For Consideration:

The law gives no instruction as to how the results are to be reported. It is recommended that all election results be reported by precinct within electoral unit identifying the number of votes received by each list or candidate. This method of reporting results is extremely important in providing an assurance that the total results reflect accurate and documented polling activity. The level of transparency afforded by this method promotes public confidence in the process and affords representatives of the candidates and other observers to compare their own findings with those officially reported.

Irregularities and Repeat Elections, Articles 94-98 and 126-129

Elections must be repeated throughout a constituency or within specific polling station under

a variety of circumstances;

- if fewer than 50% of the eligible voters participate in the election;
- if an electoral committee determines that irregularities occurred and cancels the election;
- if during the verification of mandates the assembly cancels the election of member or representative due to irregularities.

In most instances a decision to cancel the election and hold repeat election rests with the relevant electoral committee who will determine whether the repeat election is to be held throughout the constituency or only within particular polling stations. If repeat elections are only required in specific precincts, the result of the election will be withheld until the repeat elections are accomplished. The repeat elections are conducted under the same rules as the initial election.

Articles 127-129

The decisions of electoral committees to cancel elections and call for repeat elections can be prompted by objections raised by candidates, members or representatives and voters at various stages of the process. Under Article 27, objections must be decided upon by the electoral committee within 24 hours. Article 28 addresses the circumstances under which objections can be raised which could result in elections being canceled. In each case, the avenue of appeal is through the appropriate electoral committee. A decision of an electoral committee may be appealed to an appropriate court.

Potential Problem Areas:

- No allowance is made for appealing decisions of the lower committees to a higher committee. Even the SEC is left out of the process in spite of the fact they are responsible for supervision and coordination of the lower committees and for ensuring uniform compliance with the law. Omission of this avenue for the adjudication of grievances eliminates opportunities for administrative remedies which would ultimately be more efficient and which would alleviate the time consuming and burdensome weight of court action.
- The most serious concern is that the only remedy called for under the law in response to any irregularity is cancellation of the election. In some instances, elections can be overturned for almost any infraction, no matter how minor, and whether or not it is sufficient to have influenced the outcome. Electoral committees are given latitude to cancel an election autonomously. Most election administrators would agree that cancellation of an election should occur only as a last resort and upon court order. By establishing such loose criteria by which a decision to cancel an election can be made, it leaves the process vulnerable to

purposeful manipulations perpetrated to cause circumstances which would require an election to be canceled. In addition, without very strict guidelines, different electoral committees could come to very different conclusions in making their decisions, even under similar circumstances.

The difficulty is that when an election is canceled, it is not only the candidates that are disenfranchised. The voters who voted in good faith are also disenfranchised. Elections are held at a specific moment in time. When repeat elections are called, the playing field is irreparably altered. Conditions and popular will that existed at the time of the first election can never be replicated. Every attempt should be made to avoid cancellation of an election except under the most grievous of circumstances.

3

The Election Calendar

# of Days Prior to Election	Activity or Procedure Required	Article #
160 Days Prior	Longest period allowed between call for election and election day Campaign period can begin based on date of call for election	Article 10 Article 56
30 Days Prior	Shortest period allowed between call for election and election day Campaign period can begin based on date of call for election The amount of compensation (reimbursement) due an elected member or representative to cover costs of his campaign must be defined by the assembly of the jurisdiction for which the person was elected	Article 10 Article 56 Article 137
Within 3 Days of Announcement of Elections	Permanent register of voters must be exhibit The list and inform citizens that they may review the list and request corrections as necessary	Article 17 Law on Voter Registers
20 Days Prior	Lists of candidates being nominated by political organizations or citizens must be submitted to relative electoral committee	Article 35
15 Days Prior	Locations of polling sites must be established by municipal electoral committees based on proposals of municipal administrative authorities Last day to for municipal electoral committees to appoint Polling Committees	Article 58 Article 27
13 Days Prior	7 day extension of the deadline for submission of lists of candidates if none were submitted by the 20th day prior to the election or if none were confirmed	Article 43
10 Days Prior	New candidate may be nominated by political organization or citizen to replace one on the original candidate list who resigns, dies or is determined not to be qualified Preparation of voter registers is concluded and registration is closed	Article 36 Article 18 Law on Voter Registers

5 Days Prior	Last day to announce the collective list (candidates' lists)	Article 44
	Last day polling places must be announced	Article 58
	Last day for announcement of the list of voters assigned to each polling site	Article 58
3 Days Prior	Names of representatives of each list who will observe at the polling sites must be submitted to relative electoral committee	Article 74
1 Day Prior	Ballots, materials, supplies, commodities and forms must be delivered to polling sites	Article 61
	No agitation (campaigning) is allowed	Article 57
Election Day	Polls open 7 a.m. to 7 p.m.	Article 63
	No agitation (campaigning) allowed	Article 57
	Polling committees must verify that all required materials have been received	Article 61
18 Hours After Close of Polls (1 p.m.)	Polling Committees must deliver ballots, registers, results to municipal Electoral Committee	Article 80
3 p.m. Day After Election	Ballots voted at military installations must be delivered to relevant municipal Electoral Committee to be included in summarized results	Article 85
14 Days After	FOR HOUSE OF MUNICIPALITIES: Repeat election must be held if no candidate receives absolute majority in first round	Article 92
30 Days After Election Day, or After Cancellation of the Election in the Mandate Verification Process	FOR ELECTIONS IN SOCIO-POLITICAL COMMUNITIES: Repeat election must be held if competent electoral committee cancels voting or the elections because of irregularities, if during verification of mandates the assembly cancels the election of a member or representative, or if upon a second round the required number of members or representatives is not reached	Article 97

4

Establishing Eligibility and Reaching Displaced Voters

One of the most challenging aspects of the 1996 elections in the Republic of Bosnia and Herzegovina will be the preparation of voter lists. A great deal of thought and planning will have to be initiated to try to overcome the difficulties which will be encountered due to the extensive displacement of citizens within the Republic and large numbers of refugees outside its border.

The question is raised as to whether an attempt should be made to develop new registration rolls based on current populations where they currently reside, or whether pre-war data should be used as the basis for the 1996 voter lists. Consideration is apparently leaning toward use of the 1991 census data as a foundation on which to build. Although most census data tends to be quantitative rather than maintained on the basis of individuals, it appears that one of the forms used in that census recorded information on each person. Those records may still be available. Each strategy carries with it its own advantages and disadvantages.

Creation of a New Registration Roll

A new list based on current residency of populations would more accurately reflect the numbers of voters currently residing within a given jurisdiction. Citizens displaced by the war but still residing within the Republic could be located and identified with their new constituencies even if it was only for the purposes of the next elections.

Given the extent of destruction and disruption, rebuilding and establishment of an unimpaired infrastructure will undoubtedly take more time than the election timetable will allow. It is unlikely that repatriation and return of displaced persons and refugees will be sufficiently completed in time for the election. Another consideration that must not be overlooked is that many displaced citizens may be reluctant to return to their former places of residence, even if it were physically possible. Lingering distrust and fears of ethnic tensions that are not likely to disappear overnight may cause many people to choose not to return.

Development of a newly initiated registration roll is likely to be more accurate, especially in the near term, and the issue of delivering the proper ballot to the proper number of resident voters would be a straightforward process.

Although there are some distinctive advantages, attempting to create a new list from scratch would pose significant practical challenges. And, it would require extraordinary provisions for reaching the very large number of refugees currently outside the Republic. On another level, it could also promote elections in which the results are even more ethnically divisive.

Registration Based on 1991 Census Data

Use of existing pre-war data could create the most broadly based registration roll. According to the provisions of Annex 3, the 1991 census data would be used. Except for records that were specifically updated or amended, a person would be officially "registered" in

his former jurisdiction in which he resided in 1991. Additionally, a fundamental presumption would be made that the act of voting by a displaced person or refugee would automatically reflect their "intention to return." With an allowance for amendment and updating, appropriate additions and deletions could be made from a relatively stable starting point assuming that the data is still available. Use of pre-war data would also help overcome ethnic imbalances in jurisdictional populations which the war and its aftermath have only amplified. This strategy would also create an automatic safety net for refugees who outside the Republic. Most would already be included in the master roll based on their 1991 place of residence, ensuring their eligibility to vote in the election.

It is difficult to anticipate how many individuals among those uprooted by the war, could slip through the cracks in any window of opportunity created for amending and updating the lists. And, on what criteria would some voters retain their pre-war jurisdiction, while others would be allowed to change their registration? Would changes also be related to a voter's affirmation of his "intent to return" or "intent not to return?"

The obvious problem that such a strategy poses, is how to ensure that voters have access to the correct constituency ballots, when they reside or are refugees in a place away from their registered voting jurisdiction identified by their pre-war residence.

Suggestions for Creating a Strategic "In-Person" Absentee Voting System

Creating the broadest avenue of voter access to the ballot while ensuring that voters vote in the jurisdictions in which they are legitimately eligible, might best be managed by developing a liberal and comprehensive absentee voting program which provides generous access, while ensuring security, transparency and accountability. The program should be viable not only for voting at locations outside the country, but also within the territory of the Republic as well.

The program offered for consideration is based on precedent conditions that have already been established in law and in practice:

- Article 64 requires that voting be done in person;
- traditional practice has accommodated the establishment of voting sites outside the territory of the Republic;
- the law makes provisions for in-person absentee voting at military installations.

Based on these precedents and borrowing heavily from the concepts established in Articles 81-83 governing military voting, it is suggested that consideration be given to developing regulations to establish a broad based absentee voting program to meet the needs of displaced persons and refugees whose unique circumstances may not be resolved through the

registration process.

The fundamentals of the proposal would involve the following elements:

- establishing In-Person Absentee Voting Stations at all municipal offices or other strategic locations within all territories within the Republic and at selected sites outside the country;
- establishing a specific period for absentee voting in advance of election day;
- appointment of Absentee Voting Committees (AVC) at each site designated for absentee voting, as well as an Absentee Review Committee (AVRC) within each electoral unit or constituency;
- development of appropriate forms and protocols for the administration of the program to secure the auditability of the program;
- preparation of a directory defining the boundaries the various constituencies;
- securing appropriate logistic support to accommodate the transport of materials and ballots and communication requirements.

The In-Person Absentee Program would be open to any voter who cannot return to his regular voting constituency to vote on election day. An extensive voter education program would be developed to advise voters about the program and to let them know how they can take advantage it.

Ideally, the absentee voting stations would be opened for a window of approximately one week in advance of election day. To accommodate this program the deadline for the nomination of candidates should be set earlier in the election calendar to allow ballots to be printed in time to accommodate the absentee voting program. At each municipal office, and at stations designated outside the Republic, ballots would be available for each constituency subject to election. Deadlines would have to be established for the opening and closing of the absentee voting period, the application period if one is implemented, and the date by which voted ballots and related materials are returned to the appropriate constituency.

Two alternatives could be considered for determining how many ballots would be needed for each constituency at each absentee voting site. 1) Voters who wish to take advantage of the program could apply to the municipal administrative office by a deadline established for the purposes of absentee voting. A list of the applications could be sent to the respective electoral committees. They, in turn could prepare and transmit the appropriate number of ballots to the absentee voting station to accommodate the number of voters who have applied similarly to the method by which military voters are accommodated. 2) As an alternative, voters could be accommodated with no prior advance application required. Each absentee station would simply be sent a specifically regulated number of ballots for every

constituency.

The procedure for facilitating the absentee voting program would include the following steps.

- When the ballots are received by the Absentee Voting Committees they would counted and a receipt would be signed by the members of the AVC. An accountability report would be initiated identifying the number of ballots received for each election district.
- A voter register would be maintained separately for each constituency. As each voter presented himself to vote, the AVC would inspect the voter's identification documents. Based on the address indicated in the voter's documents, the AVC could determine the voter's eligibility to vote absentee, and the constituency in which the voter is eligible to vote.
- As the appropriate ballots are issued, the voter should be required to sign the respective voter register, list just as would be required at any other polling station. The voter would also be required to provide the same information as is required on the regular voter register.
- After the voter has voted, the ballot would be sealed in a special envelop on which would be written the name of the constituency for which the ballot was cast, the voter's name, identification number and domicile as it appears on his identification document.
- At the end of the absentee voting period, (or at regular intervals during the process) the AVC would prepare a package for each constituency containing the voter lists, completed accountability report identifying the number of ballots that were not used, the unused ballots, and the individual envelopes containing the voted ballots. The package would be sent to the appropriate electoral committee.
- Upon receipt of the materials at the constituency, the voted ballots and absentee register would be delivered to the AVRC. If the deadline for receipt of the ballots is set in advance of election day, the AVRC could review each absentee envelop to determine if the voter is identified on the registration roll for the constituency. If the voter's name is found, a notation could be made on the excerpt to indicate that the voter has voted absentee before the list is given to the polling committee.

If the deadline for the receipt of absentee ballots on or after election day, the AVRC would review the envelop to determine the voter's registration on the list and determine if someone had already voted under that person's name on election day.

If the person is eligible and no vote has been cast by someone under that name, the envelop could be set aside to be included in the counting of the absentee

votes. If the person is found to be ineligible, or if someone has already voted under that person's name, the envelop would be set aside and not included in the count.

The decision of the AVRC to count or not count the ballot would be written on the outside of the sealed envelope. In the case of rejected ballots, a notation would be made as to the grounds on which the rejection was based.

- The AVRC could establish a specific date and time when the eligible absentee ballots would be counted. Representatives of the candidate lists and other observers should be invited to observe the count.
- At the appointed time and in the presence of the observers, the AVRC could announce the total number of ballots received, how many were eligible to be counted, and how many ballots were put aside and rejected. For each ballot set aside the AVRC could state the reason for the rejection.
- In order to preserve the secrecy of vote, each envelope could be slit open so that the ballot could be carefully dropped into a sealed ballot box without the vote being seen. The ballots would be commingled so that no individual ballot could be identified as coming from any specific envelope.
- The AVRC would ultimately open the ballot box and count the ballots following the same procedures applied at polling stations. A protocol of the results of the count would be prepared, and the results would be added to the constituency-wide summarization results.

Obviously, this only represents an overview of a process that could be considered. Implementation would require a comprehensive system analysis and development of procedural detail to ensure that the program could be manageable and accountable. However, it does provide a safety net for the voters who remain unable to take advantage of normal voting opportunities.

Index of Articles

Law on Election of Members and Representatives
of the Socio-Political Communities

Preliminary
Index of Articles
to Be Considered for Amendment or
Regulatory Clarification
12 February 1996

SUBJECT	ARTICLE #(s)	ISSUE FOR CONSIDERATION	REFERENCE : Technical Analysis
Right to Elect and Be Elected	Article 3	Members and Representatives are elected by "electoral units" established by Municipal Assemblies. Need to clarify relation to formation of cantonal boundaries and authority for such decisions. Clarification of "electoral units" criteria or standards on which decisions are made is not clearly defined. Deadline should be established for formalizing the boundary determinations since so much of the administration of the elections will be dependent on this information. Will require creation of appropriate directory of descriptions "electoral units."	Page 8
	Article 5	States that no one can require a voter to "divulge how he voted." May need to address in relation to observers, and rules regarding exit polling.	Page 9
	Article 6	Refers to "domicile" as a criteria for determining eligibility to vote. Policy decision must be formalized with regard to mandate of Annex 3, use of 1991 census data, and options for allowing changes in registration upon application by voters. Impacts displaced and refugee voters, as well as those who moved prior to April 1992 and those who may have moved after November 14, 1995.	(Annex III)
	Article 7	Restricts simultaneous holding of elected office and certain governmental, juridical or local administrative posts. Does not restrict them from being candidates while holding these posts. Needs regulation to dictate how candidates holding these posts will function if they hold posts which are responsible for or are otherwise involved in any aspect of the election process.	Page 10
	Article 8	Identifies grounds for termination of mandates, including residency (domicile). May need review for current circumstances.	Page 11
Electoral Bodies	Article 14	States that proceedings of electoral committees are open to representatives of the media and other bodies and organizations. Their presence is "authorized" by electoral committees. Manner in which they seek authorization is not defined. Grounds for refusal not defined. No coverage offered to allow these entities access to proceedings of polling committees on or before election day.	Page 12
	Articles 11-29, 130 and 134	These articles define electoral committees, polling committees, State Electoral Committee and their duties. They also describe qualification of members, terms and by whom they are appointed, and sources of administrative support. Regulators may wish to review and modify to address the following issues: 1) No provision made for representation of political parties at any level. 2) Process by which assemblies nominate or select members not clarified. PEC may want some oversight or approval/confirmation of members.	Pages 12-15

Electoral Bodies Continued		<p>3) Process by which assemblies establish proportional ethnic and national basis for membership not defined.</p> <p>4) No qualifications are defined for members of polling committees.</p> <p>5) No rules are established for how committees will organize themselves, or make decisions. No mandates are created for quorums. Manner in which deputies are appointed is omitted, as is any description of their duties or authorities.</p> <p>6) The line of authority between various levels of committees is not defined. It is not clear whether higher committees may overturn decisions of lower committees. This will be critical in developing an efficient strategy for adjudication of grievances.</p> <p>7) In view of the administrative support and budgeting from government administrations, it is not clear as to whether the electoral committees are functionally subordinate to administrations or visa versa.</p>	
State Electoral Supervising Committee	Article 39	Establishes the SESC to monitor campaign activity and conduct of participants in all aspects of the electoral process, including media, parties, candidates, administrative bodies and organizations. SESC may propose measures designed to ensure equal opportunities for candidates. Initiates proceedings through courts if participants promote violence, sexual discrimination, racial or religious hatreds. Law does not clarify to whom this body is accountable, on whom their rulings are binding, or qualification or terms of members. Regulations are recommended to clarify their role and how they will relate to the PEC, and to define limits of their oversight to ensure that intervention in campaign activity is not arbitrary, subjective or potentially biased.	Page 15-16
Nomination and Confirmation of Candidates and Lists	Articles 30-34, 47-48, 52	Articles prescribe that candidates are nominated by citizens or political parties through a petition process. Candidates can appear in only one electoral unit, and on only one list. Manner of selection of candidates is governed by rules of the nominating group. Makes reference to independent candidates nominated by "citizens." Authorizes parties to form blocs for submission of a "joint" list. Contents of petitions are described. Deadlines for submissions, withdrawal and replacements of candidates are described as are extensions of nominating periods under certain circumstances. Electoral Committees are responsible for the confirmation of lists and preparation of the collective lists.	Pages 16-19
	Articles 35-36, and 43	Sets date for submission of candidate lists "not later than" 20 days prior to election, resignations 15 days before election, replacements 10 days prior to election and collective lists prepared 5 days before election. Deadlines should be moved back to allow for efficient administration and accommodation of absentee voting and meaningful campaigns.	
	Article 37	<p>Describes required contents of petitions. Lists must include a number of candidates equal to the number of mandates. Considerations to be addressed or clarified through regulation include:</p> <p>1) Does not clarify whether or not candidates must be selected by nominating group prior to circulation of petition so voters know whom they are endorsing when they sign. Regulations should clarify purpose of petition, e.g. to allow a party to compete, or to endorse the state. If the latter, the candidates names should accompany the petition during circulation.</p> <p>2) If candidate list is submitted by a bloc, voters should be advised of the individual parties making up the bloc. With regard to blocs, regulations should be formalized with regard to any registration status as a new entity, acceptance of contributions as a bloc, or separately by the individual parties making up the bloc. Similar considerations need to be addressed with regard to their access to media and campaign activities. It is recommended that regulations stipulate that the bloc acts as a single entity in all aspects and that for the period of the specific election they set aside the individual identities of the participating parties.</p>	Pages 17-18

