

1998

## The Lack of Implementation of Annex 7 of the Dayton Accords: Another Palestinian Crisis?

Madelyn D. Shapiro

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/auilr>



Part of the [International Law Commons](#)

---

### Recommended Citation

Shapiro, Madelyn D. "The Lack of Implementation of Annex 7 of the Dayton Accords: Another Palestinian Crisis?" American University International Law Review 14, no. 2 (1998): 545-597.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in American University International Law Review by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact [fbrown@wcl.american.edu](mailto:fbrown@wcl.american.edu).

# THE LACK OF IMPLEMENTATION OF ANNEX 7 OF THE DAYTON ACCORDS: ANOTHER PALESTINIAN CRISIS?

MADELYN D. SHAPIRO \*

INTRODUCTION .....	546
I. SHORT HISTORY OF BOSNIA-HERZEGOVINA .....	551
II. ANNEX 7 .....	555
A. THE PROVISIONS OF ANNEX 7 .....	555
B. PURPOSES OF ANNEX 7 .....	557
C. FATAL FLAWS IN ANNEX 7 .....	560
1. <i>Relocation</i> .....	561
a. Nationalistic Goals .....	562
b. Effects on Housing .....	563
2. <i>Lack of Military Presence</i> .....	563
3. <i>Lack of Specific Timeline</i> .....	565
4. <i>Too Much Power in the Parties' Hands</i> .....	566
5. <i>A Contradiction Leading to a Separated Bosnia</i> .....	567
D. BOSNIAN IMPLEMENTATION OF ANNEX 7 .....	568
E. RECENT ACTIONS IN THE BOSNIAN FEDERATION .....	571
F. THE UNITED NATIONS ROLE .....	573
III. LESSONS TO BE LEARNED .....	576
A. BRIEF HISTORY OF PALESTINIAN REFUGEES .....	576
B. INTERNATIONAL LEGAL AUTHORITY .....	578
C. CALAMITOUS MISTAKES WITH PALESTINIAN REFUGEE RETURN .....	580

---

\* J.D. Candidate, 2000, American University Washington College of Law; B.A., History, 1996, The College of William and Mary. I would like to thank my friends from the former Yugoslavia whom I met while working in a refugee center in Hungary. These friends impassioned me with the area, opened my eyes to war, and taught me true lessons of life. A special thanks to Leslie McKay, Julie Seamon, Stefan Meisner, and the rest of the members of the *American University International Law Review* for assisting me with the publication process. Finally, thanks to my parents and brothers for their constant encouragement.

1. <i>A Prolonged Crisis</i> .....	581
a. A Prolonged Refugee Situation and its Effects on Peace in the Region .....	581
b. Heightened Tensions and Nationalism .....	583
2. <i>The Lack of a Legal Plan for Return</i> .....	585
IV. LEARNING FROM OTHER'S MISTAKES: RECOMMENDATIONS FOR IMPLEMENTATION OF ANNEX 7 AND THE FACILITATION OF THE RETURN OF REFUGEES IN BOSNIA .....	586
A. SOLVING THE REFUGEE SITUATION QUICKLY .....	587
1. <i>Identifying the Crucial Purpose of the Dayton Ac-         cords</i> .....	588
a. Supporting Minority Returns .....	588
b. Preventing Forced Relocation .....	592
c. Additional Measures to Prevent Forced Relocation .....	594
B. DEVELOPING A PLAN FOR RETURN: CHANGES TO ANNEX 7? .....	595
CONCLUSION .....	597

A reunited, ethnically mixed Bosnia is not only the sole chance for peace, but also the sole chance for happiness.<sup>1</sup>

## INTRODUCTION

The nearly four-year civil war that Bosnia endured from April 1992 to December 1995 resulted in a country ravaged both economically<sup>2</sup> and physically.<sup>3</sup> Millions of threatened and persecuted people

---

1. Interview with twenty-five year old refugee from Prnjavor, Bosnia-Herzegovina, in Washington, D.C. (June 17, 1998).

2. See UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, THE STATE OF THE WORLD'S REFUGEES 170-71 (1997) (finding that Bosnia's gross national product dropped more than two-thirds since 1990, and that industrial production is now at a level of only twenty percent of its pre-war capacity); see also Elizabeth M. Cousens, *Making Peace Agreement Work: The Implementation and Enforcement of Peace Agreement Between Sovereign and Intermediate Sovereign: Making Peace in Bosnia Work*, 30 CORNELL INT'L L.J. 789, 792 (1997) (stating that nearly all of Bosnia's economic infrastructure was ruined during the four years of conflict).

3. See Cousens, *supra* note 2, at 792 (finding almost half of the housing in Bosnia was ruined); see also UNITED NATIONS HIGH COMMISSIONER FOR

fled their homes in search of peace.<sup>4</sup> By 1995, one million refugees<sup>5</sup> were living outside the Bosnian border and at least another million were displaced<sup>6</sup> throughout the country.<sup>7</sup> At war's end, the issue of refugees and displaced persons became one of the major factors threatening stability in the region.<sup>8</sup> Many scholars believe that the failure to adequately enforce the return of refugees to their homeland could result in hostilities and possibly ignite the fires of war once again.<sup>9</sup>

---

REFUGEES, *supra* note 2, at 171 (noting that the military forces damaged Bosnian land through the use of land mines during hostilities).

4. See John M. Scheib, Comment, *Threshold of Lasting Peace: The Bosnian Property Commission, Multi-Ethnic Bosnia and Foreign Policy*, 24 SYRACUSE J. INT'L L. & COM. 119, 119 (1997) (noting that Bosnian refugees escaped to prevent the evils of war and the consequences of their nationality). See generally PETER MAAS, LOVE THY NEIGHBOR 5, 8, 9, 77, 86 (1996) (recounting various stories of Bosnian refugees who were forced to flee their homes in the infamous mass process euphemistically called "ethnic cleansing"); *Letter from the Secretary General to the President of the Security Council, Feb. 9, 1993*, U.N. SCOR, at 55-56, U.N. Doc. S/25274 ("Considered in the context of the conflicts in the former Yugoslavia, "ethnic cleansing" means rendering an area ethnically homogenous by using force to remove persons of given groups from the area.").

5. See UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *supra* note 2, at 51. "Refugee" is defined according the 1951 United Nations Convention relating to the Status of Refugees, as a person who:

owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, or membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.

*Id.*

6. See *Internally Displaced Persons*, U.N. ESCOR, 51st Sess., Agenda Item 11(d), para. 116, U.N. Doc. E/CN.4/1995/50 (1995) (stating that "[i]nternally displaced person[s]" are defined as "persons who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters; and who are within the territory of their own country").

7. See *The Dayton Accords and the Return of Bosnian Refugees*, The Balkan Institute, Jan. 29, 1996, available in <<http://www.balkaninstitute.org/reference.Rs5refug.html>>.

8. See *id.* (identifying the return of refugees as one of the greatest obstacles to stability in Bosnia).

9. See *Dayton at Two Years*, The Balkan Institute, Jan. 5, 1998, available in <<http://www.balkaninstitute.org/analysis/DaytonReport2years.html>> (suggesting that the failure to adequately implement civilian provisions, such as the return of

The Bosnian refugee issue has historical precedent. In fact, Bosnia can benefit by learning from both positive and negative refugee models,<sup>10</sup> including the Palestinian refugee situation. The Palestinian refugee situation is often considered "the oldest and largest refugee problem,"<sup>11</sup> extending back fifty years<sup>12</sup> and involving over 2.7 million Palestinian refugees.<sup>13</sup> The length of the crisis and the lack of a comprehensive bilateral agreement have allowed the refugee situation to heighten and intensify, greatly disturbing the peace plan and causing an increase in nationalism.<sup>14</sup>