Nomination and Confirmation of Candidates and Lists, Continued		3) The status of independent candidates must be addressed. Since all lists must include a number of candidates equal to the number of mandates in the electoral unit, the concept of the independent candidate is eroded. If indeed, an independent candidate can run individually, regulations must address how they will be integrated into a PR system in the allocation of seats. Regulations could clarify that independent candidates can only run as individuals in those races where candidates are elected individually. In PR races, independent candidates should be interpreted to mean independent lists.	
	Articles 38-45	<p>These articles describe the processing of petitions and creation of collective lists by electoral committees. Also describe circumstances under which submissions of lists must be accepted, returned to submitters for remedy, or canceled. Provides a 3 day window of opportunity for submitters to remedy deficiencies. If found to be timely and complete, petitions must be confirmed and sponsors so notified.</p> <p>Law is deficient in describing scope of responsibility of electoral committees in evaluating petitions other than for administrative considerations, e.g. timeliness, sufficient number of signatures, format, etc. However, the depth of such evaluation is not clarified. For example, requirements or authorities involved in verification of authenticity of individual signatures, or parameters and methodologies to be used if such verification is required are not defined. Nor does it provide sufficient mandate as to the grounds on which a petition may be rejected. For example, if authenticity of signatures is verified, it is important to regulate the manner in which such investigations or reviews are to be conducted. It is also suggested that regulations specify that the omission of a detail of information of a particular voter will not cause the signature to be rejected if enough information has been provided to establish the eligibility of the voter. Regulations should specify that a petition must be confirmed even if some signatures are found to be improper or without complete information so long as the minimum number of required eligible signatures remain. Regulations should be specific enough to ensure uniform and equal treatment and review of all petitions, and elimination of subjective or partisan evaluation practices which would favor some lists over others. Uniform rules should be binding on electoral committees in all electoral units to limit subjective rules being applied differently at various levels.</p>	Pages 18-19
	Articles 47-48 and 52	Article 47 stipulates that 1000 signatures are required on petitions for individual candidates for the House of Citizens. Article 48 requires 300 signatures for qualification to House of Municipalities. Municipalities set the signature requirements for their individual electoral units. The law is silent on the setting of signature requirements for the Republika Srpska or the Federation. The PEC will have to make decisions as to whether the existing laws or limits set by governing bodies will be superseded, and, if so, the number of signatures they will impose for each kind of election.	Page 17
Presentation of Candidates	Article 55-57	<p>Articles attempt to outline the rights of political organizations, and independently nominated candidates to freely campaign and have equal access to the media. In the first case, the law implies that equal media opportunities are afforded only to the political organizations; in the case of independently nominated lists are candidates assured such opportunities. Independent citizens groups are not identified as being eligible to media access. Any paid commercial advertising or paid transmission of other forms of "commercial publicity" is prohibited. Article 57 prohibits "agitation" 24 hours before election day and on election day. Laws are silent on:</p> <p>1) kinds of campaign activities in which parties, citizens and candidates can and cannot engage, including any limitations or parameters in periods before circulating a petition, during circulation and after a list has been confirmed by an electoral committee;</p> <p>2) rules regarding public demonstrations and forums, permits and locations or authorities to whom to apply for such permits, if necessary;</p>	Page 19

Presentation of Candidates continued		<p>3) requirements regarding disclaimers on political announcements identifying sponsors.</p> <p>4) acts constituting violations subject to penalties.</p>	
	Article 55	<p>While providing for equal access to the public media for promoting candidates and programs, the only directive as to how equal access is to be secured is the fact that it is confined into periods within the same daily time segment. Several omissions will need clarification in regulations:</p> <p>1) The law requires that "public media shall establish rules..." there is no oversight (except in the limited purview of the SEC.) as to how the rules are to be established, what standards must be met or how they will be enforced.</p> <p>2) The law does not define "public media." It is not clear whether or not "public media" in this case is state media, or as it is used in the Law on Public Media where it is defined as print, broadcast and film in general founded and published by the state or private entity. If the latter is used it means that each individual publisher or broadcaster would have to make its own rules. Uniform standards should be devised. Since paid advertising is not allowed, even private stations and publications would be prohibited from charging fees.</p> <p>3) The law narrows the scope to cover "objective information" and equal treatment. Regulations should clarify the forum for partisan and editorial information or comment.</p> <p>4) The law makes no provisions for campaigning by non-political groups, individuals or organizations to campaign for or against parties or lists. With prohibitions against paid announcements, these groups are severely limited in their opportunities. This limitation should be reviewed. Prohibitions against commercial spending may put independent candidates and candidate's lists and citizens at a disadvantage against parties who may publish their own newspapers or journals.</p>	Page 19-20
	Article 56	<p>This article provides that public media is "obliged" to provide equal access from time the election is announced until new assemblies are established. It also vaguely indicates that the right to "inform citizens on their programs and candidates" is provided to political organizations from the time they announce their candidates. This would mean that every party would presumably be afforded access at different times. Nothing suggests the mechanisms for documenting these details or providing official notification to the media as to which party is officially eligible to begin. Regulations should cover these issues keeping their relation to the circulation of qualifying petitions. They should also define what constitutes a formal announcement, or whether a party could make an announcement of their "intent to field candidates." Ability to campaign before a petition is filed could be helpful in gathering signatures. before their full slate of candidates is identified. An option would be to clarify an official starting date for the campaign period which is uniform for everyone.</p>	Page 21
Polling Places & Election Materials	Article 59	<p>The law establishes general guidance regarding establishing polling sites. While Articles 81-83 make provisions for voting at military installations and Article 11 provides for students attending schools for terms of more than six months (Article 11, Law on Voter Registers) no law makes reference to establishing voting opportunities for people who are institutionalized in medical facilities, convalescent hospitals, prisons, etc. Regulations should address this issue and provide guidance as to any unique procedures to be followed in these special environs.</p> <p>Regulations should also provide for the creation of Absentee Voting Sites inside the country and for refugees outside the country.</p>	<p>Page 22</p> <p>See Proposal for Absentee Voting Procedures</p>

Polling Places & Election Materials Continued	Article 61	<p>Municipal Electoral Committees are to deliver ballots, voter lists, commodities and voting materials to polling sites on the eve of the elections. Verification of receipt of required materials is to occur on election day before voting begins.</p> <p>1) Regulations should require that verification of receipt occur at the time of delivery. Ballots should be counted and a receipt should be signed acknowledging what has been delivered. Provisions should be dictated with regard to secured storage of the ballots and materials held prior to the opening of the polling site on election day.</p> <p>2) The law omits duties which should be undertaken before voting begins on election day which are necessary to ensure that an audit trail is maintained, and that transparency is provided. Regulations should stipulate that representatives of the nominating groups and candidates, the media, international and domestic observers may be present to observe these proceedings. Pre-voting steps should include:</p> <p>display and sealing of the empty ballot box(es);</p> <p>counting and announcement of the number of ballots received;</p> <p>counting and announcement of the number of voters on the list;</p> <p>display of the sealed envelope containing extra ballots used for eligible voters omitted from the voter list, and announcement of the number of ballots reported to be contained inside (See Article 62);</p> <p>recording of this information on the report of election day activity including the name and number of the polling site, all written in ink.</p> <p>display of the sealed envelope containing extra ballots used for eligible voters omitted from the voter list, and announcement of the number of ballots reported to be contained inside (See Article 62);</p> <p>recording of this information on the report of election day activity including the name and number of the polling site, all written in ink.</p>	Page 23
	Article 62	<p>Stipulates that each polling site is to receive its voter list excerpt plus an additional "certified" list of voters (workers and students) known to be away from the polling site abroad or in military service. The # of ballots to be issued to the site is equal to the number of voters identified on both lists. A sealed envelope is also delivered containing extra ballots for eligible voters omitted from the list.. Clarifications are needed on the following issues:</p> <p>1) Neither this law or the Law on Voters Registers is clear as to whether names on the "certified" list have been removed from the excerpt. Whether or not this is done will determine the manner in which the voters will be handled if they present themselves on election day. If they are not removed from the excerpt than polling sites are issued more ballots than necessary. If they have been removed, polling committees will have to understand to review both lists before turning a voter missing from the excerpt away or referring them to see the municipal administration to get a confirmation document of their eligibility.</p> <p>2) The only mention made as to where a "confirmed" eligible voter initially omitted from the excerpt is reported, e.g. on the excerpt or on a separate list is in the "minutes". These entries are needed to support use of the ballots provided for these voters in the sealed envelope.</p> <p>3) The number of ballots to be issued to each site should be reviewed in view of the number of displaced persons and refugees. whether it is necessary to have a special group of ballots for people omitted from the list. should also be considered. As an option, it might make sense to simply add their names to the bottom of the excerpt list and issue ballots from the regular ballots for the polling site. Their confirmation documents should be retained and delivered to the electoral committee with other election materials.</p>	<p>See Page 24</p> <p>See Law On Voters Registers</p>

Processing Voters	Article 65	<p>This article guides the general steps undertaken when a voter presents himself to vote at a voting site: 1) voter identifies himself; 2) official may check identification documents; 3) official finds voter's name on list and circles ordinal number; 4) official explains rules and issues ballots.</p> <p>These provisions should be strengthened to promote accuracy and security to avoid problems associated with voter eligibility under current circumstance and errors in view of the strict law regarding cancellations of elections even if there is only one more ballot found in a ballot box than the number of voters reported to have participated</p> <p>1) Under the law as translated official "may" inspect identification documents. This should be required if at all possible.</p> <p>2) Grounds on which a voter may be turned away should be clearly defined.</p> <p>3) A voter should be required to sign the voter list rather than having an official simply "circle other ordinal number." Affirmative action of the voter could help reduce potential errors that could potentially require an election to be canceled. It would also make the register a little less vulnerable to purposeful manipulation to cause an election to be canceled.</p> <p>4) No guidance is given as to a procedure which would be applied should a voter spoil, mismark or damage his ballot.</p> <p>5) Law gives no guidance regarding set up of the polling site, e.g. that the ballot box(es) must be sealed and remain in full view, or that only one person may be in the secrecy area at a time, or that observers must have unrestricted view of proceedings.</p>	<p>Page 25-26</p> <p>See Article 77</p>
	Article 66	<p>Fundamentally, an "election day registration" provision. An eligible voter who has been omitted from the list may apply to municipal authorities who are required to remain open on election day, to receive a "confirmation document." The voter presents the confirmation to the polling official and is allowed to vote. Event is entered into minutes.</p> <p>1) Regulations should stipulate information to be included on confirmation document and that the signature of the official must be affixed.</p> <p>2) The law does not stipulate the disposition of the document upon presentation. It should be retained by the polling committee and made part of the permanent record. It might be helpful to add the names to a list attached to the special envelop containing the special ballots to be used for this purpose.</p> <p>3) The law does not stipulate steps which municipal official must take to ensure omission is rectified on the master roll for future elections.</p>	<p>Page 26-27</p> <p>See Article 62</p>
Ballots & Manner of Marking	<p>Articles 67-73</p> <p>Article 42</p>	<p>These laws provide general parameters with regard to the preparation of the ballots by the respective electoral committees. No guidance is provided as to the manner in which ballots are to be printed and secured during storage or transport prior to use. To provide greater security and accountability, a number of suggestions might be offered depending on resources available and options for international donor support: sequential numbering, padding, attaching a stub or counterfoil, use of watermarked paper. The law does not adequately describe how an audit trail will be maintained, e.g. maintaining a log of the number of ballots issued to each site, requiring receipts to be signed upon delivery, etc.</p> <p>Candidate Lists are listed in an order drawn by lottery. No mention is made as to whether representatives of the candidate list may be present, or the manner of lottery which is to be used.</p>	Page 28

Observer Presence at the Polls	Article 74	<p>Provides that "during the whole course of voting" representatives of the candidate lists "shall be present.." Names of these representatives are to be submitted to electoral committees at least 3 days before the election. The electoral committees issue confirmations to each representative who present them to polling committees on election day. The language is difficult in two ways:</p> <p>1) it does not make any provision for foreign or domestic observers or representatives of the media to be present;</p> <p>2) "course of voting" could be restrictively interpreted to mean during the actual polling, but exclusive of pre-poll activities and the counting causing observers to be removed during these very important aspects of the process;</p> <p>3) by stating they "shall be present" implies that presence is mandatory. Mandatory presence may be impractical in terms of independent lists, or smaller parties who may not be organized sufficiently to recruit enough observers.</p> <p>4) Regulations should define rights and responsibilities as well as restrictions which would apply to observers, including the right to leave and return. This would allow observers to move among site for broader coverage in the event an insufficient number of representatives and observers can be recruited.</p>	<p>Page 29-30</p> <p>Pages 30-31</p>
Establishing Polling Returns	Article 77	<p>Articulates the order of steps in the counting: 1) count and packaging of unused ballots; 2) count of the number of voters who participated; 3) opening of the ballot boxes and counting of votes and invalid ballots.</p> <p>Provision that the election at the polling site is canceled if the number of ballots in the ballot box(es) is greater than the number of voters who participated should be reviewed. This rule leaves no tolerance for inadvertent human error, even if the irregularity could have had no influence on the outcome. Modification of the rule might be warranted which more realistically weighs the value of remedy against no meaningful benefit. Disenfranchises voters, candidates and lists unnecessarily and could actually leave the system vulnerable to purposeful manipulation to cause cancellation.</p> <p>Actual steps to be taken in the physical counting process is not defined providing no basis of uniformity from one site to another. Nor are there any steps suggested to verify accuracy.</p>	Page 32
	Article 79	<p>Article describes poll site reporting procedures. Data entries are made to report: 1) number of voters on list; 2) number of voters who participated; 3) number of "confirmed" voters voted; 4) number of votes cast for each candidate list; 5) number of invalid ballots. Report is adequate for reporting results of the vote, but does not provide adequate accounting and audit information. Regulations and forms should provide for reporting:</p> <p>1) number of ballots received;</p> <p>2) number of ballots remaining unused;</p> <p>3) number of special ballots for "confirmed voters" received;</p> <p>4) number of special ballots remaining unused;</p> <p>5) number of ballots spoiled or damaged by voters.</p> <p>Regulations should require reports to be completed in ink. Duplicate copies should be made so that one can be retained by the polling committee, and one can be posted at the polling site. Observers should be able to copy the report for their own record.</p>	Page 33-34
	Article 80	<p>Article covers transport of materials back to electoral committees and municipal administrative bodies. Law does not provide guidance with regard to manner of transport or who must accompany ballots. Makes no provision for security protection. List of materials to be delivered is not complete: does not discuss special packet of ballots for confirmed voters, for example.</p>	Page 34

Military Voting	Articles 81	By law the procedure for the conduct of voting at military installations is defined by "competent authority". The law provides no guidance except that vote must be direct and secret. Rules for transparency, accountability or freedom from intimidation are omitted. Even if some flexibility is granted, regulations should define certain accounting procedures to document ballots usage and reporting and disposition of ballots remaining unused. They should require minimum uniform procedures, e.g. appointment of teams to facilitate voting, lists signed by voters, set up of site for voting, etc.	Page 35
	Article 84	Provides for counting of military ballots by electoral committees. Regulations should ensure access by representatives of candidate lists to be present for counting. Law does not specify how military votes are integrated into summarized results.	Page 36
Election Results	Article 86	Sets a 50% voter participant requirement for an election to be valid. Elections must be repeated if the threshold is not met, presenting the same candidate lists. If in a repeat election the threshold is still not met, the entire process must be redone. In view of massive displaced persons and refugees, this threshold may be difficult to achieve given the Annex requirement that 1991 census data be used as a basis for the voter lists. Consideration should be given eliminating or lowering the threshold.	Page 36
	Article 88-91	Uniform rules are dictated for determining winners of the elections for all elections except the House of Municipalities. In the former a PR system is dictated while for the HM winners must be elected by an absolute majority. Failure to achieve an absolute majority results in a 2nd round between the two candidates earning the most votes. In the second round, a simple majority determines the victor. It is not clear as to whether the 50% threshold is required.	Page 36-37
	Article 93	Provides for the publishing of results. No guidance is given as to how they are reported. It is suggested that they be required to be reported by precinct within electoral unit to ensure adequate transparency.	Page 37
Irregularities and Repeat Elections	Articles 94-98, and 126-129	<p>Repeat elections are necessary if: 1) 50% threshold is not met; 2) an electoral committee determines irregularities occurred; 3) if during verification of mandates and assembly cancels an election of a member or representative due to irregularities. Cancellation of election can occur in electoral units or polling sites. Laws also dictate that cancellations can result from objections being raised by candidates, members or representatives and voters at various stages of the process. Avenue of such appeals is through electoral committees who must decide the cases within 24 hours. Decisions of electoral committees may be appealed through the court. In virtually all cases electoral committees can invalidate or cancel an election autonomously. Depending on the type of election being held this may not be prudent.</p> <p>Regulations should augment a process for adjudication of grievances to fill gaps left in the law. Some considerations include:</p> <ol style="list-style-type: none"> 1) providing for administrative remedy rather than cancellation of an election. Under the law the only remedy afforded is cancellation; 2) clarifying an avenue of case review through the hierarchy of electoral committees so that a higher committee can overturn decision of a lower committee if their decision is found to be improper; 3) dictating specific grounds on which an election must be canceled in with enough detail to ensure uniform application of the rules. Without such guidelines electoral committees are given such a wide latitude that different committees could come to very different conclusions, even under similar circumstance. 	Pages 37 and 38
Calendar of Elections		The Law is sparse in dictating the schedule for activities that are integral to the conduct of the election. Many deadlines provided in the law are set too late in the process. The calendar needs to be thoroughly reviewed and fleshed out to accommodate reasonable time frames to allow for responsible policy development, efficient and thoughtful implementation, civic education and candidate and voter access.	Pages 39-40

**Electoral Systems, Districting Issues, Political Parties,
and Independent Candidates**

Jorgen Elklit
Electoral Code Working Group (ECWG)
Denmark

February, 1996

Electoral Systems, Districting Issues, and Political Parties and Independent Candidates

The Dayton Agreement establishes that the Provisional Electoral Commission (PEC) must conduct and oversee the following elections in Bosnia and Herzegovina:

	Federation BiH	Republika Srpska
BiH: Presidency	[1] Plurality	[6] Majority (?)
BiH: House of Representatives	[2] 28 seats; PR	[7] 14 seats; PR
Fed.: House of Representatives	[3] PR	
RS: National Assembly/People's Representatives		[8] PR
RS: President		[9] Majority
Cantonal, preferably	[4] PR	[10] ?
Municipal, if feasible	[5] PR	[11] PR
Number of elections in each Entity	3?/4?/5?	4?/5?/6?

The numbers in bold brackets [] are reference numbers.

Material available as background for the discussion below include:

1. The Dayton Agreement, especially Annexes 3 and 4.
2. The ODIHR translation of the 1990 "Law on the Election of Members and Representatives to the Assemblies of the Socio-Political Communities".
3. Final draft for "The Decree on the Elections of the City Council etc. of the city of Mostar". Relates to [5], but only for one municipality.
4. ODIHR translation of the "Law on Election of the People's Representatives and Members" for the Republika Srpska". Relates to [8] and [11].
5. ODIHR translation of the draft version of the "Law on the Election of the President and Vice President of the Republika Srpska. Relates to [9].
6. ODIHR translation of "Law on Territorial Organization and Local Self-Government for Republika Srpska". Relates to [11].
7. Final Report of the OSCE Election Assessment Team's Mission to Bosnia-Herzegovina (January 30, 1996).

Basic principles:

- The overall aim is to achieve the objectives agreed upon in the Dayton Agreement, its Annexes and accompanying documents (e.g. the Copenhagen Declaration).
- Where applicable, already existing local electoral legislation and regulation should be built upon for the up-coming elections.
- In order to ensure a smooth electoral process relevant legislation and regulation should be identical in the two Entities if at all possible.

Immediate questions:

- The information given to the Electoral Assessment Team was that a total of 112 municipalities were being established in the entire Bosnia and Herzegovina. The Republika Srpska claims to have 79 municipalities, and the map makes it evident that the Federation has almost the same number. What is actually the situation in this regard and when will reliable information on administrative structures and population sizes be available?
- Will a cantonal structure (or a structure to the same effect) be established in Republika Srpska? When?
- The Assessment Report recommends that the various elected councils be kept as small as possible in order to ease their working process when elected (and to reduce the number of people who might spend the better part of their working hours politizicing). Who will determine these numbers and when?
- What is the status of the draft concerning local elections in Mostar?
- Electoral formulas are not God-given, but must be chosen on the basis of their inherent qualities and effects on the expected electoral outcome. PR formulas have different basic qualities. The proposal here is to use - if at all possible - the same PR formula in all PR elections, partly because it is least problematic, partly to increase transparency throughout, partly to avoid discussions of why one formula was chosen for some of the elections, while another was chosen for other elections.

Below, various issues related to the 11 different elections will be presented and discussed, and - where possible - recommendations given:

[1] Election in the Federation of the Presidency of Bosnia and Herzegovina

This election is - beyond discussion - the most complicated since the constitutional requirements (one Bosniac and one Croat should be elected, but voters will only be voting to fill one of the two seats from this Entity) (Assessment Team's Report p. 15).

It is not acceptable to let the voters select a ballot paper according to their ethnic preference, and, therefore, the one and only ballot paper to be used must have two columns, one with the Bosniac candidates, the other with the Croat candidates.