Although Bosnia has developed a plan for return, Bosnia must heed the mistakes made with the Palestinian refugees. The General Framework Agreement, negotiated in Dayton, Ohio ("Dayton Accords"),<sup>15</sup> addressed the refugee and displaced person<sup>16</sup> issue by ending the fighting in Bosnia and enacting a plan for reconstruction.<sup>17</sup>

---

refugees, could result in prolonged fighting); *see also* Cousens, *supra* note 2, at 801 (noting that a failure to implement the refugee return plan could result in war). *But see* Charles G. Boyd, *Making Bosnia Work*, 77 FOREIGN AFF., Jan./Feb. 1988, at 42, 47-48 (1998) (explaining the view that the hatred must subside before refugees from ethnic minorities will return).

10. *See* DONNA E. ARZT, REFUGEES INTO CITIZENS: PALESTINIANS AND THE END OF THE ARAB-ISRAELI CONFLICT 101 (explaining how nations such as South Africa or the new Balkan states can benefit from learning about the refugee return from countries who previously experienced this transformation).

11. *Id.* (defining the Palestinian refugee situation as the "longest standing in modern history"); *see also* Palestinian National Authority Official Website, *Palestinian Refugees: Fifty Years of Injustice* (visited July 12, 1998) <[http://nmopic.pna.net/un\\_pal\\_1948.htm](http://nmopic.pna.net/un_pal_1948.htm)> (stating that the Palestinian refugee problem is five decades old and has been at issue since the creation of the United Nations).

12. *See infra* notes 214-20 and accompanying text (noting the longevity of the Palestinian refugee problem and the countries with the highest concentrations of Palestinian refugees).

13. *See* ARZT, *supra* note 10, at 101.

14. *See infra* notes 243-88 and accompanying text (detailing how the lack of a comprehensive plan and the length of the refugee crisis in Israel has led to increased nationalism and effected a peace settlement).

15. The General Framework Agreement for Peace in Bosnia-Herzegovina, Dec. 14, 1995, Bosn.-Herz., 35 I.L.M. 75 [hereinafter Dayton Agreement].

16. *See id.* Annex 7, 35 I.L.M. at 136-41.

17. *See* UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *supra* note 2, at 170 (stating that the Dayton Peace Accords ended the conflict in Bosnia).

The ultimate goal of the Dayton Accords was to maintain peace and to reestablish a multi-ethnic state.<sup>18</sup> The return of refugees and displaced persons to their original homes is imperative to reach this goal.<sup>19</sup> Annex 7 of the Dayton Accords<sup>20</sup> provides a plan to facilitate this refugee return.<sup>21</sup>

Although the Dayton Accords have produced some initial successes, including the return of about 350,000 refugees and displaced persons, more than 1.5 million people remain displaced within Bosnia and outside the borders.<sup>22</sup> In addition, of those 350,000 refugees that returned, only 30,000 returned to areas where they belong to the ethnic minority.<sup>23</sup> The Property Commission, a legal implementation body organized under Annex 7,<sup>24</sup> has resolved six thousand property claims.<sup>25</sup> Hundreds of thousands of refugees, however, continue to

---

18. See RICHARD HOLBROOKE, *TO END A WAR* 232 (1998) (stating that the peacemakers' two goals were to extend the sixty day cease-fire and to create a multi-ethnic state). *But see* Boyd, *supra* note 9, at 43 (noting the hypocrisy of the Dayton Accords in its attempts to recreate a multi-ethnic state "where no common sense of national community existed.").

19. See UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *supra* note 2, at 170 (identifying that the return of refugees as intended to reverse the progress of ethnic cleansing and to recreate a multi-ethnic state); *see also* UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES: INFORMATION NOTES, at i, No. 1 98 (Jan.-Feb. 1998) [hereinafter INFORMATION NOTES—No. 1 98] (declaring that the return of refugees, especially minority returns, is a priority in 1998).

20. See Dayton Agreement, *supra* note 15, Annex 7, 35 I.L.M. at 136-41.

21. See *id.*

22. See *Dayton at Two Years*, *supra* note 9 (providing an executive summary of some of the successes and flaws of the Dayton Accord).

23. See *id.* at 1 (stating that of the 350,000 refugees and displaced persons, only 30,000 have gone back to regions deemed "ethnically hostile"); *see also* Boyd, *supra* note 9, at 48 (noting that those who came back to live as minorities in another ethnic group's area are heavily outnumbered by those who have fled Dayton's freshly drawn boundaries, which left them as new minorities).

24. See Dayton Agreement, *supra* note 15, Annex 7, 35 I.L.M. at 136-41 (defining the Commission as an adjudicatory body having jurisdiction over property claims to decide issues of ownership and just value of the land).

25. See *RRTF: Report for March 1998*, Office of High Representative, Sarajevo, Bosnia-Herzegovina, Mar. 1998, available in <<http://www.ohr.int>> (noting that due to the Commission's limited financial means and the large number of claims, only 6,000 claims out of 70,000 were processed as of December 1997).

wait for their claims to be addressed.<sup>26</sup> The need to resolve these property issues is imperative and must be completed without further delay.<sup>27</sup>

Annex 7 specifically grants refugees the right to return to their homes,<sup>28</sup> as do numerous other documents. For example, the Universal Declaration of Human Rights<sup>29</sup> and the Human Commission on Human Rights<sup>30</sup> reaffirm a person's right to voluntarily return to her country of origin.<sup>31</sup> Given that the refugees have an inherent right of return, the question remains: what is preventing them from returning and what are the ramifications if their return is not adequately implemented? Why is the plan for refugee return established in Annex 7 of the Dayton Accords not working?

This Comment examines how the failure to implement Annex 7 of the Dayton Accords, concerning refugee return and property reacquisition, affects the stability of Bosnia as well as the recreation of a multi-ethnic state. Part I provides a short history of the fall of Yugoslavia and the birth of the state of Bosnia. Part II analyzes the purpose and need for Annex 7. This section recognizes the inherent flaws in Annex 7 and the reasons for its inadequate enforcement. Part III explains Bosnia's current method of enforcement, detailing the roles of the United Nations and local governments. Part IV compares

---

26. *See id.*

27. *See Scheib, supra* note 4, at 120 (noting the pressing problems presented by the property claims of refugees).

28. *See Dayton Agreement, supra* note 15, Annex 7, 35 I.L.M. at 136-41 ("All refugees and displaced persons have the right freely to return to their homes of origin.").

29. *Universal Declaration of Human Rights*, G.A. Res. 217(A), U.N. GAOR, 3d Sess., 183d plen. mtg., at 71, U.N. Doc. A/810 (1948).

30. *See Economic and Social Council Resolution*, U.N. 1 988, (LIV) of May 18, 1973] [hereinafter Human Commission].

31. *See id.* (reaffirming "the fundamental right of refugees and internally displaced persons to return voluntarily, in safety and dignity, to their country of origin and/or within it to their place of origin or choice" and Article 5(d)(ii) of the International Convention on the Elimination of All Forms of Racial Discrimination, and the prohibition of arbitrary deprivation of the right to enter one's own country contained in Article 12, Paragraph 4, of the International Covenant on Civil and Political Rights."); *see also Universal Declaration of Human Rights, supra* note 29, art. 13, para. 2 (noting "the right of every person to return to his or her own country.").

the refugee situation in Bosnia to that in Israel with the Palestinian refugees. This section examines possible lessons the international community should have learned from the Palestinian experience and suggests how the community should apply these lessons in Bosnia. Finally, this Comment concludes with recommendations for implementation and enforcement of Annex 7, in order to reach the ultimate goal of a stable, multi-ethnic Bosnia.