Since voters are only allowed to cast one vote, it is obviously not possible that the two candidates with most votes in their respective columns both have a majority of the votes cast sic!) - and - most probably - none of the candidates will be able to achieve that. It is not even possible to have run-offs because of the impossibility of identifying those voters who actually voted for candidates in a specific column, so it follows that this election should be conducted as an ordinary first-past-the-post election (requiring pluralities in each of the two columns).

If this reasoning is accepted, relevant articles must be formulated and put in their proper place in the electoral legislation.

Independent candidates, *i.e.* candidates not running on behalf of one or more political parties, should - of course - be allowed to participate in these elections.

Required turnout: There should be no requirements of this kind.

Questions:

- How many signatures should be required from prospective candidates? The Assessment team proposed the number 10,000, since it cannot be considered undemocratic to require a certain popular support from voters for men and women considering to run - and it is better to try to avoid a flooding of less serious presidential candidates in this way than by requiring a money deposit.

- The Assessment Team even suggested also requiring that a certain amount of the votes came from different parts of the Federation, *e.g.* from at least four of the cantons.

[2] Election in the Federation of 28 Members of the BiH-House of Representatives

Membership: 28: determined in Dayton/Constitution

Electoral formula: Simple quota (Hare) + largest remainders. This allocation system is generally considered the simplest and least manipulative of all electoral systems currently in use. It is simpler than the system used in the 1990 Electoral Act (Art. 89) (where seats unallocated by full quotas are allocated by the d'Hondt method), but that is only a detail. Other electoral systems (d'Hondt, Sainte-Laguë, etc.) are slightly advantageous to either the bigger or the smaller parties, and especially so if the vote distribution is very skewed, *e.g.* with one large party.

Electoral threshold: When 28 seats are to be allocated, a natural electoral threshold of more than 3 per cent is effective, and there is no need for a formal threshold. It would, however, be wise to require that parties should win a least the equivalent of a full electoral quota (= 1 seat) in order to be eligible for seats allocated by largest remainders. In this way, all problems are avoided and an effective, natural threshold of 3.58 per cent is implemented.

Ballot paper access: Political parties, social organizations, as well as independent candidates should be allowed to stand for election, provided they fulfil the requirements established by the PEC. The Assessment team has recommended that all electoral contestants (including political parties registered according to the Law on Political Parties) must present a considerable number of voter signatures to be allowed to participate in the elections. The number of signatures should be established as the balancing point between keeping out frivolous parties and self-seeking independent candidates, and allowing serious, *bona fide* small parties and serious independent candidates to face the voters.

A requirement of 10,000 signatures has been suggested for parties and other organizations running under a party/organization name and presenting a list of candidates, while the number for independent candidates should be lower (perhaps 5,000 signatures?).

Required turnout: There should be no requirements of this kind.

Lists of candidates: Parties and organizations might present a list of candidates (who accept being on the list by signing). Seats won by lists are allocated to individual candidates in declining order of priority as indicated by the party's own order of candidates. In case of vacancies, the vacant seat is filled by the next available candidate, *i.e.* by moving down the ordered list. Thus, by-elections are not needed. Parties and organizations should not be allowed to present more than a certain number of candidates over and above the total number of seats (*e.g.* + 25 per cent), and if they run out of candidates (or an independent loses his

or her seat) seats are to filled after a repeated seat allocation procedure with the relevant party (or parties) excluded from the calculations. Seats won in the original allocation can of course not be lost in the new calculation.

[3] Election of the Federation's House of Representatives

Membership: To be determined, but certainly less than 130

Electoral formula: Simple quota + largest remainders, as in [2].

Required turnout: There should be no requirements of this kind.

These elections should in all respects be as close as possible to the elections under [2], but one important issue remains:

Multimember constituencies or only one constituency? The Assessment Team's Report recommends (p. 17) that these elections be conducted with the entire Federation as the constituency. The rationale behind this recommendation is mainly the uncertainty related to the question of the voters' actual registration municipality and the allocation of that municipality to a certain multimember constituency.

However, the 1990 elections of 130 national representatives were conducted in seven multimember constituencies, *i.e.* with an average of 18.6 seat, but actually ranging from 9 to 28 seats. The translation of the 1990 law terms these multimember constituencies "electoral units", while the translation of the law from Republika Srpska calls the similar units there "polling districts", and the Mostar-draft talks of "wards". The best term in all three cases appears to be the one proposed here: "multimember constituency".

The use of such constituencies is usually considered very instrumental in securing a much wanted regional spread of the elected representatives as well as a closer relationship between the voter and his or her representative. The issue here is what the balance will be when this objective is counted against the many registration problems which might appear in the registration process.

If the PEC decides to use multimember constituencies, it is strongly recommended that the cantons be used for that purpose in order to avoid problems connected with constructing new groups of municipalities only for that purpose. If nine multimember constituencies are considered to many, some of them (of course geographically adjacent) might be combined to form a smaller number of multimember constituencies than nine.

Such a system would allow regional parties etc. to run only in their preferred multimember constituencies which could be considered an advantage. The same goes for independent candidates. If such a system is established, the required number of signatures should be adjusted accordingly.

Seats should be allocated to constituencies on a proportional basis, based on either number of registered voters or population size - or a combination of the two.

[4] Cantonal Elections in the Federation

Elections in the nine cantons of the Federation should - according to the Dayton Agreement - only be carried if feasible. It has, however, been stressed by various Federation authorities that the election of the cantonal councils is a prerequisite for the indirect elections to the Federation's Upper House. It therefore appears as if these elections must also be conducted in order to avoid a constitutional deadlock.

By and large, these elections should be conducted in parallel to the elections to the Federation's House of Representatives, especially regarding the electoral system, and the cantons at-large should be the constituencies, *i.e.* no districting is needed.

Membership: To be determined for each canton, according to population size, ethnic composition, etc. There is no need to have councils with larger memberships than around 30. The numbers decided on should be odd, to avoid voting deadlocks.

Electoral threshold: Not needed with the foreseen number of seats.

Electorate: Voters registered in municipalities (or parts of municipalities) belonging to the canton in question. Shall voters who *intend* to reside in the canton upon their return to the Federation also be allowed to vote for the cantonal council?

Required turnout: There should be no requirements of this kind.

Party Registration: Shall political parties which have been registered for the Federation - or national - elections on the basis of the required number of signatures also collect signatures for cantonal elections? My recommendation would be that registration on one of the two upper levels automatically allows participation also at lower levels, since the popular support has been sufficiently demonstrated. So only parties running at this level will have to provide a certain number of signatures which must be decided on the basis of the population sizes of each of the nine cantons. All independent candidates should, however, supply a certain

number of signatures, since they will not be running for office at different levels. The system of verification of the signatures should be administered by PEC or its regional offices.

[5] Municipal Elections in the Municipalities in the Federation

Electorate: Those registered in the municipality according to registration rules. This will not be discussed further in this connection, but reference is made to relevant parts of the material presented by the ECWG.

Size of Municipal Councils: As small as possible, for reasons indicated above, and of course odd numbers. The sizes should be determined according to a federation-level scale combining population sizes and council sizes.

Electoral system: As the above.

Required turnout: There should be no turnout requirements.

Party Registration and Registration of Independent Candidates: As above [4].

Comments on the Mostar-draft:

1. Municipal elections in Mostar must be conducted on two levels, (1) the city council and (2) the councils of the so-called city-municipalities. This requires two ballot papers, two ballot boxes, etc.
2. Articles 12-14 are not very clear, especially regarding the position of independent candidates who should of course be allowed to run as such (*i.e.* "lists" of one). The number of signatures required is very low and should be increased.
3. The allocation system is described in Article 17 which is not very clear, but the proposed combination of double proportionality (lists and ethnic groups) is highly recommendable. The subsection on seat allocation refers to "... the highest quotients resulting from the described procedure" which is difficult to understand since there is no procedure described above and no quotient calculated. It *might* refer to relevant Articles in the 1990 electoral law?
4. It appears that the city council is proposed to have 37 members (13 elected on the city-wide list + 4 from each of the 6 city-municipalities). This sounds very reasonable, considered the ethnic composition of Mostar, but what about the city-municipalities?

[6] Election in Republika Srpska of the Serbian Component of the Presidency of Bosnia and Herzegovina

This election is straightforward, since one person is to be elected in a defined region.

The same rules for number of signatures, geographical spread (if any), etc. as for the Federation should apply.

The only pertinent question is if a majority - as opposed to a plurality - of the valid votes should be required for election? My recommendation would be to require a majority (*i.e.* to have a run-off if the candidate with most votes does not have a majority) since that will ensure the eventual selection of a candidate who has the support of most of the voters of the Republika. This is generally preferable.

The arguments against are mainly two: (1) A run-off will prolong the electoral process, and (2) run-offs are not possible in the Federation, and it could be argued that the electoral rules for the two components of the presidency should be as identical as possible.

The rules are easily formulated in either case.

Required Turnout: No particular level of turnout should be required.

[7] Election in the Republika Srpska of 14 Members of the BiH-House of Representatives

Membership: 14: determined in Dayton/Constitution

Electoral formula: Simple quota (Hare) + largest remainders. This allocation system is generally considered the simplest and least manipulative of all electoral systems currently in use. It is simpler than the system used in the 1990 Electoral Act (Art. 89) (where seats unallocated by full quotas are allocated by the d'Hondt method), but that is only a detail. Other electoral systems (d'Hondt, Sainte-Laguë, etc.) are slightly advantageous to either the bigger or the smaller parties, and especially so if the vote distribution is very skewed, *e.g.* with one large party.

Electoral threshold: When 14 seats are to be allocated, a natural electoral threshold of more than 6 per cent is effective, and there is no need for a formal threshold. It would, however, be wise to require that parties should win at least the equivalent of a full electoral quota (= 1 seat) in order to be eligible for seats allocated by largest remainders. In this way, all

problems are avoided and an effective, natural threshold of not less than 7.14 per cent is implemented.

Ballot paper access: Political parties, social organizations, as well as independent candidates should be allowed to stand for election, provided they fulfil the requirements established by the PEC. The Assessment team has recommended that all electoral contestants (including political parties previously registered) must present a considerable number of voter signatures to be allowed to participate in the elections. The number of signatures should be established as the balancing point between keeping out frivolous parties and self-seeking independent candidates, and allowing serious, *bona fide* small parties and serious independent candidates to face the voters.

A requirement of 10,000 signatures has been suggested for parties and other organizations running under a party/organization name and presenting a list of candidates, while the number for independent candidates should be lower (perhaps 5,000 signatures?).

Required turnout: There should be no requirements of this kind.

Lists of candidates: Parties and organizations might present a list of candidates (who accept being on the list by signing). Seats won by lists are allocated to individual candidates in declining order of priority as indicated by the party's own order of candidates. In case of vacancies, the vacant seat is filled by the next available candidate, *i.e.* by moving down the ordered list. Thus, by-elections are not needed. Parties and organizations should not be allowed to present more than a certain number of candidates over and above the total number of seats, and if they run out of candidates (or an independent loses his or her seat) seats are to filled after a repeated seat allocation procedure with the relevant party (or parties) excluded from the calculations. Seats won in the original allocation can of course not be lost in the new calculation.

[8] Election of the National Assembly (People's Representatives) in Republika Srpska

For these elections, the "Law on Election of the People's Representatives and Members [of municipal assemblies]" is already available. It explicitly nullifies the 1990 electoral law as far as the Republika Srpska is concerned.

Membership: 120 seats (Art. 3), where an odd number (*e.g.* 119) would have been preferable.

Multimember constituencies (polling districts): The entire electoral set-up for these elections presupposes that the Republika Srpska is divided into a number of polling districts, but the law does not indicate how many or how they should be established. This should be addressed at the earliest possible convenience. If 119 seats are foreseen, 5-10 polling districts would be appropriate. Seat allocation between them should be proportional, based on either population size, number of voters, or a combination of the two. Multimember constituencies should be geographically adjacent and - if at all possible - follow other administrative borders, to avoid districting problems as much as possible.

Electoral formula: Articles 96-98 clearly state that a proportional representation system is to be used and that more specifically the d'Hondt method be applied for seat allocation (Art. 98) in each multimember district individually. This differs from the system proposed for the Federation, but it is a widely used system, and in spite of its well-documented, slight bias in favour of large parties (lists) it might be argued that it should be kept as it is. This is not a technical, but a political decision.

Electoral threshold: In the system contained in the law as it stands at the moment, different effective, natural thresholds will apply. The exact size cannot be determined without knowledge of the number of seats in each and every multimember district (and, to increase the precision, the number of lists running in each constituency), but - depending on the size of the number of seats in each constituency - it will definitely vary between 4 and 7 per cent. To require that parties running should win at least 5 per cent of the entire vote in order to be allowed to participate in the seat allocation in constituencies where they had done well, would potentially undermine the possibility of a close relationship between voters from such multimember constituencies and their elected representatives.

Since the electoral system itself is already slightly biased in favour of larger parties, it is most certainly against the idea of a representative, democratic system to have such a strict electoral threshold. It is therefore strongly recommended that Article 97 be deleted.

Ballot paper access: Political parties, social organizations, as well as independent candidates should be allowed to stand for election, provided they fulfil the requirements established by the PEC. The Assessment team has recommended that all electoral contestants (including political parties previously registered) must present a certain number of voter signatures to be allowed to participate in the elections. The number of signatures should be established as the balancing point between keeping out frivolous parties and self-seeking independent candidates, and allowing serious, *bona fide* small parties and serious independent candidates to face the voters. Article 54 requires signatures from one thousandth of the voters with domicile in the polling district in question. This requirement should be replaced by a somewhat higher requirement, and it is probably advisable to state the requirement in absolute

figures, and not relate it to the concept "voters with domicile" which might be difficult to administer.

Selection of elected candidates within the lists: Art. 100 states that a third of the seats won by individual lists shall go to candidates according to their position on the list, while remaining mandates will be given to candidates according to rules set up by the person who submitted the list. This is not an acceptable system - by any standard - since it denies the voters the possibility of knowing who will eventually benefit from a vote for that particular party. Much can be said against the use of so-called "strict" party lists where candidates are elected according to their position on the list, but then the voters at least know what the system is and can behave accordingly.

It might be too complicated to have a system put in place with voters actually voting according to their preferences for individual candidates, but that is as a matter of fact a possibility in any PR electoral system.

It is consequently recommended that Art. 100 should read: "If an electoral list has won one or more seats in a multimember constituency, the corresponding number of candidates are elected in declining order according to their position on the list. If substitutes are to be appointed, they will also be appointed in declining order according to their position on the list".

It should be said - in more general terms - that the position of the "Holder of the electoral list" is very strong (e.g. Article 52, 2nd paragraph) - and not necessarily very transparent - and it might therefore be considered to scrutinize the various articles relating to the position of this "party owner" in more detail.

Required number of candidates on each electoral list: Article 49 stipulates that electoral lists must have a number of candidates which is at least two thirds of the number of mandates in the multimember district, while it cannot be higher than the number of mandates to be allocated. For "groups of citizens" the lower level is half the number of seats, while the maximum is the same as for the political parties' lists.

There is no need to prescribe a certain number of candidates on the lists, since political parties, groups of citizens, and individual voters who want to run for office are fully capable of deciding what the optimal number of candidates should be. If in a certain "polling district" (multimember constituency) one party is very strong, the maximum number of candidates might not be sufficient, since a need for substitutes might arise during the four-year electoral term which could not be met.

Thus, Article 49 should be changed so that no specific lower level for the number of candidates is indicated, while the upper level could be the number of mandates to be elected + 25 per cent. It should also be explicitly stated that independent candidates are allowed.

Order of electoral lists on the ballot paper: Article 59 states that the list order on the ballot paper shall be according to the order of their announcement. This is not fully satisfactory and it is therefore recommended that the order be determined by lot after the announcement of last party.

Floor-crossing: Article 104 states that candidates who leave the political party for which they were elected loose their seat. Good theoretical as well as political arguments for and against this kind of party tyranny can be presented. The practical problem is that it is totally unclear (maybe because of the translation?) what will happen in that case (*vide* Article 108). It looks as if the seat will "belong" to the party owner of the next electoral list in line for a seat which of course is totally unacceptable - if a floor-crosser must loose his seat, it is because his seat is seen as belonging to the party, not to the individual candidate. The content of Article 108 must therefore be clarified and a new version inserted.

Invalid votes: Article 92 (subpar. 7) states that ballot papers are invalid if either the party owner's name or the name of the list is circled. Since the intention of the voter is clear in both cases, this provision should be deleted.

Publication of previous election results: Article 119 states that not only election forecasts, but also the publication of the previous election result is forbidden 48 hours before election day and on election day. This part of Art. 119 should be deleted.

[9] Election of the President and Vice-president of the Republika Srpska

Only a draft version of this law exists at the moment (according to my knowledge). I have only very few remarks to that draft:

Ballot paper access: The requirement of 10,000 signatures for candidates from political parties as well as for independents seems reasonable.

Names on ballot paper: Since the President and Vice-President are elected as a pair(?), this should be clarified, and both names should appear on the ballot paper. Therefore, the wording in, e.g., Article 11 should be clarified ("Voter may only vote for one of the pair of candidates..."). It might also be clarified that, in Article 10, the "defined order" refers to Article 8.

Turnout requirements: There should be no specific turnout requirement (Art. 14)

[10] Cantonal (?) elections in the Republika Srpska

Preparations of elections at this administrative level presupposes that information on the actual situation regarding these administrative units be made available - how many will there be, what municipalities will be allocated to this administrative level, how many seats in the cantonal assemblies? Will they be termed "cantons" or something different?

These elections should of course be so much in line as possible with the other elections foreseen in the Republika Srpska.

[11] Municipal elections in the Republika Srpska

Membership of municipal assemblies: Art. 28 (Law on territorial Organization...) states that these assemblies have between 25 and 70 members. It is highly recommendable that these numbers be lowered (*e.g.* to an odd number between 13 and 35) and that clear instructions for the connection between population size and assembly size in the municipalities be issued. The Law on Election of People's Representatives and Members says in Article 3 that these numbers will be defined by the municipal statutes.

Multimember constituencies: Article 10 of the Electoral Law leaves the establishment of polling districts and the allocation of seats to these districts to the municipal assembly. This is to call for complicated problems, and it is therefore recommended that the entire assembly is elected with the entire municipality as the "polling district" - *i.e.* as the unit for seat allocation - which has no connection to the actual establishment of polling places (Article 65ff).

Electoral system and electoral threshold: There are many good reasons to keep up a close connection between the electoral systems in the municipalities and in the National Assembly/People's Representation. The Electoral Code Working Group therefore suggests that the various decisions taken on the level of the Republika Srpska is also used on the municipal level. It is especially worth mentioning that the 5 per cent threshold of Article 97 can also be dropped at this level - and particularly if the number of members is lowered as recommended above.

Ballot paper access: The same applies here - the required number of signatures must be considerable higher than in the present law text, since one thousandth of the voters in a certain polling district in a small municipality will be a very small number.

The same applies to all other items discussed above under the heading: **[8] Election of the National Assembly (People's Representatives) in Republika Srpska**. Therefore, changes in that system will immediate redress similar problems at the lower level.

Political Party and Candidate Registration

With respect to the registration of parties and of candidates, the Election Commission should consider either managing this registration process itself or very closely supervising and approving all of the actions of the local officials. The present legislation with respect to registration and criteria for parties and candidates should be carefully reviewed to ensure that either, as part of the legislation or as a condition of registration, adherence to a strict code of conduct should be one of the criteria for obtaining and maintaining registration.

Consideration might also be given to the feasibility of a requirement for a deposit of a certain amount of money in order for a party or a candidate to register. At the same time, if international financing of parties and/or candidates is involved, and if relatively equal access to the media is also a benefit of registration, the criteria for eligibility to be registered as a party or a candidate should be demanding but not to an extent that would discourage bona fide political movements. Depending on the nature of the election, a reasonably large number of signatures of qualified electors, representing a cross-section of the geographic area involved, might be considered as a basic criteria for registration. There is a very fine line between requirements which will ensure the development of responsible small parties and the discouraging of publicity seekers and the "lunatic fringe."

Electoral System and Districting

1. The Mission holds it to be of paramount importance that the electoral systems to be implemented in the upcoming elections in Bosnia and Herzegovina under the Dayton agreement be some kind of proportional representation electoral system. The Mission finds it a well-established fact that proportional representation (PR) electoral systems are much better suited than majoritarian electoral systems to dampen all kinds of political, social, and ethnic tensions within electorates. Recent developments in Bosnia and Herzegovina have made the Mission even more convinced than it was before of the necessity of conducting these elections under a proportional representation electoral system (wherever relevant).

2. The Mission's overall proposal (which only covers elections under the Dayton Agreement) is well in line with the intention of building as much as possible on local experience, since PR was actually used in the November 1990 general elections in Bosnia and Herzegovina.

3. All specific proposals, *i.e.* concerning individual elections, should be kept as simple as possible because of time constraints, the necessity of easy communicability, and the foreseeable problems with voter registration in specific municipalities. Therefore, the proposed electoral system builds entirely either on the two Entities as such or on the local administrative system now being implemented, *i.e.* cantons and the new system of 111 municipalities. It is also considered important that the elected governing bodies have a relatively low number of seats.

4. The Mission suggests that it should not be a requirement for the final certification of the elections that a certain percentage of the electorate has actually participated in the election in question. The reason is that this might complicate matters by unnecessarily delaying the entire process without adding to the democratic character of the elections.

5. The seven different elections foreseen under the Dayton Agreement (Annex 3) raise a number of different issues. They should, therefore, be classified accordingly:

- 5.1. a) **Election of the Presidency of Bosnia and Herzegovina** (cf. Annex 4, the Constitution of Bosnia and Herzegovina, Article V) is best conducted as an ordinary plurality election in the two Entities, where successful candidates must win more votes than any other candidate. It goes without saying that candidates must fulfil the national/ethnic requirements of Article V.

In the Republika Srpska the electoral procedures will be very straightforward. The Mission suggests that provisions for a run-off be implemented together with the regulations of the ordinary election, since this can be done easily in this part of Bosnia and Herzegovina.

In the case of the Federation, however, where both a Bosniac and a Croat are to be elected, things become more complicated. One reason is that the Mission would consider it a bad idea to use different ballot papers, and consequently the one and only ballot paper to be used for these elections in the Federation must have two columns, one with the Bosniac candidates, the other with the Croat candidates. Since voters (according to the Constitution of Bosnia and Herzegovina, see Dayton Agreement, Annex 4, Article V (1,a)) are only allowed to cast one vote (to be used, of course, at the voter's discretion) it will not be possible in the Federation to have two candidates elected with a majority of the votes cast (sic!). Consequently, this part of the presidency election must be an ordinary first-past-the-post election - also because it will not be possible to have a run-off because of the complications with identifying those voters who actually voted for the candidate(s) with less than half of the votes.

The Provisional Election Commission (PEC) must determine the number of signatures from eligible voters needed to support registration of prospective candidates for the presidential posts. The Mission suggests that the numbers be relatively high (10,000), in order to lower the number of candidates. It is not undemocratic to require a certain popular support also before the election, in order to avoid a flooding of less serious presidential candidates. The mission also suggests that the 10,000 signatures include at least 1,000 signatures from each of half of the cantons in the Entity in question, to secure a certain spread of the popular support. It is important that the signature verification procedures - including the percentage of the signatures which should actually be verified - be left to the discretion of the PEC!

b) **Election of the Presidency of the Republika Srpska:** The same proposal as for the election of the Serbian component of the Presidency for Bosnia and Herzegovina applies to this Entity, *mutatis mutandis*.

- 5.2. a) **Elections for the House of Representatives of Bosnia and Herzegovina.** It is already stipulated that this House will have 28 members from the Federation and 14 from the Republika Srpska. The Mission suggests very strongly that these elections be conducted as separate PR elections within the two Entities. The electoral system should be a straightforward simple quota system, where the Hare quota (vote total divided by seat total) be used for the initial allocation of seats, while seats not allocated by full quotas are allocated by largest remainders. The Mission finds this system for the allocation of seats not allocated by full quotas much simpler than the one used in the

1990 Electoral Law (Art. 89), but the former system is, of course, also applicable. The electoral system proposed here is generally considered the simplest and least manipulative of all electoral systems currently in use.

The small number of seats at stake in the separate elections in the two Entities (28 and 14 respectively, as mentioned above) makes it completely unnecessary to conduct the two separate elections as two-tier elections or to have some kind of electoral threshold. The low number of seats in the two Entities will automatically provide a "natural" threshold of more than 3 and more than 6 per cent in the Federation and the Republika Srpska, respectively.

Elections should be conducted on the basis of party lists, but independent candidates should be allowed to stand for election, provided they fulfill relevant requirements for registering.

The PEC must also establish the number of signatures required for registering as an independent candidate and as a party (with a fixed list of candidates). The numbers should be low enough to allow all serious parties and independent candidates to stand for election, while it should be so high that it keeps as many unserious parties and independent candidates as possible off the ballot paper! When the basis of the election is the parties and their lists, it is not necessary to also let the candidates collect a certain number of signatures. They must, however, accept in writing that they actually appear on the list of the party in question.

Since it is now extremely easy to become a registered party (50 signatures!), the Mission suggests that also already registered parties must present the required number of signatures, if they actually want to stand for election (and get, *e.g.*, both free air time on radio and television and access to the Public Campaign Fund, provided that such a fund be established). The number of signatures required should be lower for independent candidates than for parties.

- 5.3. a) **Elections for the House of Representatives of the Federation of Bosnia and Herzegovina.** The Mission suggests that this House gets 85 seats (and the National Assembly of the Republika Srpska 55, together only slightly more than the 130 seats in the House elected in the November 1990 elections).

The Mission holds the opinion that these elections should definitely be conducted as PR elections with the entire Entity as the electoral unit/district. The reasons for this point of view are

- (1) that the many foreseeable and extremely intricate problems of registering individual voters in specific municipalities (either the municipality of residence in 1991 or some other municipality) in this way will be less consequential on the political level, since the votes will have the same weight and be included in the same overall allocational computations no matter where they are actually cast. This proposal will consequently lower all kinds of tensions connected to the registration within specific localities,

(2) voters will not be put in a situation, where they - rightly or wrongly - could claim that they do not know the candidates running in a particular canton/electoral unit, because they are new to that particular canton/ electoral unit, and

(3) since the administrative cantonal Districting exercise has not yet been finalized, it could postpone the pre-election allocation of seats to cantons/electoral units for quite a while. The proposal here is also for this reason preferable, since it will not require knowledge of the eventual administrative borders.

Parties must present a list of candidates, but the parties themselves should decide if they want to present a full list or only put up a smaller number of candidates. In case of vacancies, the vacant seats are to be filled by moving further down the list, *i.e.* to the next available candidate. Therefore, by-elections are not necessary under this electoral system. If a party runs out of available candidates - or if the seat of an independent candidate becomes vacant - the practical consequence is that the calculations must be redone with the votes of the party (parties) in question excluded from the calculations.

b) Elections for the National Assembly of the Republika Srpska. Basically, the same electoral system should be put in practice as for the House of Representatives for the other Entity, even though the number of seats is suggested to be somewhat lower, namely 55; the proposed number of seats reflects - very broadly - the size of the two populations in the 1991 census. Other electoral system and law regulations also apply, *mutatis mutandis*.

- 5.4. a) **Elections for the cantonal assemblies - or councils - (and the District of Sarajevo).** Elections for cantonal assemblies should be conducted on the same PR basis (concerning the electoral PR formula, the handling of seats not allocated by full quotas, etc.) as the above-mentioned elections to parliamentary bodies in order to allow all political and other groupings a fair chance of winning as many seats as their support in the actual electorate would suggest. Since cantons have not yet been delimited and finalised, it is difficult to come up with many practical proposals, but each canton (and the District of Sarajevo) should in any case be only one electoral unit. Furthermore, the number of seats in the cantonal assembly should not be too high - *e.g.* around 30, depending on the population size and the administrative and regulatory powers allocated to the cantonal level. With this size of the cantonal assemblies/councils there is no reason to have a formal electoral threshold. The "natural" thresholds will most probably do the job!

Independent candidates should also be allowed to run. The parties should be allowed to present as many - or as few - candidates as they like, as long as the number does not exceed the number of seats in the assembly + 2. If a party runs out of candidates during the electoral period (or if an independent gives up his or her seat), a reallocation takes place on the basis of the number of votes cast in the original election in order to avoid by-elections.

b) **Elections for the municipal authorities.** The same applies as for the cantons, apart from the number of seats, which we suggest be smaller than is presently the case. The present membership is 30-50, while we would suggest that it be only 15-25, depending on the actual population size of each of the 111 new municipalities. These numbers should be calculated and issued officially at the earliest possible convenience.

6. One of the advantages of using PR electoral systems on the highest possible level (usually the national level, and in this particular case the level of the two Entities) is that the question of electoral districting loses virtually all its potential and damaging importance, since it has no bearing whatsoever on the overall seat distribution, in which locality the votes are actually cast. That is the reason why the Mission strongly suggests using also for electoral administrative purposes primarily only the two Entities and the 111 new municipalities.

Within municipalities, the delimitation of individual polling districts - also to be used for registration purposes - should be the responsibility of the municipal level election commissions, according to relevant regulations. Within municipalities, the publication of voters' lists should also take place within the foreseen polling districts.

In this way, districting issues will be virtually absent from the agenda of the Provisional Election Commission, and it will have no particular bearing on the electoral process as such.

Recommendations for Voter Registration in
Bosnia and Hercegovina

Steven Nix, Esq.
Electoral Code Working Group (ECWG)
USA

February, 1996

Registration Based on 1991 Census Data

Use of existing pre-war data will create the most broadly based registration roll. In addition, use of 1991 data will result in a register which does not reflect the ethnic cleansing from the war. According to the provisions of Annex 3, the 1991 census data would be used as the basis for preparation of the voter registers for the 1996 elections. Except for records that were specifically updated or amended, a person would be officially "registered" in his former jurisdiction in which he resided in 1991. Additionally, a fundamental presumption would be made that the act of voting by a displaced person or refugee would automatically reflect their "intention to return." With an allowance for amendment and updating, appropriate additions and deletions could be made from a relatively stable starting point assuming that the data is still available. Use of pre-war data would also help overcome ethnic imbalances in jurisdictional populations which the war and its aftermath have only amplified. This strategy would also create an automatic safety net for refugees who outside the Country. Most of them would already be included in the master roll based on their 1991 place of residence, ensuring their eligibility to vote in the election.

It is difficult to anticipate how many individuals among those uprooted by the war, could slip through the cracks in any window of opportunity created for amending and updating the lists. And, decisions will have to be made on what kinds of updates and changes will be allowed. For example, allowances would be made for voters who have become 18 in the interim, and for those whose names have changed due to marriage. Other types of changes may require more thought, if indeed the eligibility standard strictly adheres to the criteria of domicile or place of residence as it was recorded in 1991 or the April 1992 cut off. Policy decisions will have to be made as to circumstances which would allow citizens to change their registration based on new places of residence, if ultimately such allowances are instituted. Criteria would have to be clearly defined under which some voters would retain their pre-war jurisdiction, while others would be allowed to change their registration. For example, such criteria might include a required sworn affidavit signed by the voter as an affirmation of his "intent to return" or "intent not to return." For the latter, such affirmations could be supported by proof of permanent employment or purchase or proof of long-term lease on property, establishment of a business at the new location.

The obvious problem that such a strategy poses, is how to ensure that voters have access to the correct constituency ballots, when they reside or are refugees in a place away from their registered voting jurisdiction identified by their pre-war residence.

Suggestions for Creating a Strategic "In-Person" Absentee Voting System

Creating the broadest avenue of voter access to the ballot while ensuring that voters vote in the jurisdictions in which they are legitimately eligible, might best be managed by developing a liberal and comprehensive absentee voting program which provides generous access, while ensuring security, transparency and accountability. The program should be viable not only for

voting at locations outside the country, but also within the territory of the Country as well.

The program offered for consideration is based on precedent conditions that have already been established in law and in practice:

- Article 64 requires that voting be done in person;
- traditional practice has accommodated the establishment of voting from outside the territory of the country for workers, diplomats and others;
- the law makes provisions for in-person absentee voting at military installations.

Based on these precedents and borrowing heavily from the concepts established in Articles 81-83 governing military voting, it is suggested that consideration be given to developing regulations to establish a broad based absentee voting program to meet the needs of displaced persons and refugees who retain their eligibility based on their 1991/92 registered places of residence (or whose unique circumstances may not be resolved through a transfer of registration process should one be implement.)

The fundamentals of the proposal would involve the following elements:

- establishing In-Person Absentee Voting Stations at all municipal offices and at selected sites outside the country as well as at extra designated sites deemed necessary by municipal authorities to accommodate voters living too far from the municipal center;
- establishing a specific period for absentee voting in advance of election day;
- appointment of Absentee Voting Committees (AVC) at each site designated for absentee voting, as well as an Absentee Review Committee (ARC) within each electoral unit.
- thorough training of AVC's and ARC's'
- development of appropriate forms and protocols for the administration and auditability of the program;
- preparation of a directory of the various electoral units relative to the election to be on hand at each absentee voting site which can assist AVCs in determining which ballot(s) should be issued to the voter;
- securing appropriate logistic support to accommodate the transport of materials and ballots and communication requirements.

In general, the In-Person Absentee Program would be open to any voter who currently resides

in a jurisdiction other than where he was actually registered in 1991/92 unless he has formally changed his registration under the regulations promulgated by the PEC. An extensive voter education program should be developed to advise voters about the program and to let them know how they can take advantage it.

The absentee voting stations set up at municipal offices or other strategic points designated by the municipality should be opened for a window of approximately one week in advance of election day. At least 3 members should serve on each AVC based on an expectation of 1,500 absentee voters to be served. An additional member should be considered for each additional 1000 voters expected. Because the ARCs would be verifying the eligibility of voters whose sealed ballots have been received from all the sites through the country and abroad, the ARC's will need more members. One suggestion offered for consideration is that the ARC's be made up of 2-3 deputies from the electoral committee and supervising the elections in the electoral unit and representatives of each of the political parties competing within the constituency. Participation by party representatives ensures a layer of transparency in the absentee voting process to raise their confidence in the system and to provide assurance that absentee voters are treated equally.

At each absentee voting site, and at stations designated outside the country, ballots would be available for each constituency subject to election. Those absentee sites within the country would have ballots for all electoral units except for the electoral unit in which they are located. This would eliminate the potential for resident voters to attempt to vote absentee rather than at their regular polling site.

Two alternatives could be considered for determining how many ballots would be needed for each constituency at each absentee voting site:

- 1) An Absentee Application could be implemented. Voters outside the country could submit requests or applications to the designated absentee site in the cooperating country in which they are residing. Displaced voters within the country who wish to take advantage of the program could apply to the municipal administrative office by a deadline established for the purposes of absentee voting. The application would have to include the municipality or foreign site at which they wish to cast their ballots. A list of the applications could be sent to the respective electoral committees. They, in turn could prepare and transmit the appropriate number of ballots to the absentee voting station to accommodate the number of voters who have applied similarly to the method by which military voters are accommodated. This process would be labor intensive, time consuming and burdensome and require additional logistic support. Because of its complexity, it could also result in delays or errors being made which would bring into question the reliability of the program.
- 2) As an alternative procedure, voters could be accommodated with no prior advance application required. Each absentee station would simply be sent a specifically regulated number of ballots for every electoral unit

To accommodate this program the deadline for the nomination of candidates should be set earlier in the election calendar to allow ballots to be printed in time to accommodate the absentee voting

program. This would be preferable, in any case, to provide adequate time for the conduct of meaningful campaigning. If a window is created for allowing voters to update or change their voting registration that window would also have to be set early enough to allow for corrections on the list to be accomplished before the review of absentee ballots occurs. Deadlines would also have to be established for the opening and closing of the absentee voting period, the application period if one is implemented, and the date by which voted ballots and related materials are returned to the appropriate electoral unit.

Steps in the Processing of Absentee In-Person Voting

- As the ballots from each electoral unit are received by the Absentee Voting Committees they would be counted and a receipt would be signed by the members of the AVC. A copy of the receipt would be returned to the electoral committee issuing the ballots. An accountability report would be initiated and maintained identifying the number of ballots received for each electoral unit. Should an absentee site find they are running low of a particular electoral unit ballot they could request more from the appropriate electoral committee. The same accountability procedures would apply in the case of any additional ballots received.
- An on-site absentee voter register would be maintained separately for each constituency. The absentee voter register for each electoral unit would identify the name or number assigned to the Absentee Voting Station. Separate lines would be provided to accommodate each individual voter who presented himself to vote. A sequential number based on the order in which the voters presented themselves would be listed on the register for each voter. The register would also provide space in which the voter's name, address and electoral unit where he was registered in 1991/92, his current address, description of identification presented and national ID #, address as it appears on his identification (if different than his current or 1991 address) signature of the voter, and signature of the official issuing the ballots.
- In addition to the absentee registers, officials would also be supplied with special envelopes in which voters would seal their voted ballots. On the face of the envelopes would be space to write in the same information which appears on the register itself. In addition would be a spaces on which to write the name and number of the constituency of the ballots which are enclosed, and the sequence number that was assigned to the voter on the register for that electoral unit.
- As each voter presented himself to vote, the AVC would inspect the voter's identification documents. Based on the address indicated in the voter's documents or attestation of the voter as to the address where he was registered in 1991/92 (if different,) the AVC could determine the voter's eligibility to vote absentee, and the electoral unit for which the voter is eligible to receive ballots. The official would refer to the directory of electoral units in making his

determination as to which ballot is to be issued. The appropriate information and signatures of the voter and the issuing official would be entered onto the register and the special envelope.

- The voter would be given instructions for marking the ballot just as occurs at a regular polling station. The voter would be directed to the secrecy area to mark his ballots. After the voter has voted, the ballot would be sealed in a special envelop which has already been completed. The sealed envelope containing the ballot would be returned to the official.
- The AVC would be responsible to maintain the registers and ballot envelopes associated with them in sequential order and under secured storage throughout the absentee voting period. A daily accounting could be maintained as to the number of ballots issued for each district. In addition, minutes of any unusual circumstance could be maintained just as they are for polling stations.
- At the end of the absentee voting period, (or at regular intervals during the process) the AVC would prepare a package for each electoral unit containing the register, completed accountability report identifying the number of ballots that were used and not used, the unused ballots, and the individual envelopes containing the voted ballots. The package would be sent to the appropriate electoral committee.
- Upon receipt of the materials at the electoral unit, the voted ballots and absentee register would be delivered to the Absentee Review Committee (ARC.) With a deadline for receipt of the ballots set in advance of election day, the ARC could review each absentee envelope to determine if the voter is identified on the registration roll for the electoral unit. If the voter's name is found, a notation could be made on the appropriate excerpt to indicate that the voter has voted absentee. This notation would help to limit any opportunity for the person to vote twice. On the absentee envelope, the ARC would make a notation that the ballot could be counted and would also write the number of the polling station for which the voter was found on the excerpt. The envelopes containing the ballots of voters found to be eligible would be sorted by polling station number. On the day before the election, the sealed ballots would be delivered to the appropriate polling station with the regular ballots, excerpts and voting materials so that they could be included in the count at the polling site after the close of the polls.
- If the person's name cannot be found and he is therefore found to be ineligible, the envelop would remain sealed and set aside and not delivered to any polling station. The decision of the ARC not count the ballot would be written on the outside of the sealed envelope. In the case of rejected ballots, a notation would be made as to the grounds on which the rejection was based. The rejected ballots would remain in their sealed envelopes and would be retained by the electoral committee as part of the permanent record. The number of rejected ballots should be recorded in the summary of results for the electoral unit. Regulations should include an allowance that the envelopes containing the rejected ballots could be

inspected by representatives of the candidate lists, if requested.

- Before voting begins on election day, the polling committee could count and announce the number of absentee ballots received in front of the observers who are present and record the number on the form used for reporting results and ballot accountability information. After the closing of the polls and before the ballot boxes are opened, polling committee could prepare to commingle the absentee ballots with regular ballots inside the ballot box. In order to preserve the secrecy of vote, each envelope could be slit open and tilted over the slot on a ballot box so that the ballot drops in without the vote being seen. The ballots would be commingled so that no individual ballot could be identified as coming from any specific envelope.
- The polling committee would ultimately open the ballot box and count the ballots following normal counting procedures. Completion of the report of results would be accomplished in accordance with normal procedures. The opened envelopes would be returned with materials to the electoral committee to be retained as part of the permanent files.

Special Considerations for Voting Outside the Country

Although absentee sites may be set up at key locations in cooperating countries, it is unlikely that all refugee voters are living in the same place. Therefore, it may be necessary to allow these sites to also accommodate by-mail voting. In these instances voters within the hosting country could apply or submit a request for an absentee ballot from the absentee site established for refugees in the country where they are located. Using that country's mail system, the absentee site could send the ballot(s), a pre-addressed return envelope and secrecy envelop, and thorough instructions to the voter. The voter would return the voted ballots back to the site who would then handle them in the manner prescribed for ballots cast in person. A few extra steps would be required.