## I. SHORT HISTORY OF BOSNIA-HERZEGOVINA

Bosnia-Herzegovina was one of six republics in the former Yugoslavia.<sup>32</sup> With a prewar population in 1991 of 43.7% Muslim, 31.4% Serb, 17.3% Croat, and 5.5% Yugoslav, Bosnia was the most ethnically mixed republic.<sup>33</sup> Josip Broz ("Tito") and his administration managed to suppress ethnic tensions among the groups during his years in power in Yugoslavia.<sup>34</sup> Many citizens, however, still feared the thought of multi-ethnic conflict.<sup>35</sup> Many Bosnians remember this prewar era as a time when they were Yugoslavians first and Serbian, Muslim, or Croatian second.<sup>36</sup> The people spoke the same language, worked together, and frequently intermarried.<sup>37</sup>

---

32. See Cousens, *supra* note 2, at 790 n.3 (stating that the Yugoslav state was comprised of six republics: Croatia, Serbia, Bosnia-Herzegovina, Slovenia, Montenegro, and Macedonia).

33. See LEONARD J. COHEN, *BROKEN BONDS: YUGOSLAVIA'S DISINTEGRATION AND BALKAN POLITICS IN TRANSITION* 241 (1995) (describing the ethnic make-up of Bosnia).

34. See *id.* at 22 (describing Croatian communist dictator Tito's rise to power in 1937 and his vision of a unified Yugoslav state).

35. See COHEN, *supra* note 33, at 245 (noting that although ethnic tensions were suppressed during the authoritarian communist reign, the situation remained ripe for war).

36. See Interview with twenty-five year old refugee from Prnjavor, Bosnia-Herzegovina, *supra* note 1 (recalling his childhood during Tito's reign when the communist mentality, as well as the attitude of the people, prevented nationalism from erupting into violence).

37. See MAAS, *supra* note 4, at 27 (stating that 18.6% of marriages between 1981 and 1991 were between people of different nationalities); *cf.* ROBERT D. KAPLAN, *BALKAN GHOSTS: A JOURNEY THROUGH HISTORY* 25 (1995) (quoting British expert Nevill Forbes who asserted in his 1915 study of the Balkans that Serbs and Croats originated from one people, suggesting were it not for religion, there would be a minimal basis for ethnic tensions).



With the death of Tito in 1980, the situation in Yugoslavia slowly transformed from a republic comprised of ethnically mixed and harmonized people into a republic in which ethnic identities were more pronounced.<sup>38</sup> As early as 1987, nationalist leaders began igniting ethnic tensions to further their political goals.<sup>39</sup> One of these nationalist leaders, Slobodan Milosevic, began his rise to power in Serbia, the largest Yugoslavian republic,<sup>40</sup> where he espoused nationalistic sentiments that eventually spread throughout the other republics.<sup>41</sup>

In June of 1991, the region underwent drastic change when Slovenia,<sup>42</sup> the smallest republic in Yugoslavia, declared its independence.<sup>43</sup> A short war followed,<sup>44</sup> though, for various reasons, the resistance by the Yugoslavian National Army was minimal.<sup>45</sup> A short time

---

38. See MAAS, *supra* note 4, at 26 (suggesting that the disintegration of Yugoslavia began when President Tito died in 1980).

39. See MAAS, *supra* note 4, at 26 (explaining how Yugoslavia's political transformation in 1980 from a one-person presidency to a rotating presidency, its economic downfall, and its repudiation of old ideas led to a resurgence of nationalism).

40. See *id.* (noting that Milosevic spoke in Serbia in 1987, urging the Serbian people to assert and protect their rights).

41. See *id.* (noting a resurgence of nationalism following Milosevic's speech in Kosovo); see also KAPLAN, *supra* note 37, at 39 (stating that the spread of the Serbian revolution against Yugoslavia began in 1987 when Milosovic came to Kosovo Polje). Milosevic stated, "They'll [Albanians?] never do this to you again. Never again will anyone defeat you." *Id.*

42. See MAAS, *supra* note 4, at 27 (noting that Slovenia and Croatia's relative homogeneity enabled it to attain its independence from the rest of the former Yugoslavia with little bloodshed).