- A public awareness campaign would have to be developed to advise refugees how they could take advantage of the program, with specific instructions given as to what their application letter of request would have to include. Such information should be the same as that entered on the absentee register for those persons voting in person. Voters should be advised that failure to provide sufficient information could cause delays or rejection of their applications.
- Upon receipt of the application to be sent ballots by mail, the AVC should list the voter on the a by-mail register maintained separately for each electoral unit. The same information on the voter should be entered as for an in person voter, however, the register should also include a log as to the date on which the application was received, date ballots were mailed, and date the ballots were returned. This record should be maintained and submitted to the electoral

committee with other documents at the end of the absentee period.

- Each voter who requests a ballot by mail should be handled individually, even if multiple requests come on the same letter or application. As packets are prepared for mailing the ballots, they should be sent to each voter separately and not commingled. The AVC should complete the voter information on the face of the secrecy envelop provided with the ballots. The information on the secrecy envelope should be the same as that required for in-person voters. Voters should receive instructions that they must send their ballot back individually in the mailer provided. Strict instructions should indicate the deadline by which the ballots must be received by the AVC and that the secrecy and that the voter must sign the secrecy envelope. It is suggested that their secrecy envelope require the signature of a notary or other official witness who attests that the voter voted the ballot personally. Voters should be advised that failure to follow the instructions could cause the ballot to be rejected and not counted.

Advantages of the Proposed Program

Obviously, this only represents an overview of a process that could be considered. Implementation would require a comprehensive system analysis and development of procedural detail to ensure that the program could be manageable and accountable. However, it does provide several advantages:

- This program would provide liberal access to voting and and adequate safety net for the voters who remain unable to take advantage of normal voting opportunities.
- The program could be tailored to serve equally well at absentee sites inside the country and at locations outside the country.
- Since actual eligibility is determined at the electoral unit level, it eliminates the need to have copies of the nationwide electoral rolls or computers at each and every absentee voting site resulting in a tremendous cost savings.
- It builds in suitable accountability procedures to ensure that ballots are properly accounted for.
- The program provides a level of oversight and transparency that serves to build confidence in the fairness of the program and confidence in the counting and inclusion of the results in electoral unit-wide totals.
- It borrows on precedents already established in law and practice.

Time Line for Proposed In-Person Absentee Voting Program

9 Weeks Prior	8 Weeks Prior	7 Weeks Prior	6 Weeks Prior	5 Weeks Prior	4 Weeks Prior	3 Weeks Prior	2 Weeks Prior	1 Week Prior	E L E C T I O N D A Y	1Week After
Regulations for All Absentee Voting Procedures Finalized and Published		Voter Education Begins for Absentee Voting Within Country Trainers Appointed and Logistics Plan for Training Exercises Completed	** Deadline for Submission of Nominating Petitions Submitted to Electoral Committees Sites for Absentee Voting Selected AV Officials Appointed	** Extension Period for Nominations If Necessary ** Collective Lists Ready (Allowing for Replacements of Withdrawn Candidates)	** Collective Lists Finalized Ballots Printed At Least for Absentee Voting Purposes, Collective Lists for Use at Absentee Sites	Transport of Materials to All Absentee Voting Sites Within Country	Week of In-Person Voting Within Country Occurs	Delivery of Voted Ballots and Materials Back to Electoral Committees ARC's Can Begin Review of Absentee Ballots Rcvd &Determine Eligibility		ARCs Complete Review & Set Date for Counting Absentee Votes Results Reported with District Summary
AV Sites Outside Country Negotiated and Selected			Application Period , If Implemented			Deadline for Applications Set				
	Training Manuals and Materials Written Directory of Constituencies Prepared		Training Materials Printed Directory of Constituencies Printed for AV Sites	Trainers Trained	Training of AVCs					
		Absentee Voting Voter Education Program is Ongoing								
		Applications Printed and Distributed, if Application Process Implemented	Printed Materials Printed: AV Registers, Envelopes, Accountability Reports, Packaging Envelopes, Etc.							

* Approximately 150 AVCs: 1/each Municipality, 20 Sites for Refugees and Workers in Cooperating Countries+Additional Sites Determined by Municipalities. ARCs: 1 in Each Electoral Unit.

** The Law on Election of Members and Representatives of the Socio-Political Communities (Articles 35-36, 43-44) set the deadlines for submission of candidate lists, certification and confirmation of the collective lists very late in the process. The period for this part of the process under the law is set between 20 and 5 days prior to the election. To accommodate a viable absentee program and to afford adequate opportunity for meaningful campaigns, it is critical that the deadlines be reset occur earlier. For discussion purposes, this time line suggests closure of the nomination period to be at least 6 weeks in advance of election day.

**In-Person Absentee Voting: Reaching Displaced Voters and
Establishing Eligibility**

Linda Edgeworth
Electoral Code Working Group (ECWG)
USA

February, 1996

The recommendations set forth below are the result of both a legal analysis of the current election and registration laws and constitution of Bosnia and Herzegovina, Annex 3 of the Dayton Agreement and several OSCE Mission reports (although not a complete set) on voter registration and legal issues, as well as additional administrative-related questions.

The result is a series of recommendations on the PEC's powers to decide questions on the legal basis for citizenship and registration in Bosnia and Herzegovina, as well as recommendations oriented towards the scope of registration efforts, taking into account political questions, and the extent of logistics, resources and other practical issues. Also outlined is a suggested plan for the targeting of several distinct groups of "citizens" for registration, followed by recommendations on the technical and logistical means by which they could be registered. Finally, a proposed series of draft election regulations related to voter registration have been submitted.

I. LEGAL BASIS FOR CITIZENSHIP AND REGISTRATION

Pursuant to the General Framework Agreement for Peace in Bosnia and Herzegovina (the "Agreement"), the Provisional Election Commission (the "PEC") is required to adopt rules and regulations regarding "the registration ... of voters." See Annex 3, Art. III, paragraph 1, General Framework for Peace. The Agreement goes on to grant the PEC the authority to determine "voter registration provisions", *Id.*, at paragraph 2(b).

The Agreement defines individuals eligible to vote as those "citizens of Bosnia and Herzegovina, aged 18 or older, whose name appears on the 1991 census for Bosnia and Herzegovina ..." See Annex 3, Art. IV, paragraph 1.

However, the Agreement grants a certain level of latitude to the PEC with regard to citizens of Bosnia and Herzegovina who no longer are domiciled where they resided in 1991. This group "as a general rule" is "expected to, in person or by absentee ballot", vote in their 1991 domicile. *Id.* The Agreement grants the above-referenced citizens the right to petition the PEC to vote in another location and impliedly grants refugees¹ the right to vote. *Id.*

The Agreement can be construed, therefore, to grant the PEC the legal authority to authorize registration of the following universe of persons:

1. All Bosnia and Herzegovina qualified electors who maintain the same legal domicile as during 1991 census
2. Qualified electors residing in Bosnia and Herzegovina who have changed their legal domicile since 1991
3. Citizens of Bosnia and Herzegovina who are currently residing outside its territory:

A) who are refugees as a result of displacement due to hostilities

¹/Citizens of Bosnia and Herzegovina who were displaced outside of its territory as a result of hostilities.

- B) who are members of the diplomatic corps, or Bosnia and Herzegovina citizens living abroad by choice
4. Citizens of the former SFRP never domiciled within the territory of Bosnia and Herzegovina who wish to emigrate to Bosnia and Herzegovina and be registered to vote.

CONSTITUTIONAL AND LEGAL AUTHORITY

The Agreement should, however, take into account the constitution and laws of Bosnia and Herzegovina as they relate to both citizenship and voter registration.

As a precursor to voting rights, the Bosnia and Herzegovina constitution provides for citizenship for "all citizens of either Entity ..." ² see Constitution of Bosnia and Herzegovina, Art. 7 (a) (1995).

The Constitution defines citizens as those persons "who were citizens of the Republic of Bosnia and Herzegovina immediately prior to the entry into force of this constitution." I.d. at Article 7 (c).

The citizenship of persons who became naturalized after April 6, 1992 and before the constitution came into force is to be "regulated by the parliamentary assembly." I.d.

Bosnia and Herzegovina's law on Citizenship allows for citizenship to be attained by origin, by birth within the territory of Bosnia and Herzegovina, by naturalization and by international agreement. See Art. 3, Decree With Legal Power on the Citizenship of Bosnia and Herzegovina (1990).

Article 29 of the Decree grants citizenship to a person who was a citizen of the former SFRY and was legally domiciled on Bosnia and Herzegovina territory on April 6, 1992. I.d., Art. 29, as amended (1993).

VOTER REGISTRATION

Pursuant to Bosnia and Herzegovina law, mere citizenship does not convey the right to vote, which must be confirmed by voter registration. See Art. 2, Law on Voter Registers (1990). Voter registration is to include all citizens of the former SFRY, 18 years or older and legally domiciled within the territory of Bosnia and Herzegovina, and is to be conducted by a competent municipal administrative body. I.d. at Art. 3.³

The information to be included in the voter register, and thus potentially available to the PEC to organize registration efforts, consists of the following:

1. ordinal number
2. surname

²/Bosnia and Herzegovina and the Republica Srpska, I.d.

³/The Municipal bodies in turn establish committees for voter registers, who could conceivably advise the OSCE/IFES Working Group on the method of collecting data, its location, etc. See Art. 23.

3. name
4. gender
5. date of birth
6. domicile
7. street number
8. town or village

I.d. at Art. 8.

It should be noted that the law allows for voter registration to be recorded on index cards, magnetic tape or magnetic disc.⁴ I.d. at Art. 10. It should be further noted that the voter register information is to be retained by the municipal administrative body cited in Article 13, above.

ELECTION LAWS

The parliamentary election law of Bosnia and Herzegovina reiterates the extension of the right to vote to citizens, aged 18 and over and having legal domicile within the territory of Bosnia and Herzegovina. See Art. 6, Law on the Election of Members and Representatives to the Assemblies of Socio-Political Communities.⁵

While the law creates municipal and City of Sarajevo electoral committees, parliamentary electoral committee and a State Electoral Committee, none of the electoral bodies is responsible, pursuant to the law, for the compilation, update or maintaining of voter registration lists. See Arts. 11-27, et seq.

LEGAL PRECEDENCE OF PEC AUTHORITY OVER BOSNIA AND HERZEGOVINA LEGAL ACTS

Notwithstanding the requirements of the Bosnia and Herzegovina laws governing citizenship, the right to vote and voter registration, it is clear that the PEC, by virtue of its mandate stemming from the General Framework Agreement, may choose to comply with, or disregard, the above-referenced laws and regulations. The PEC clearly has the authority to draft new regulations which it perceives necessary to carry out its mandate to supervise the preparation and conduct of elections in Bosnia and Herzegovina. In fact, the rules and regulations promulgated by the PEC must include, inter alia, "determining voter registration provisions." See Annex 3, Art. III, paragraph 2 (b).

The Agreement goes further in establishing the supremacy of PEC regulations over the laws of Bosnia and Herzegovina by requiring the PEC to ensure compliance with electoral rules and regulations that it promulgates. I.d. at 2 (c). This argument gains further support in the Bosnia and Herzegovina Constitution, which requires that Bosnia and Herzegovina's initial

⁴/These provisions are directory, not mandatory, leaving municipal authorities to decide upon the method of storing data, i.e., hard copy or electronically.

⁵/ *The Bosnia and Herzegovina Assembly*

parliamentary and presidential elections be governed by Annex 3 of the Agreement. See Constitution of Bosnia and Herzegovina, Art. IV, paragraph 2 (a). See also, Art. V, paragraph 1 (a).

The supremacy of PEC - promulgated rules and regulations is clearly set forth and takes precedence over the laws of Bosnia and Herzegovina and the Entities. The OSCE reported on a meeting conducted with the Election Commission of the Republica Srpska, in which the statement was made that the "PEC cannot make laws, because they are not a legislative body, but they can issue regulations." See Second OSCE Mission Report, Art. IX, (1996). This issue requires clarification.

The PEC may not, per se, enact "laws". However, its regulations have the force of law, pursuant to the General Framework and Articles IV and V of the Bosnia and Herzegovina Constitution. The extent of the power of this force of law must be clearly understood by local bodies of government and election officials who may be under the impression that Bosnia and Herzegovina laws regarding registration (and elections in general) must be strictly construed and enforced. That is the case only within the areas of Bosnia and Herzegovina law that the PEC does not promulgate regulations, i.d. (emphasis added).

Consequently, the PEC should consider any existing restrictions on citizenship, registration or the right to vote to be directory or advisory in nature, rather than mandatory and should proceed to draft election regulations which it perceives will assist it in carrying out its mandate to the fullest extent possible.

PRESERVATION OF EXISTING LAWS AND SYSTEMS

While Annex 3⁶ maintains supremacy over the laws of Bosnia and Herzegovina regarding the elections in general, and specifically with regard to voter eligibility and voter registration, the OSCE has deemed it advisable, where possible, to use the existing Bosnia and Herzegovina system (including laws and regulations) as "the base for new electoral rules and regulations". See OSCE Field Assessment Mission, Dec. 12, 1995. Again, it should be emphasized that the current laws shall form the basis only upon the approval of the PEC.

⁶/And by legal consequence, PEC - promulgated regulations.

II. TARGETED REGISTRATION SHOULD BE A PRIORITY

While advocating the use of existing systems (and presumably data), the OSCE Field Mission has expressed doubt as to the usefulness of existing voter registration/census data and has recommended that redistricting be undertaken before elections take place. This would seemingly require a new census to be conducted in the next 2-3 months. Weighing the cost of a census, the logistical demands it would place on the PEC and subordinate structures, as well as the amount of time required, against the possibly questionable accuracy of existing data, a strong agreement can be made for the PEC to proceed with existing data, present accuracy notwithstanding.

Rather than commence with redistricting, it is recommended that the PEC first target registration groups of voters and develop specific and distinct plans to conduct registration for each of the groups, which are listed as follows:

1) QUALIFIED ELECTORS AT THE SAME DOMICILE

This group represents the core of the current system and is the largest group of voters. Registration of this group would also be the least demanding in terms of time and resources.

A Registration Board (the "Board") should be organized by the Electoral Policy Management Commission (the "EPMC") to oversee the confirmation of the registration of all qualified electors who still reside in the domicile where they voted in the 1990 elections. This will require contacting each of the responsible municipal bodies organized pursuant to the law on voter registration in order to interview appropriate members and determine the location of existing voter registration data. This could be done through the Bosnia and Herzegovina Office of Statistics, which has already agreed to contact each of the Bosnia and Herzegovina municipalities. See Second OSCE Mission Report, Section XI (1996).

The Board could compare the voter registration data, where necessary, with the census data currently retained by the Office of Statistics. This would provide a draft voter list, which would be updated. The data must be reviewed for accuracy by the Registration Board and, where appropriate, must be updated to delete the names of those who have changed domiciles, are deceased or have changed their citizenship. This could be done either by the Board, or in cooperation with municipalities and the Office of Statistics, which would present the amended list to the PEC. If the resources were available, a second review of the voter register could be conducted by citizens themselves, the Board could post the lists in public places or publish them in newspapers with the request that voters report to the board to petition for the addition or deletion of names from the list. This would require the Board to organize offices on the municipal level.

2) QUALIFIED ELECTORS WHO HAVE CHANGED DOMICILE WITHIN BOSNIA AND HERZEGOVINA

This second target group must be registered to vote, but the PEC must determine their place of voting. To ease administrative burdens, the Registration Board should utilize the same methods used for target group No.1, above, to determine whether these voters were previously domiciled in Bosnia and Herzegovina and were registered to vote. If either factor

could be documented by the Board, this group of voters should be allowed to vote in their new domicile. This could be achieved with the use of a "special list" for those not registered at their polling station. The voter would present his identification card at the polling station and provide evidence of his change of domicile. The polling station would then record the name on the special list and present the elector with a ballot.

Safeguards against vote fraud must be in place, such as the computerization of data at a central location by the Board, combined with well-publicized penalties for voting in more than one polling station. The Board must cross-check the computerized list with the voter lists at polling station and a mechanism must be devised for vigorous prosecution of multiple voting.

The lack of freedom of movement is a factor in this recommendation. Forcing voters to attempt to return to their previous polling place could drastically lower voter turnout.

Again, when weighed against the potential of vote fraud, the forced travel throughout Sarajevo and other areas of Bosnia and Herzegovina would seem to be more problematic. Consequently, it is recommended that the PEC invoke its powers to create a new law allowing internally displaced citizens to vote at the places of their new domicile.

3) CITIZENS OF BOSNIA AND HERZEGOVINA WHO CURRENTLY RESIDE OUTSIDE ITS TERRITORY

In the event that the Electoral Policy Management Group determines that refugees should be registered to vote, it must devise a means of registration and implement registration itself or through appropriate international organizations.

The UNHCR estimates the number of Bosnia and Herzegovina refugees currently residing in Western Europe at approximately 800,000. See Second OSCE Mission Report. If it is perceived that their repatriation will not take place within the next 60 days, it is recommended that voter registration be conducted on-site by the UNHCR. In the event that UNHCR assistance is unavailable, the PEC should request that registration be conducted by the refugees' host country.

Registration of this sort must be streamlined, inexpensive and must begin as soon as possible. Citizens of Bosnia and Herzegovina 18 years old and older are required to keep in their possession identification cards issued as a result of the census. See OSCE Mission Report, Article 2.2, paragraph 6. Voters could confirm citizenship by displaying identification cards to local officials, who would add the names to a voter register issued by the PEC. The register could then be sent to the appropriate group within the PEC to prepare for elections.

Refugees claiming citizenship, but who are not in possession of Bosnia and Herzegovina identification cards, should be added to a supplemental voter registration list. The PEC would then be empowered to make a final decision as to their eligibility to vote at a later time.

Based upon the registration list and the supplemental lists, absentee ballots could be transported to the host country and presented to refugees, accordingly.

Due to the fact that roughly one-half of all Bosnia and Herzegovina refugees currently reside in Germany, the German government itself should also be requested to conduct registration. In the alternative, the Adenauer Foundation or other appropriate NGOs based in Germany could be approached to fund and implement registration.

As a final alternative, the PEC may conduct refugee registration with its own teams of registration officials. This would require the PEC to hire registration teams locally, or transport teams to Western Europe.

4) CITIZENS OF OTHER COUNTRIES OF THE FSRY WHO WISH TO EMIGRATE TO BOSNIA AND HERZEGOVINA

The PEC must consider and decide the question of the eligibility of this group immediately. If it is decided to proceed, and the above-referenced émigrés remain outside of Bosnia and Herzegovina, the PEC must either employ the same resources and methods utilized in Article 3, above, or, in the alternative, they could be registered at the time of their emigration processing in Bosnia and Herzegovina.

III. RECOMMENDED VOTER REGISTRATION REGULATIONS FOR PROMULGATION BY THE PROVISIONAL ELECTION COMMISSION

The following draft regulations are proposed for the registration of the four targeted groups listed, *infra*, pursuant to Annex 3, the General Framework Agreement, Articles III and IV, *et seq.*; The Constitution of Bosnia and Herzegovina, Articles IV and V, *et seq.*, and the existing Bosnia and Herzegovina laws on elections, citizenship and voter registration, as follows:

Draft Article 1

The right to vote shall be granted to all Bosnian citizens, aged 18 and over as of the date of elections.

Draft Article 2

The right of citizens to vote shall be registered in a national voter register, which shall be realized in accordance with this law.

Draft Article 3

A citizen who has been registered in the national voter register may not be deprived of his voting rights, unless so determined by a decision of the Provisional Election Commission (the "PEC").

Draft Article 4

The voter shall cast his ballot at the polling place where he was previously registered to vote, unless he has changed domicile, in which case he shall be registered and vote at the polling station at his new place of residence.

Draft Article 5

A National Registration Board (the "Registration Board") shall be created by the PEC. The Registration Board shall have the authority to register citizens to vote in the manner outlined in Articles 5-8 of these regulations.

Draft Article 6

The registration of voters who were registered to vote and/or were listed in the census in 1991 and remain in the same domicile shall be conducted by the Registration Board, using both census data from the Office of Statistics and voter registration lists previously compiled by registration committees formed by municipal governments pursuant to the registration laws of Bosnia and Herzegovina.

Draft Article 7

The registration of voters who were registered to vote in 1991 and/or were listed in the census and currently reside in Bosnia and Herzegovina but are no longer domiciled at their 1991 address shall be conducted in the same manner as indicated in Article 6, above.

Draft Article 8

The registration of voters who were registered to vote in 1991 and/or were listed in the census, but are currently domiciled outside the territory of Bosnia and Herzegovina due to hostilities, shall be registered in their host country by registrations teams under the authority of the Electoral Policy and Management Commission.

Draft Article 9

The registration of voters who were registered to vote in 1991 and/or were listed in the census but residing outside the territory, who are assigned to Bosnia and Herzegovina embassies and consulates, or who reside abroad for reason unrelated to hostilities, shall be registered at the nearest consulate or embassy. Registration will be conducted by embassy or consulate staff, which shall be under the authority of the Electoral Policy Management Commission.

Draft Article 10

In conducting registration, persons referred to in Articles 6-9 shall be required to produce their Bosnia and Herzegovina identification card, which shall be noted in the voter register.

The names of those persons claiming citizenship and/or the right to vote shall be entered in a supplemental list to the national voter list.

Draft Article 11

Upon registration pursuant to Articles 1-4 of this law, each voter's name shall be included in a national voter list or a supplemental list, where appropriate, which shall include the following:

1. ordinal number
2. surname and name
3. date of birth
4. address
5. identification card number (if available)

Draft Article 12

All data referred to in Article 11 shall be entered into a computerized database and stored by the Office of Statistics, which shall work under the supervision of the Electoral Policy Management Commission.

Draft Article 13

The municipal government bodies and registration committees referred to in Article 8 of these regulations shall be required to submit copies of all registration data in their possession to the Electoral Policy and Management Commission (alternative: to the Office of Statistics).

Draft Article 14

The geographic areas of voter registration shall be determined by the Electoral Policy Management Commission.

Draft Article 15

The Electoral Policy Management Commission shall oversee the creation of a national voter list by the Office of Statistics.

Draft Article 16

The Office of Statistics shall revise the national registration list ____ days prior to the date of elections, taking into account 1991 census data as well as previous voter registration data.

Draft Article 17

The Electoral Policy Management Commission shall oversee the publishing of revised voter lists in newspapers and shall oversee the posting of the list at polling stations no later than 2 weeks prior to the date of elections.

Draft Article 18

Every citizen has the right, in accordance with regulations promulgated by the Electoral Policy Management Commission, to review the voter register as posted and/or published and request additions or deletions from the voter register.

Draft Article 19

Petitions to add or delete names from the voter register may be made to polling station commissions, which shall consider them and make a decision thereto within 3 days of receipt of the petition. Appeals from the decision of the polling station commission shall be made to the Electoral Policy Management Commission, whose decision is final and may not be appealed.

Draft Article 20

The basis for the decision to add or delete names from the voter list shall be recorded on the voter register.

Glossary of Election Terms

PRELIMINARY GLOSSARY OF ELECTION TERMS

Unless otherwise noted, terms relate to references in the Law on Elections of Members and Representatives of the Socio-Political Communities - 14 February

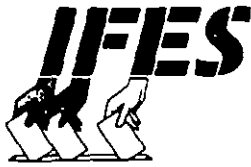
Term	Definition	Example of Reference
Absentee Review Committee (ARC)	Special committees appointed within each electoral unit to verify the eligibility absentee voters prior to their sealed ballots being sent to relative polling sites for counting.	Not Referenced in Existing Laws
Absentee Voting Committee (AVC)	A committee appointed to facilitate voting by refugees and displaced persons (DPs) at absentee sites designated within the country and in cooperating countries abroad.	Not Referenced in Existing Laws
Absentee Voting Site (AVS)	Sites designated to serve absentee voters.	Not Referenced in Existing Laws
Assembly	The elected legislative body of BiH, a canton, or municipality.	Throughout Election Law
Cancellation of the List of Candidates	List of candidates determined to be ineligible to appear on the ballot when deficiencies and omissions in their nominating documents have not been remedied by the statutory deadline.	Article 40
Cancellation of Voting or Elections	Action denoting the cancellation of election returns in a particular polling station, or electoral unit based on irregularities or when the threshold of voter participation has not been met.	Article 94
Canton	A legally mandated regional sub-division within the Federation and BiH. Not used in Republika Srpska.	Referred to throughout.
Certified List	A separate voter list provided to polling stations that denotes eligible voters living temporarily abroad or those in the military.	Article 62
Citizen	A person may acquire citizenship in BiH by: origin, birth on the territory, naturalization, or by international agreements. For the purposes of voting, a person is considered a citizen if he/she appears on the 1991 census.	Decree on Citizenship
Collective List	The consolidated list of candidate lists confirmed to be printed on a ballot.	Article 42
Confirmation of a Voter (Confirmed Voter)	The official approval of an eligible voter on election day should he/she not appear on a general voter list.	Article 66
Confirmation of the Candidate Lists	The affirmation by an electoral committee that the list of candidates has been presented on time and completed properly to appear on the ballot.	Articles 38-45
Course of Voting	Election day activities at polling sites including those before official opening of the polls, casting of votes during polling hours and counting activities after the closing of the polls.	Article 74

Domicile	Reflects a person's physical place of residence within the jurisdiction for which an election is being held.	Article 6
Electoral Committee	A group designated to organizing electoral administrative process in its respective electoral unit. Includes State Electoral Committee, Municipal Electoral Committees, and Electoral Committees of the Electoral Units for BiH.	Articles 11-22, 25
Entity	Refers to either BiH, Bosniac-Croat Federation, or Republika Srpska.	Annex III
Excerpt of Voters Register	The sub-section of the national voter list which includes a list of individuals in a select polling station.	Articles 60, 62 Law on Voters Register
Holder of the List	The submitter of a list of candidates.	Article 36-37, 39
House of Citizens a.k.a. House of Peoples	One of two bodies of the bi-cameral parliament of the Assembly of BiH made up of 15 members, 10 from the Federation (5 Croats and 5 Bosniacs) and 5 from Republika Srpska.	Article 46-47, 50, Constitution (Annex IV)
House of Municipalities a.k.a. House of Representatives	One of two bodies of the bi-cameral parliament of the Assembly of BiH made up of 42 members, 2/3 from the territory of the Federation and 1/3 from Republika Srpska.	Article 48-49 Constitution (Annex IV)
Independent Candidate	Any individual nominated by the citizens of the BiH.	Article 49
Independent List	Any list of candidates presented by the citizens.	Articles 37
Joint List	A candidate list that is presented by two or more political organizations (parties) joining to form a bloc.	Article 37
List of Candidates	The final candidate list which is submitted to the committee and includes the acceptance of nomination by the candidate, signed by the holder of the list, and conforms with stipulations outlined in the noted Articles.	Articles 35-45
Mandate	The period of time that an elected member of the Assembly of BiH is in office (term of office).	Articles 8, 10
Member	A representative of the House of Representatives* or the House of Peoples* in the General Assembly of BiH. (The terms "member" and "representative" are used throughout various translations and documents and has seemingly been used interchangeably).	*Constitution
Municipality	An administrative sub-unit (112 in BiH) below the canton level and the seat of municipal administrative authorities.	Referred to Throughout.
Political Organization	Political Parties registered in accordance with the law.	Articles 30-37
Polling Committee (PC)	Election officials appointed to facilitate voting and counting of votes at a particular polling station.	Articles 11-22

Public Media	Denoted all forms of publicly accessible media including press (newspapers, journals, magazines, and other periodicals), electronic broadcasted programming, and news agencies. In short, this definition includes, according to the law, any "information on some event, phenomenon, person, thing or activity...intended to inform the public."	Articles 55-56 and Law on Public Information
Repeal	The act of removing members or representatives from office through the election process prior to the end of the term.	Article 105
Repeat Election	The act of re-polling an election due to irregularities in the performance of an electoral committee or if the required number of representatives or members is not reached.	Article 94
Representative	A delegate to the House of Representatives.*	*Constitution (Annex IV)
Representative of Candidate List	A confirmed candidate on the electoral list.	Article 42 Article 74
Representative of Political Organization	A confirmed party on the electoral list allowed to be present at proceedings of electoral committees.	Article 14
Right to Elect and Be Elected (?)	Any person over the age of 18, has domicile on the territory of BiH, and not determined by a court of being incapable of doing business. Article 7 notes the official position which would have to be vacated upon the certification of a mandate in the Assembly.	Articles 4-7
Right to Vote (?)	Any person over the age of 18, has domicile on the territory of BiH, and not determined by a court of being incapable of doing business who is registered on the list of voters.	Article 6
Second Round	Re-polling initiated because none of the candidates acquired the necessary majority. Only the top two candidates who received the most votes take part in second round voting to be held in 14 days time.	Article 92
Socio-Political Community (SPC)	Any electoral sub-division subject to an election to which a mandate is assigned.	Election Law
State Electoral Committee (SEC)	The chief electoral administrative body charged with the oversight of the full entity and corresponding polling electoral committees and municipal election committees.	Articles 15, 24-25
State Electoral Supervising Committee	State-level, Assembly-appointed committee responsible to monitor campaigns and the activities of the political parties, organizations, and candidates.	Article 29
Verification of Mandates	The official approval of a member or representative to formally hold office. Once verified, prior holders of each office cease their mandate in the Assembly.	Article 10

Voters Register	The complete voter list in each entity which presents all eligible voters down to the polling station level.	Introduction-Item 4 Article 4-5 Law on Voters Register
-----------------	--------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------

General Field Mission Correspondence



January 22, 1996

Ambassador Robert Frowick
Head of Mission
Organization for Security and Cooperation
Pehlivanuša 3
Sarajevo 71000
Bosnia and Herzegovina

Dear Ambassador Frowick:

Let me take this opportunity to outline in more detail the objectives, activities, and timing associated with the Electoral Code Working Group (ECWG) being organized in partnership with ODIHR in Warsaw. This correspondence expands upon the proposal described in a letter of January 13.

The objective of the Electoral Code Working Group is to provide the Provisional Election Commission (PEC) with a set of recommendations which concerns the PEC's promulgation of rules governing the 1996 elections in Bosnia and Herzegovina.

Following the organization of Annex 3 to the Dayton Agreement, the ECWG will develop a series of papers by topic which discuss the Article's language, and its impact on the relevant local law. The topics to be assigned include:

1. Certification of Conditions for the Election (Article I, Sections 1, 2, and 3).
2. Definition of OSCE Legal Authority (Article II, Sections 1, 2, 3, and 4; Article III, Section 2, 3, and 4).
3. Political Parties and Independent Candidates [Systems of representation discussed here] (Article III, Section 1).
4. Voter Registration (Article III, Section 1).

BOARD OF DIRECTORS		Barbara Boggs	Peter G. Kelly	William R. Sweeney, Jr.	DIRECTORS EMERITI
Charles T. Manatt Chairman	Patricia Hutar Secretary	Dame Eugenia Charles (Dominica)	Maureen A. Kindel	Leon J. Weil	James M. Cannon
David R. Jones Vice Chairman	Joseph Napolitan Treasurer	Judy G. Fernald	Jean-Pierre Kingsley (Canada)	Randal C. Teague Counsel	Richard M. Scammon
		Victor Kamber	Peter McPherson	Richard W. Soudriette President	

Page 2

5. Observation and a Campaign Code of Conduct (Article III, Section 1).
6. Certification of Results (Article III, Section 1).
7. Adjudicating Election Grievances (Article III, Sections 2c and 2d).
8. Citizenship (Article IV, Section 1).

Recommendations on the demands which the Dayton Agreement place on the electoral system will be examined in the context of existing laws. Currently, there are six applicable legal documents in the Group's possession. These are the following:

1. Annex 4 Constitution
2. Law and the Election of Members and Representatives to Assemblies of the Socio-Political Communities.
3. Law on the Voter Register.
4. Decree on the Citizenship of the Republic of Bosnia and Herzegovina.
5. Law on Public Information.
6. Decree on the Elections in City-Municipality of Mostar.

Additional source material is in translation or has been requested from the Republika Srpska.

Each member of the Group is being assigned one of the eight topics. Draft papers outlining legal issues and options will be drawn up by the members. It is then proposed that the ECWG meet with the PEC by the second week in February in order to discuss their assignments and derive final direction for the purpose of drafting regulations.

A report with these recommendations will be provided to the PEC.

Additionally, members of the ECWG could remain in Sarajevo and work with the PEC on the actual drafting of the regulation language.

In developing a team for this project, IFES and ODIHR have sought to build upon the work of the Electoral Assessment Team and the discussions in Stockholm. As a result, the team being put together is a composite of Assessment Team members, Stockholm contacts, and others already involved in the legal issues associated with these recent Bosnia and Herzegovina initiatives.

Page 3

A final list of multinational Group members and their assignments will be sent to you under a separate cover.

Please feel free to contact me with any questions.

Jeff Fischer
Executive Vice President



MEMORANDUM

TO: Ambassador Robert Frowick
Head of Mission
OSCE

FROM: Jeff Fischer
Executive Vice President
IFES

SUBJECT: Electoral Code Working Group

DATE: January 31, 1996

Let me provide this update on the progress of the Electoral Code Working Group.

I. Working Group Members

Hans Birchler (Switzerland) - Legal Counsel to the European Union Administration in Mostar (confirmation pending).

Reiner Morell - (Germany) attorney and councillor to the Foreign Secretary.

Jorgen Elklit - (Denmark) professor of political science at Aarhus Universitet.

Linda Edgeworth - (United States) former Director of Elections for Alaska; international election law consultant.

Carol Batchelor - (Canada) Legal Consultant to UNHCR.

Stephen Nix - (United States) election law attorney; election law counsel to the Supreme Rada of Ukraine (prepared paper only).

BOARD OF DIRECTORS		Barbara Boggs	Peter G. Kelly	William R. Sweeney, Jr.	DIRECTORS EMERITI
Charles T. Manatt Chairman	Patricia Hutar Secretary	Dame Eugenia Charles (Dominica)	Maureen A. Kindel	Leon J. Weil	James M. Cannon
David R. Jones Vice Chairman	Joseph Napolitan Treasurer	Judy G. Fernald	Jean-Pierre Kingsley (Canada)	Randal C. Teague Counsel	Richard M. Scammon
		Victor Kamber	Peter McPherson	Richard W. Soudriette President	

Page Two
ECWG

II. Topical Assignments

Hans Birchler has recently conducted the exercise of comparing the provisions of the Dayton Accords to an existing election law in Mostar. Mr. Birchler and his committee developed a Decree on the Elections in City-Municipality of Mostar. If he can attend, Mr. Birchler will be asked to discuss his methodology in pursuing this exercise, problems encountered, and other observations. He has also been requested to discuss the legal aspects of certification of conditions for the election.

Reiner Morell was a member of the Electoral Assessment Team and authored the sections on citizenship in the Team's final report. Mr. Morell's two presentations will include a discussion of the OSCE legal authority issues; and then an expansion upon his section on the citizenship question.

Jorgen Elklit was also a member of the Electoral Assessment Team, writing the sections on systems of electoral representation and political parties. Mr. Elklit will discuss these sections of the electoral code. The mechanics of the voting process will be covered in this session.

Stephen Nix's paper on voter registration will be presented by me. With input from Ron Gould and others on the Assessment Team, I authored the section of the final report on Voter Registration.

Linda Edgeworth has worked on election law projects in Macedonia, Armenia, Georgia, Central Asia and elsewhere. Her topical assignments are election observation, codes of conduct, certification of results, and adjudication of grievances. I also believe that media considerations can also be addressed during this session.

Carol Batchelor is a legal consultant to UNHCR who has worked on citizenship questions and has studied the citizenship questions of Bosnia and Herzegovina.

Consideration has been given to inviting one or two Bosnian electoral law experts to sit in, ex officio, on the discussion and provide their input. However, I wanted to consult with you about the advisability of such an invitation before taking any action on it.

The structure of the topics was selected to follow the articles of the Dayton Accords and then demonstrate the Accords' impact on the local election laws so that the final product of the PEC would resemble the existing laws, but, with notable changes of language in areas such as representation, registration, and political parties.

Page Three
ECWG

III. Dates and Times

Most of the Group will be in Sarajevo on Thursday, February 8 and Friday, Friday 9. A member or two could remain longer if the Provisional Election Commission (PEC) requires someone to assist with the drafting of language for the code. It is proposed that the entire group be present during the topical discussions. This format will allow for a more thorough technical discussion of the issues.

Specific order of presentation will be governed by travel schedules. The time required for discussions can be expanded or contracted at the PEC's pleasure. Some venue with the capacity of holding seven PEC, five electoral advisors, and several other support staff or participants will need to be reserved. The Group is prepared to work all day Thursday and Friday although some individual schedules vary slightly. Perhaps a location such as the first floor of the Hotel Bosnia would be suitable with a large conference table set-up.

Although there should be no secrecy surrounding this workshop, it is also not a public hearing or media event. A deliberative atmosphere must be permitted to prevail and the location and access must be governed accordingly.

Each PEC member will be furnished with a binder which has a collection of election laws and legal language.

CC: Ambassador Audrey Glover
Robert Buergenthal
ODIHR/OSCE

Carol Batchelor
Hans Birchler
Linda Edgeworth
Jorgen Elklit
Reiner Morell
ECWG

PHASE TWO

Voter Education Plan for Pre-Election Activities

Henry Valentino
Electoral Code Working Group (ECWG)
USA

March, 1996

International Foundation for Election Systems
1101 Fifteenth Street, NW
Washington, DC 20005

March 11, 1996

The Honorable Robert H. Frowick
Ambassador
OSCE Mission to Bosnia and Herzegovina
Sarajevo, BiH

Dear Ambassador Frowick:

I am pleased to forward the attached *Voter Education Plan for Pre-Election Activities*. The plan covers the first two phases for information programs concerning the preparations for the election. Phase one is immediate. The second phase envisions implementation approximately 14 days before release of the Provisional Voters' List and the beginning of registration. The Plan focuses on information support of the Dayton Agreement, the election law and Rules and Regulations adopted by the Provisional Elections Commission.

Included as part of the proposed plan are several recommendations which are related to the Provisional Elections Commission and the electoral process. They are offered in the spirit of suggestions or ideas to help improve the credibility and visibility of the Commission.

I thank you for the opportunity to participate in this very important mission. I also appreciate the courtesies extended and the cooperation received from your dedicated and knowledgeable staff. Their excellent assistance and support made it possible for me to complete this project in the shortest possible time.

Please do not hesitate to contact me if I can be of any further assistance.

Sincerely,



Henry Valentino
IFES Consultant

Attachment

Voter Education Plan for Pre-Election Activities

Submitted to: OSCE Mission to BiH
By : International Foundation for Election Systems

Voter Education Plan for Pre-Election Activities

Executive Summary

PEC

There is a basic need to establish the image and credibility of the Provisional Elections Commission (PEC) with the citizens, political and non-government organizations and the media. Immediate action should be taken to project the positive aspects of the Dayton Agreement including democratization and the electoral process.

Situation Analysis

The aftermath of the war and fragile peace have left most citizens confused and uninformed about their status and rights and responsibilities. Survival and availability of the basic necessities are foremost considerations in their daily activities.

Dayton Agreement

The Dayton Agreement, with its guidelines and time constraints, the current political environment and the extremely complex task of giving all citizens, including refugees and displaced persons, the opportunity to vote do not give the OSCE Mission to BiH much flexibility in planning and supporting the electoral process.

Marketing and Media Strategy

Citizens, their governments, political parties, non-government organizations (NGOs) and the media must understand they have an integral role in the electoral process which will have a direct effect on their future. A comprehensive and extensive information program must be implemented with each phase of the process in order to communicate effectively. The attached plan addresses the first phase—explaining the electoral rules, regulations and the process. It covers the immediate situation up to the beginning of registration. It proposes two waves of information materials—one immediate and the second 14 days before registration begins.

Measurement or Evaluation

Formal starting benchmark should be made using existing information from ECMIM supplemented as necessary. Monthly progress should be assessed using specific surveys to make adjustments to the information plan. Results could also be useful to other areas of the OSCE Mission.

Recommendations and Actions Summary

- Establish a logo and letterhead for the PEC. Issue all election information as PEC releases.
- Increase visibility and exposure of local members of PEC. Within parameters mentioned, consider opening PEC meetings to all political parties, NGOs, the public and media as observers. Press conferences monthly, then weekly.
- Issue regulations to ensure "pro bono" cooperation by media in-country for time and space.
- First Wave (All materials must be "politically correct" --language and signage.)
 - **Television**--five, one-minute spots targeted for displaced persons, conventional persons and refugees. Three to five minute series of interviews with local PEC reps.
 - **Radio**--five, one-minute spots, same targets as TV. Audio of interview series.
 - **Newspapers & Magazines**--text of rules and regulations, three informational display ads, interviews with journalists, same targets as TV
 - **Poster & Flyer**--one of each. Flyer is tri-fold to fit in pocket and has use throughout election process.
 - **Hot Lines**--Set up in all areas, also available in countries with refugees.
 - **Public Meetings**--very useful in small communities, but applicable to all.
 - **Private Sector**--businesses include information in internal newsletters, time sheets, flyers and in advertisements normally placed by businesses.
 - **Press Releases**--issue to coincide with applicable news and events.
 - **Information Kits**--include complete text of Dayton, rules and regulations, press releases, flyer and other printed materials released by PEC. Send to Parties, NGOs, media, and local governments.
 - **Internet Web site**--put all information on the internet, see plan for details.
- Second Wave (Materials scheduled for release 14 days before registration.)
 - **Television**--seven, one-minute spots--all target audiences, interview series continue.
 - **Radio**--five, one-minute spots, same targets as TV, interview series continue.
 - **Newspapers & Magazines**--three display motivational ads, interviews with journalists.
 - **Poster**--Two motivational posters, one for Federation of BiH, one for Rep. of Srpska.
 - **Hot Lines**--continue operation.
 - **Public Meetings**--continue as needed.
 - **Private Sector**--continue as in first wave.
 - **Press Releases**--continue as news and events occur.
 - **Information Kits**--continue availability and distribution as requested
 - **Internet Web Site**--continue with current materials, use for registration of refugees.
 - **Vehicles with Loudspeakers**--use to remind of deadlines or for special events.

Estimated budget for production of materials recommended in this proposal is \$62,450.

Certain portions of the Plan may be applicable to an overall voter information or civic education program. A comprehensive voter information plan should also be developed for registration, change of registration and election so that the entire six to nine month election cycle is covered.

Table of Contents

Voter Education Plan for Pre-election Activities

GOALS AND OBJECTIVES.....	1
SITUATION ANALYSIS.....	2
MEASUREMENT OR EVALUATION TECHNIQUES.....	2
TARGET AUDIENCES.....	3
MARKETING AND MEDIA STRATEGY.....	3
GENERAL.....	3
DISPLACED PERSONS.....	5
Television.....	5
Radio.....	6
Newspapers and Magazines.....	6
Posters and Flyers.....	7
Private Sector.....	7
Press Releases.....	7
Hot Lines.....	7
Public Meetings.....	8
Mobile Sound Vehicles.....	8
IFOR Support.....	8
CONVENTIONAL PERSONS.....	8
Television.....	9
Radio.....	9
Newspapers and Magazines.....	9
Posters and Flyers.....	10
Private Sector.....	10
Press Releases.....	10
Hot Lines.....	10
Public Meetings.....	10
Mobile Sound Vehicles.....	10
IFOR Support.....	10
REFUGEES.....	10
Television.....	10
Radio.....	11
Newspapers and Magazines.....	11
Posters and Flyers.....	11
Press Releases.....	11
Hot Lines.....	11
Internet.....	12
ORGANIZATIONS, POLITICAL PARTIES, NGOs AND MEDIA.....	12
Background and Media Kits.....	13
Staff Liaison.....	13
CREATIVE STRATEGY.....	13
GENERAL.....	13
FIRST WAVE.....	14
SECOND WAVE.....	14
THIRD WAVE.....	14
FOURTH WAVE.....	15
FIFTH WAVE.....	15
SIXTH WAVE.....	15
BUDGET.....	15

Voter Education Plan for Pre-election Activities

This plan focuses on explaining the electoral process to eligible citizens and selected groups and organizations prior to the period of registration. Certain portions of the plan may be applicable to and complement an overall voter information and/or civic education program.

Goals and Objectives

- 1. Inform citizens of their right to vote under the Dayton Agreement.**
- 2. Inform citizens of the electoral process.**
 - Role of the Provisional Elections Commission (PEC)**
 - Law and Rules and Regulations for Elections**
 - Registration**
 - Change of Registration**
 - Voting**
- 3. Establish and enhance credibility of Provisional Elections Committee (PEC).**
- 4. Develop interest in upcoming elections.**
 - Local Elections**
 - Higher Level Elections**
- 5. Develop an understanding of the responsibilities of citizens in a democracy.**
- 6. Instill a sense of pride about voting participation.**
- 7. Enhance democratization.**
- 8. Reinforce support of the Dayton Peace Agreement.**

Situation Analysis

- The aftermath of the war and fragile peace have left most citizens confused and uninformed about their status and rights and responsibilities. In many instances survival and availability of basic necessities are foremost considerations in their daily activities.
- Citizens, most political parties and local organizations lack official information about the Dayton Agreement, the PEC and the electoral process.
- Citizens shown on the 1991 census over the age of 18 and domiciled in one of the jurisdictions holding elections are automatically eligible to vote.
- Persons attaining the age of 18 after 1991 must register in order to vote.
- Estimate 3.2 million eligible voters of which 700,000 are refugees located in over 15 foreign countries and 1.5 million are displaced persons. Approximately 2.2 million (69%) are eligible to vote absentee unless they change their registration.
- These unusual circumstances and the short time in which to prepare and conduct the elections magnify the need for an extensive and intensive voter and civic education effort for successful free, fair and orderly elections.
- During the elections of 1990, approximately 3.3 million citizens were registered.
- The large number of registered political parties, in excess of 70, would normally provide access to a significant percentage of eligible voters, however the vast majority of the parties are either inexperienced, lack organizational structure or do not have national support.
- Most mass media outlets are tied to political ideologies that are responsive or controlled on a regional or local basis.
- Local and national non-governmental organizations (NGOs) are new and being developed.

Measurement or Evaluation Techniques

- Formal starting benchmark evaluation should be made using existing information from ECMM supplemented with a special survey.

- Monthly progress evaluations should be made to determine changes or adjustments to the information plan.
- Examine participation in the registration process to determine changes or adjustments to the information plan.
- Examine national voter turnout subsequent to the election to determine effectiveness.
- Qualitative research to determine potential for institutionalizing the process.

Target Audiences

Primary

- All citizens who are legally eligible to vote.
- Local and nationally based NGOs.
- Local and nationally based political parties.

Secondary

- Refugees and displaced persons who may not be aware of the electoral process as it applies to them.
- Young adults, particularly those who have turned 18 since 1991 and those who are not registered.
- Women, particularly those in rural areas or who are not aware of the electoral process.
- Media and journalist organizations covering the elections.
- IFOR media and other international support organizations based in the areas where elections are being held.

Marketing and Media Strategy

General

- There is a basic need to establish the credibility and image of the PEC with the citizens, political and non-government organizations and the media. Immediate action should be taken to project the positive aspects of the Dayton Agreement including democratization and the electoral process. Consideration should be given to opening PEC meetings to the public and specifically to political parties, NGOs and the media. Provisions could be made for any member of the PEC to request an executive session, subject to the Chairman's approval. Attendance could be limited by the number of

available seats in the meeting area which could be provided on a first arrival basis or by advance reservation. Security is a factor that could be accommodated.

- The basic underlying marketing and media strategy is to utilize all available resources to achieve maximum impact and results in the most cost effective manner and to accomplish the goals and objectives.
- Policies should be promulgated to ensure cooperation by the government and private sector media in-country on a "pro bono" basis. These policies should be established by OSCE because the information broadcast is for the benefit of local citizens and the media have a responsibility of service to the citizens. Payment for broadcast time and print media space should only be considered for reaching refugees in foreign countries, and then only if the media will not use the materials as a public service.
- *Care must be taken to ensure materials and announcements are completely non-partisan and supportive of the Dayton Agreement* with the test being that even the appearance of being partisan or of questionable support will be sufficient reason to change the particular item.
- *Care must also be taken to ensure all materials are "politically correct"* in the appropriate language and signage for the particular area. General materials, as distinguished from targeted materials, should be released in the common languages spoken in the BiH. The content of the targeted messages will be the same in the Federation of BiH and the Republic of Srpska.
- The materials produced will convey a particular message but variations will be targeted for specific audiences. Materials will be designed to reinforce and build on the information previously released yet comprehensive enough to stand alone.
- A basic theme and format will be used. A PEC logo should be developed and included in all materials.
- The general marketing strategy will be customized for displaced persons, persons eligible to vote in their domicile (Conventional Persons), refugees and organizations. The campaign creative materials and the launch dates for each action or medium may vary.
- There is no dominant mass medium for reaching the target audiences, so combinations of media and activities will be used to reinforce the messages.

- Because of the variables in the local environments where the messages are delivered, foreign countries and different political jurisdictions, the strategy must be flexible.

Displaced Persons

- These persons make up the largest group of potential voters. They are located within the country and, for the most part, may be reached with conventional media. The electoral law, rules and regulations will have the highest impact on this category of potential voters because they will have to make decisions concerning registration and where they intend to vote. It is essential that some information be communicated to them as soon as possible. Therefore, there are two waves of information materials with specific launch dates directed to this audience. One is immediate and the other should precede the release of the Provisional List of Voters and commencement of registration by at least 10 to 14 days.

Television

- Television has high penetration and has the potential for delivering the highest impact to a large percentage of these citizens.
- Six public service announcements of approximately one minute should be produced, two targeted at displaced persons in the Federation of BiH, two targeted at displaced persons in the Republic of Srpska, and two general messages, one for the Federation of BiH and one for the Republic of Srpska. The general message should be in the first wave.
- The announcements should be supported by three in-depth programs, five to fifteen minutes in length, focusing on the particulars of the electoral process as they apply to this category of voter but extensive enough to cover all aspects of the election. Each program would be narrated by a different local representative member of the PEC and tailored for broadcast in his particular political jurisdiction. It would emphasize the teamwork of the PEC as well as the specific subject area to be covered. The programs should be imaginative and creative. The video of some portions of the programs would be the same, such as segments showing the PEC at work and the preparations being made to accommodate their particular voting situation. These programs should be scheduled in the first and second wave and should be designed to lead in to the voter information plan for the period of registration.

Radio

- The radio medium complements television and combined with it will cover almost 100% of the eligible voters in this category. It offers an opportunity, through a diversity of program formats to reach all segments of the target audience.
- Four special one minute public service announcements should be produced for radio designed to support the initial efforts of television.
- A series of interview programs of three to five minutes should be produced based upon interviews with the three local governments' members of the PEC. An in-depth interview will be conducted with each member and the interview edited into a series of programs which can be used throughout the election cycle. The programs would be broadcast in the appropriate political jurisdictions and would focus on the same theme of support for the electoral process. Those television shows produced which lend themselves to the radio medium should also be broadcast as special features.
- Launch dates for radio materials will coincide with TV.

Newspapers and Magazines

- Two display ads should be prepared for newspapers and magazines, one designed for release in the Federation of BiH and the other for release in the Republic of Srpska. Their launch dates should be in the second wave, approximately 14 days before registration, and should be used in weekly and daily newspapers. The release should also be made to magazines that have circulation in the geographic areas where displaced persons are known to reside. This will reinforce the broadcast messages and provide continuity for the campaign.
- A complete text of the Law, Rules and Regulations should be printed as a legal notice at least once in the newspapers with the highest circulation for each geographical area.

Since this is considered a formal legal notice, publication should be at no charge. This should be scheduled as soon as the official policies are adopted by the PEC.

- Interviews with journalists should be arranged on a monthly basis up to two weeks before the registration period, then at least weekly through the registration and change of registration periods. If one-on-one interviews cannot be arranged, then the PEC should schedule regular press briefings or conferences. These journalists can enhance program impact through timely features. In many instances, the news environment adds to the credibility of the message.

Posters and Flyers

- Two posters, one informational and one motivational, in two versions, one for each major political jurisdiction should be produced. The motivational poster should use the same theme as the newspaper display ads. The informational poster should be launched in the first wave at the same time as the legal notice is published. The motivational poster should be launched in the second wave, 14 days before the period of registration.
- A single page, tri-fold, flyer should be produced with liberal use of graphics, cartoon style, to convey an informational message. The flyer should answer the most "frequently asked questions" about the electoral process. Recommend use of university students studying art and design to produce this flyer. It should be modern and current in design in order to communicate maximum information on both sides of a "legal size," approximately 8" X 14" paper. This flyer should be released in the first wave.

Private Sector

- Businesses known to employ displaced persons should encourage, in a non-partisan manner, their employees to become familiar with the electoral process as it applies to them. This could be emphasized during employee meetings and placed on materials such as newsletters, flyers, time sheets, etc., distributed internally by the business. A letter should be sent from the Chairman, PEC to all businesses in this category. Letter should be sent to coincide with the first wave and publication of the legal notice.
- Businesses could also sponsor public service type messages in the media which would also support the campaign. For example, ads placed by businesses could have a tag line of support for the election process, perhaps tie in with the theme developed for the PEC election campaign.

Press Releases

- Press releases and news coverage are effective in communicating timely information which is disseminated by the media. A press release should also be issued to coincide with the launch dates of the various materials.

Hot Lines

- This is an effective method to communicate information if the technology is available. Special telephone numbers could be set up in each region where large numbers of displaced persons are known to be located. Ideally, a national toll free number,

similar to 800 numbers in the US, could be set up to handle questions from displaced persons. If that is not possible, then do it on a regional or local basis. A small staff of two or three people, usually university students, should be able to handle the calls. This can be used for other aspects of the election as well and has applications for use in foreign countries. This service should be available throughout the election cycle.

Public Meetings

- Where large concentrations of displaced persons are known to exist, a series of public meetings should be held to inform them and answer questions about the electoral process. Printed materials could be distributed at these meetings. Depending upon the number of displaced persons in the area, one to three meetings should be held. These should be scheduled for the first wave and may be scheduled during subsequent parts of the election cycle.

Mobile Sound Vehicles

- Use of this medium is generally limited to short announcements. They should be used in advance of a particular event to encourage participation in the event. They are effective to publicize events such as public meetings or last day of registration, or the election.

IFOR Support

- Some assistance should be available to distribute flyers or leaflets to displaced persons in remote areas. Air drop of materials can be very effective. It may be possible to obtain some media production support.

Conventional Persons

- These persons make up the second largest group of potential voters. They are located within the country and, for the most part, may be reached with conventional media. The electoral law, rules and regulations also have to be explained to this category of voter even though they are not required to take any action unless their name is not on the Provisional Voters' List or their status has changed since the 1991 census. The basic structure of the electoral process should be communicated to them as soon as possible. The smaller number of citizens who will have to register because they attained the age of 18 after the 1991 census or have changed their names or status since 1991 will need additional information just before the period of registration. Therefore, there are two waves for information materials directed to this audience. The launch dates are the same as for displaced persons. One is immediate and the other

should precede the release of the Provisional List of Voters and commencement of registration by at least 10 to 14 days.

Television

- Television has high penetration and has the potential for delivering the highest impact to a large percentage of these citizens.
- Four public service announcements of approximately one minute should be produced, two targeted at conventional persons in the Federation of BiH, two targeted at conventional persons in the Republic of Srpska. Two announcements, one for each political jurisdiction, should be launched immediately in the first wave after the PEC approves the Laws, Rules and Regulations of the electoral process. The other two announcements, one for each political jurisdiction, should be launched during the second wave, five to seven days before the beginning of registration.
- The announcements will be supported by the same three in-depth programs, mentioned in the marketing strategy for displaced persons.

Radio

- The radio medium complements television and combined with it will cover almost 100% of the eligible voters in this category. It offers an opportunity, through a diversity of program formats to reach all segments of the target audience.
- Four special one minute public service announcements should be produced for radio and based on the same material and targets as the television spots.
- The series of interview programs planned in the strategy for displaced persons should also be used for this target audience.
- Launch dates for radio materials will coincide with TV.

Newspapers and Magazines

- Two display ads should be prepared for newspapers and magazines, one designed for release in the Federation of BiH and the other for release in the Republic of Srpska. Their launch dates for daily newspapers should be in the first wave, the day before and the day of the publication of the legal notice. The ads should also be made to magazines, and because of the longer lead times, should be produced immediately.
- The interviews with journalists planned in the marketing strategy for displaced persons will also support this target audience.

Posters and Flyers

- The posters and flyers produced for displaced persons can also be used here with the same schedule.

Private Sector

- Same as used to target displaced persons.

Press Releases

- Same as used to target displaced persons.

Hot Lines

- Same as used to target displaced persons.

Public Meetings

- In smaller communities, any public meetings could be used to target this audience as well.

Mobile Sound Vehicles

- Same as used to target displaced persons.

IFOR Support

- IFOR print media and possible printing support for materials.

Refugees

- This group of citizens will be the most difficult to reach. Since they are located in more than 15 foreign countries, international and host country media should be used in addition to local and international organizations working with these citizens. It may be necessary to discuss specific actions with host countries.

Television

- Some programming is currently targeted to this audience within some host countries and by international satellite feeds.
- Two spot announcements of approximately one minute should be produced and integrated in existing programming. It may be necessary to produce these announcements in different languages. One announcement should coincide with the first wave of information released and the other with the second wave. Content of the announcements may vary depending upon the host country, therefore plans should be made for a maximum of 30 spot announcements, 15 for each wave. The announcements should also be broadcast separately on international media, such as CNN and BBC World, and on the media of the host country. An analysis must be made on a country by country basis to determine the most effective way to broadcast the spots.

- The announcements will be supported by integrating in programming already targeted for refugees the three in-depth programs for displaced persons, however they will be tailored for refugees.

Radio

- Radio will probably be the least effective of the mass media to reach this audience except for those stations that currently offer special programming directed at refugees. Again, an individual country survey will have to be conducted before a final recommendation can be made in this area. Those stations that offer specialized programming should be utilized to carry the spot announcements.
- Two special one minute public service announcements should be produced. Their launch dates should coincide with television.

Newspapers and Magazines

- Two informative ads should be prepared for newspapers and magazines directed to refugees and those likely to be read by refugees. Their launch dates should coincide with the waves, one immediately and the other approximately 14 days before registration.

Posters and Flyers

- The single page, tri-fold, flyer produced for other audiences should be used here in response to questions. It should also be given to international organizations dealing with refugees so they may distribute it through known contacts.

Press Releases

- Press releases and news coverage should be used to reach this audience. Therefore arrangements should be made with host country media to utilize this information.

Hot Lines

- This could be an effective method to communicate information to refugees located in countries with the technology for toll free telephone service. Special telephone numbers could be set up to be handled by a contractor or international organization working with refugees in the host country. For those foreign countries where there are only a small number of refugees, the refugees could be advised to call a special number collect which could be received at any location desired. Collect calls should be screened before acceptance. When the refugee calls, information should be obtained to send forms and or the flyer

by mail. This should be implemented within the first wave of the information plan.

Internet

- An official Web site should be established for the PEC on the internet. There are currently several Web sites on the internet with information about BiH which are unofficial and maintained by individuals or organizations with interests in BiH. The official site can be established and maintained by any service provider in the world. It does not have to be located in BiH. The site should provide complete text of the Dayton Agreement and the Law, Rules and Regulations of the PEC. It should provide current information about the election process and all press releases and other news releases should be posted. A special domain name should be registered for the PEC to support the official status of the site. Copies of all forms and applications should be available on the internet. A list of all the candidates including biographical information can be posted. Audio and video clips can also be available such as a brief audio or video welcome message by each of the three local members of the PEC. The election returns can also be posted. The PEC should have an email address where refugees can submit questions.
- It is also possible to post the list of registered voters so refugees and others could check their names on the list. While there may be a limited number of refugees who would have direct access to the internet, it could be used by a contractor or international agency to provide the assistance directly to the refugees.
- One of the most important aspects of the internet site would be the favorable international publicity and attention that would be focused on the election. With more than 30,000,000 internet users from almost every country, assistance could be requested from them to help contact refugees located in their country. It is very similar to ham operators providing assistance during emergencies. This publicity will help get the message to refugees with very little cost.
- The internet site should be established immediately and continued through the official posting of the final results.

Organizations, Political Parties, NGOs and Media

- These organizations and activities form the core of special interest groups and sources to communicate information to the public. It is essential that special arrangements be made to ensure they are kept informed and educated as to the official

process. All information, news and media materials should be made available to them as soon as it is released, and when possible, in advance of official release dates. Have an open door approach and access for all these organizations and activities.

Background and Media Kits

- Kits should be prepared which contain complete copies of the Dayton Agreement, PEC Rules and Regulations and all background information pertinent to the election process. These should be given to all existing organizations in this category and should be provided to new official political parties or organizations when they are accredited or certified.

Staff Liaison

- Designate a staff person to be the official liaison with each group of organizations or activity. A person may have responsibility for more than one group.

Creative Strategy

General

- Proper execution of the information plan should result in citizens being informed of their rights and responsibilities under the Dayton Agreement, how they can participate in the electoral process and enhance democratization.
- Voting empowers citizens to choose their representatives and help determine their future. Free, fair and orderly elections are the basis of democracy and can help accelerate the healing process by stimulating cooperation, discussion and tolerance. The future of countries, governments, societies and citizens is at stake, therefore an overall theme for the information program should stress the process of building a better future together. Slogans or tags for media materials should use the same theme and the PEC logo. Depending upon translation, the suggested theme should be, "Together we build a better future," or "We build a better future together."
- The overall information program or campaign should be divided into media waves to cover each of the steps in the electoral process.

First Wave

- The materials produced should cover the basic information of the Dayton Agreement and the law, rules and regulations pertaining to the electoral process. The materials should target all the of the audiences listed herein. Most of the materials prepared for this wave are designed to be informational, with a lead in to the motivational portions of the campaign which begin in the second wave.

Launch Date

- The launch date is immediate and related to policy and procedural decisions of the PEC. It is designed to continue until 14 days before Registration begins or the release of the official Provisional Voters' List.

Second Wave

- The second wave is designed to cover the period of registration beginning with the release of the Provisional Voters' List. It will target those who are not able to vote in the place where they resided in 1991, and those who have never registered before or who have reached voting age since 1991, and those who have other changes to their registrations. It will also emphasize the importance of registering. If you are not on the Final Voters' List, you can't vote. (Note: This plan does not cover the registration or election portions of the campaign. They are shown here for planning only.)

Launch Date

- The launch date for the second wave is 14 days before registration begins. It will run through the registration period.

Third Wave

- This wave will cover the first two weeks of the period of registration and changes to registration. If the period of registration and changes to registration is more than two weeks, a fourth wave of information materials should be introduced.

Launch Date

- The launch date is five days before the first day of registration or changes to registration and will continue for two weeks into the term of registration, 30 days before the election and ends election day.

Fourth Wave

- This wave will cover the last part of the registration term if it is in excess of two weeks and will continue through the end of the period to change registration.

Launch Date

- The launch date is 14 days after the beginning of registration and will continue through the remainder of the term for registration.

Fifth Wave

- The wave will cover the period 35 days to 7 days before the election.

Launch Date

- The launch date is 35 days before the election.

Sixth Wave

- This wave covers the week before the election.

Launch Date

- The launch date is 7 days before the election.

Budget

The budget for the production of the materials is Attachment A.

Creative Announcements

Draft written copies of the materials are at Attachment B.

Budget for Voter Education Plan for Pre-Election Activities

First Wave of Information Materials--Release Immediate								
Media	Displaced Persons	Conventional Persons	Refugees	Organizations	Cost per Unit	Number of Units	TOTAL	
Television Spots	2	2	7.5	*	\$1,000	11.5	\$11,500	
Television Series	*	3	*	*	\$2,000	3	\$6,000	
Radio Spots	2	2	7.5	*	\$300	11.5	\$3,450	
Radio Interviews	*	3	*	*	\$100	3	\$300	
Newspapers	*	2	1		\$500	3	\$1,500	
Posters	*	2	Printing not included		\$750	2	\$1,500	
Flyers	*	1	Printing not included		\$250	1	\$250	
Hot Lines	Should be Provided at no Cost, Salaries not included						0	\$0
Private Sector	1	1	1	*	\$0	3	\$0	
Press Releases	Cost a part of OSCE Operational Expenses						0	\$0
Public Meetings	*	*	*	*		0	\$0	
Information Kits	*	*	*	1,000	\$5	1000	\$5,000	
Internet	Includes Set up Costs		1		\$10,000	1	\$10,000	
Sub Total							\$39,500	
Second Wave of Information Materials--Release 14 Days Before Reg.								
Television Spots	4	2	7.5	*	\$1,000	13.5	\$13,500	
Television Series	*	3	Costs in First Wave		\$0	3	\$0	
Radio Spots	2	2	7.5	*	\$300	11.5	\$3,450	
Radio Interviews	*	3	Costs in First Wave		\$0	3	\$0	
Newspapers	2	*	1	*	\$500	3	\$1,500	
Posters	2	Printing not Included			\$750	2	\$1,500	
Flyers	Costs in First Wave, Printing not included						0	\$0
Hot Lines	Should be Provided at no Cost, Salaries not included						0	\$0
Private Sector	1	1	1	*	\$0	3	\$0	
Press Releases	Cost a part of OSCE Operational Expenses						0	\$0
Public Meetings	*	*	*	*		0	\$0	
Information Kits	Costs in First Wave			*		0	\$0	
Internet	*	*	1	*	\$3,000	1	\$3,000	
Sub Total							\$22,950	
TOTAL							\$62,450	

* Also benefits from materials produced for target audience

Costs for broadcast materials to Refugees should cost 1/2 unit price because of similarity of multiple messages to 15 countries.

The above are production costs only. Printing and reproduction costs are not included

Dayton Agreement # 1 Displaced Persons

(FAMILY)

(Note: Names will be changed for Bosniak and Serb Versions to reflect common names.)

VIDEO

AUDIO

(Family Apartment Scene--A couple, husband and wife in mid to early thirties go to visit related husband and wife for afternoon or evening coffee. Typical apartment complex where displaced person may be living.)
MEDIUM SHOT Couple outside apartment knocking at door.

CUT TO MS couple inside apartment opening door and greeting couple. After quick exchange of greetings the two men go to a sofa, the two women go into kitchen.

CUT TO MS of both men on sofa

CUT to CLOSE UP of Host Male

CUT to CLOSE UP of Visiting Male

CUT to MS of both Men

CUT to CU of Visiting Male

CUT TO MS of both Men.

Sound Effects: (Knock on door)

Sound Effects: (Door opening and closing.)

Host Male: Welcome (or traditional greeting of relatives) We've been waiting for you. (Shakes visiting male's hand.)

Visiting Female: Hello brother (traditional greeting of brother and sister meeting). (Hugs brother.)

Visiting Male: (On Sofa) On the way over, Susan and I were talking about the Dayton Peace Agreement.

Host Male: What about it? It's just another piece of paper. They promise everything but I still have the same problems. No work, no home and a family to feed.

Visiting Male: No it's really different this time. We've waited years for this. It's a very important step for us. All sides promise to work together and we have the international community to help make it happen.

Host Male: So what, I still have the same problems. What can they do for me?

Visiting Male: But we've never had this opportunity before. Change takes time but we must act now to make a better future for us and our families. The Dayton Agreement promises free and fair elections. We'll be able to select our leaders in municipalities, cantons and at the national level. I want to be a part of that future. I can't change the past, but I can help make a better future. I'm telling you, it's too important to miss. Look in to it.

Host Male: Maybe I will. (He calls to wife.) Sarah! Sarah!

CUT TO MS of both women in Kitchen with coffee cups on tray getting ready to enter room where men are on the sofa.

Host Wife: (Whispering to Visiting female)
I'm glad John talked to him. I've been telling him about this Dayton Agreement, but he wouldn't listen to me.

2nd Woman: (On Camera) They never listen to us. I read the agreement in the newspaper. It covers more than elections--human rights and arms control and more. It's our best chance for a lasting peace and better future.

DISSOLVE to GRAPHIC--"Together we can build a better future"

Anncr: (Off Camera Voice Over) Learn about the Dayton Agreement. Together we can build a better future.

DISSOLVE to GRAPHIC--Logo of PEC, then
FADE to black.

Anncr: (Off Camera Voice Over) This message was brought to you by the Provisional Elections Commission.

The Provisional Elections Commission Spot #2 (General)

(STREET SCENE)

(Note: This is a continuation of Spot # 1, FAMILY, using same actors and names)

VIDEO

AUDIO

LONG SHOT of two men walking on sidewalk toward camera. These are the same men as in FAMILY spot. Men are dressed as average blue-collar workers; one is unemployed. They are in animated conversation.

ZOOM IN to MS as men approach street corner and stop. Pick up audio at this point.

CUT TO CU of Host Male as he speaks.

CUT TO CU of John as he speaks.

CUT TO MS of both men.

CUT TO CU of John as he speaks.

CUT TO MS of both men.

CUT TO CU of Host Male.

CUT TO MS of both men, PAN and follow both men as they continue walking.
SUPER GRAPHIC--"Together we can build a better future" as John says this line.
DISSOLVE to PEC Logo for Annr Voice Over. FADE to black.

Host Male: (On Camera) You know John, I've been thinking about what you said about this Dayton Agreement and the elections. How are things different this time?

John: (On Camera) Well, first of all there is a Provisional Elections Commission. It has a representative from the Federation of BiH, and Republic of Srpska and BiH. It is chaired by an international organization. All are working together to make sure we have free and fair elections.

Host Male: (On Camera) (Sarcastically)How can they work together after all we have been through?

John: That's exactly the point, Joe. In the Dayton Agreement, everybody agreed to work together for peace and for our future. You have to start somewhere, don't you agree?

Host Male: (On Camera) Yes, but...(he is interrupted by John.)

John: (On Camera) Well this Provisional Elections Commission is a first step in the election process. They are working together so we can have free and fair elections soon.

Host Male: Well, I'll believe it when I see it.

John: Joe, it's happening now, believe it. Together we can build a better future.

Annrc: (Off Camera Voice Over) This message brought to you by the Provisional Elections Commission.

Election Rules and Regulations Spot #3 (General) for Rep of Srpska

(CAFE)

(Note: This is a continuation of Spot #1, FAMILY, using same names and actors.)

VIDEO

AUDIO

(Cafe Scene--Two women seated at table having tea and in animated conversation.)

Music: (Soft ballad playing in background.)

Sound Effects: (Cafe scene--background noise of people talking and glasses clinking, etc. Pick up audio in middle of conversation.)

MEDIUM SHOT of both women.

1st Woman (Sarah): (On Camera) Even though we have had many difficulties, I'm very excited about the Dayton Agreement and what is happening.

CUT to CLOSE UP of 2nd Woman

2nd Woman (Jane): (On Camera) So am I... Everybody's talking about it. It's our chance for a new beginning. I'm very interested in the Elections, but I'm not sure I understand how they will work.

CUT to CLOSE UP of 1st Woman

1st Woman: (On Camera) Well, you know the Provisional Elections Commission has adopted basic rules and regulations for the elections....

CUT TO MS of both Women

2nd Woman: (On Camera) (Interrupting) Yes, they will hold local elections for the municipal assemblies and higher level elections for the National Assembly and the House of Representatives of Bosnia and Herzegovina, and the three-member Presidency of Bosnia and Herzegovina. But how do I know where to vote.

CUT to CU of 1st Woman

1st Woman: (On Camera) The Provisional Elections Commission will be publishing a Provisional Voters List. It's easy for you because you live in the same place where you were in 1991. Just check the list when it's published and if it is correct, you don't have to do anything except vote on election day.

CUT to MS of both Women

CUT to CU of 2nd Woman

2nd Woman: (On Camera) And what about you? You and John have moved since the 1991 census.

CUT to MS of both Women

1st Woman: (On Camera) We have to check the Provisional Voters List too. If we're on the List, we can vote by absentee ballot in the municipality where we were registered in 1991, or we can apply to change that and vote in a different municipality. If for some reason we are not on the List, we can apply to be added.

CUT to CU of 2nd Woman

2nd Woman: (On Camera) It sounds easy.

Cut to MS of both Women

1st Woman: (On Camera) It is. The Provisional Elections Commission is working together to help us build a better future.

2nd Woman: (On Camera) You're right, we better not miss this opportunity to work together.

SUPER GRAPHIC--"Together we can build a better future."

Anncr: (Off Camera Voice Over) Together we can build a better future.

DISSOLVE to PEC Logo
FADE to black.

Anncr: (Off Camera Voice Over) This message is brought to you by the Provisional Elections Commission.

**Election Rules and Regulations Spot #3 (General) for Federation of BiH
(CAFE)**

(Note: This is a continuation of Spot #1, FAMILY, using same names and actors.)

VIDEO

AUDIO

(Cafe Scene--Two women seated at table
having tea and in animated conversation.)

Music: (Soft ballad playing in background.)

Sound Effects: (Cafe scene--background noise
of people talking and glasses clinking, etc.
Pick up audio in middle of conversation.)

MEDIUM SHOT of both women.

1st Woman (Sarah): (On Camera) Even
though we have had many difficulties, I'm very
excited about the Dayton Agreement and what
is happening.

CUT to CLOSE UP of 2nd Woman

2nd Woman (Jane): (On Camera) So am I...
Everybody's talking about it. It's our chance
for a new beginning. I'm very interested in the
Elections, but I'm not sure I understand how
they will work.

CUT to CLOSE UP of 1st Woman

1st Woman: (On Camera) Well, you know the
Provisional Elections Commission has adopted
basic rules and regulations for the elections....

CUT TO MS of both Women

2nd Woman: (On Camera) (Interrupting) Yes,
they will hold local elections for the municipal
and cantonal assemblies and higher level
elections for the House of Representatives of
the Federation and the House of
Representatives of Bosnia and Herzegovina,
and the three-member Presidency of Bosnia
and Herzegovina. But how do I know where to
vote.

CUT to CU of 1st Woman

1st Woman: (On Camera) The Provisional
Elections Commission will be publishing a
Provisional Voters List. It's easy for you
because you live in the same place where you
were in 1991. Just check the list when it's
published and if it is correct, you don't have to
do anything except vote on election day.

CUT to MS of both Women

CUT to CU of 2nd Woman

2nd Woman: (On Camera) And what about
you? You and John have moved since the
1991 census.

CUT to MS of both Women

1st Woman: (On Camera) We have to check the Provisional Voters List too. If we're on the List, we can vote by absentee ballot in the municipality where we were registered in 1991, or we can apply to change that and vote in a different municipality. If for some reason we are not on the List, we can apply to be added.

CUT to CU of 2nd Woman

2nd Woman: (On Camera) It sounds easy.

Cut to MS of both Women

1st Woman: (On Camera) It is. The Provisional Elections Commission is working together to help us build a better future.

2nd Woman: (On Camera) You're right, we better not miss this opportunity to work together.

SUPER GRAPHIC—"Together we can build a better future."

Anncr: (Off Camera Voice Over) Together we can build a better future.

DISSOLVE to PEC Logo
FADE to black.

Anncr: (Off Camera Voice Over) This message is brought to you by the Provisional Elections Commission.

Voter Education Plan

Goals & Objectives

- **Inform Citizens of Their Right to Vote**
- **Inform Citizens of the Electoral Process**
 - Role of PEC
 - Law, Rules and Regulations
 - Registration
 - Change of Registration
 - Voting
- **Establish Credibility of PEC**
- **Develop Interest in Elections**
- **Responsibilities of Citizens in a Democracy**
- **Instill Sense of Pride About Voting**
- **Enhance Democratization**
- **Reinforce Support of Dayton Agreement**

Situation Analysis

- War and fragile peace, citizens confused
- Most lack info about Dayton, PEC & elections
- Citizens in 1991 Census can vote
- Many must register or change registration
- 3.2 M Voters--700 K Refugees, 1.5 M displaced
- 69% eligible to vote absentee
- Extremely short time to prepare for elections
- Most Political Parties Inexperienced
- Mass media tied to political ideologies
- NGOs are new and being developed

Measurement or Evaluation

- **Formal starting benchmark**
- **Monthly progress evaluations**
- **Examine participation in registration process**
- **Examine voter turnout subsequent to election**
- **Qualitative research to evaluate future**

Target Audience

- **Primary**
 - All citizens who are eligible to vote
 - Local and National NGOs
 - Local and National Political Parties
- **Secondary**
 - Refugees and displaced persons
 - Young adults, particularly those who are not registered
 - Women in rural areas
 - Media and journalist organizations
 - IFOR media and International Support Organizations

Marketing & Media Strategy General

- **Open PEC meetings, develop logo**
- **Increase visibility of local PEC members**
- **Use all resources to achieve maximum impact**
- **Ensure media support “pro bono”**
- **Ensure all materials and announcements are completely non-partisan**
- **Target materials**
- **Be flexible**
- **Primary medium in target areas may vary but launch dates will be coordinated**

Media & Marketing Strategy DP Television

- **High penetration, high impact**
- **Six targeted spot announcements**
- **Supported by a series of in-depth programs 5 to 15 minutes in length**

Media & Marketing Strategy DP Radio

- **Complements TV**
- **Offers diversity of formats**
- **May be necessary to vary launch dates**
- **Four targeted spot announcements**
- **Supported by a series of in-depth programs 5 to 15 minutes in length**

Media & Marketing Strategy DP

Newspapers & Magazines

- **Text of Law, rules and regulations**
- **Two targeted display ads**
- **Good opportunity to reinforce message which should complement broadcast media**
- **Use combination of display ads and articles**
- **Interviews with journalists**
- **Launch dates different than broadcast media**

Media & Marketing Strategy DP

Other Print Media

- **Posters--Two in each language**
 - Motivational
 - Informational
- **Flyers--One in each language**
 - Liberal use of graphics, perhaps cartoon style
 - Most frequently asked questions about electoral process

Media & Marketing Strategy DP Other

- **Private Sector**
- **Press Releases**
- **Hot Lines**
- **Public Meetings**
- **Mobile Sound Vehicles**
- **IFOR Support**

Media & Marketing Strategy CP Television

- **High penetration**
- **Four targeted spot announcements**
- **Use TV interview programs for support, 5 to 15 minutes**

Media & Marketing Strategy CP Radio

- **Complement TV**
- **Four targeted spot announcements**
- **Interview programs for support**

Media & Marketing Strategy CP Newspapers and Magazines

- **Two targeted display ads**
- **Interviews with journalists also support this audience**



Media & Marketing Strategy CP Other

- **Posters and Flyers**
- **Private Sector**
- **Press Releases**
- **Hot Lines**
- **Public Meetings**
- **Mobile Sound Vehicles**
- **IFOR Support**

Media & Marketing Strategy Ref General

- **Most difficult to reach**
- **More than 15 different countries**
- **Use host country media**
- **International media**
- **Local and International Organizations**

Media & Marketing Strategy Ref Television

- **Two targeted spot announcements**
- **Integrate information in programs already targeted to this audience in some host countries**

Media & Marketing Strategy Ref Radio

- **Two targeted spot announcements**
- **Use programs currently directed at refugees**

Media & Marketing Strategy Ref Newspapers and Magazines

- **Two informative ads for newspapers and magazines most likely read by refugees**

Media & Marketing Strategy Ref Other

- **Posters and Flyers**
- **Press Releases**
- **Hot Lines**
- **Internet Web Site**
 - Excellent opportunity
 - International exposure
 - Access by International Support Organizations

Media & Marketing Strategy

Organizations and Media

- **Core of special interest groups**
- **Keep them informed and educated**
- **Give advance copies when possible**
- **Background and Media Kits**
- **Direct Staff Liaison**

Creative Strategy General

- **Develop Theme for all materials**
- **Six Waves will be launched for key events in the election process**
- **Schedule will consider variables of media access to geographic areas**



Creative Strategy

General (continued)

- **Motivational**
 - Create an emotional appeal that will motivate target audience to perform the desired result whether it be registering, filing claims or objections or voting
 - Voting empowers citizens to help determine their future
 - Emphasize the responsibility citizens have in participating in the democratic process and the unity that can result from elections
 - Free, fair and orderly elections are basis of democracy and can help accelerate the healing process by stimulating cooperation, discussion and tolerance.

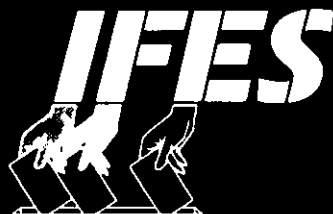
Creative Strategy General (continued)

- **Informational**

- Explain the rules and regulations of the electoral process
- Explain the role of political parties and non-governmental organizations and their importance in a democracy
- Emphasize integrity of election process
- Ensure understanding of free, fair and transparent elections
- Specify dates for each activity of the election process to include registration, changes to registration and elections

Creative Strategy Theme

- **Future of countries, governments, societies and citizens is at stake**
- **Stress process of building better future together**
- **Will be used as a tag or displayed on all materials**
- **Depending upon translation:**
 - **“Together we build a better future”**
 - **“We build a better future together”**



INTERNATIONAL FOUNDATION FOR ELECTION SYSTEMS

1101 15TH STREET, NW · THIRD FLOOR · WASHINGTON, DC 20005

TEL (202) 828 8507 FAX (202) 452 0804