43. See COHEN, *supra* note 33, at 227 (noting that Slovenia's decision to declare its independence at the end of June 1991 began a new era for Yugoslavia); see also MAAS, *supra* note 4, at 27 (suggesting Slovenia's independence was a prelude to war in Bosnia).

44. See COHEN, *supra* note 33, at 227-28 (stating that the war in Slovenia lasted only ten days and resulted in approximately fifty people killed and some three hundred wounded).

45. See *id.* at 229 (suggesting that the minimal involvement of the Yugoslavian National Army in Slovenia was due to its preoccupation with Croatia, which also sought independence, and the relatively small Serbian population in Slovenia); see also MAAS, *supra* note 4, at 27 (claiming that the Serbians did not put forth much resistance against Slovenian independence because of the small Serbian population in Slovenia).

later, Croatia,<sup>46</sup> another republic with a significant Serbian population of 600,000,<sup>47</sup> declared independence.<sup>48</sup> Unlike the fighting in Slovenia, a more intense war began<sup>49</sup> with the Yugoslavian National Army trying to protect Yugoslavia, the state, as well as the significant Serbian population that lived in Croatia.<sup>50</sup> By January 1992, the fighting in Slovenia and Croatia subsided, and the European Community and United Nations officially recognized Slovenian and Croatian independence.<sup>51</sup>

The situation was now ripe for a transformation in Bosnia.<sup>52</sup> In April 1992, the European Community recognized Bosnia's independence.<sup>53</sup> Shortly thereafter the United States followed suit,<sup>54</sup> believing that the European Community and United Nations' recognition of independence in Slovenia and Croatia prevented further bloodshed.<sup>55</sup> Unfortunately, the optimism of the international com-

---

46. See Cousens, *supra* note 2, at 790 n.3. Croatia was one of the six republics in the former Yugoslavia. See *id.*

47. See MAAS, *supra* note 4, at 27.

48. See COHEN, *supra* note 33, at 229 (noting that Croatia declared independence on June 25, 1991).

49. See *id.* (describing the war in Croatia as very destructive, resulting in over 10,000 people killed, about 30,000 wounded, and the "dislocation of hundreds of thousands of people").

50. See MAAS, *supra* note 4, at 27 (suggesting that the Yugoslavian involvement in Croatia was due to the Serbians' fear that an independent Croatia would pose a threat to the substantial Serbian population in Croatia).

51. See COHEN, *supra* note 33, at 240 (stating that although the fighting had subsided by the time the European Community formally recognized Slovenia and Croatian as independent states, violence in the former Yugoslavia was far from over).

52. See *id.* at 240-41.

53. See *id.* at 245 (noting that the European Community's recognition of Bosnian independence seemed especially threatening to Yugoslavia because it marked the anniversary of the day the Germans bombed Belgrade).

54. See *id.*

55. See *id.* The United States recognized Bosnian independence for two main reasons. First, it erroneously believed that such recognition would prevent extensive war, as appeared to be the case when the European Union and United Nations recognized independence in Croatia and Slovenia. See *id.* Second, it wanted to refute accusations that it was dedicated to a unified Yugoslavia. See *id.*

munity proved to be misplaced, and one of the bloodiest and most destructive wars in recent history ensued.<sup>56</sup>

The war in Bosnia was fought mainly between the people who wanted independence and those who feared that independence meant the possible subrogation of their ethnicity.<sup>57</sup> The Bosnian Serbs, aided by Yugoslavia, fought to remain a part of Yugoslavia.<sup>58</sup> The Bosnian Croats, with support from Croatia, also sought to protect their interests in the country and advance their desire for more land.<sup>59</sup>

After nearly four years of fighting, the leaders of the Serbian, Croatian, and Bosniac<sup>60</sup> parties gathered together in Dayton, Ohio to negotiate an end to the war.<sup>61</sup> The negotiations produced the Dayton Accords and provided an end to the fighting and a plan for reconstruction. Although the country would be considered nominally one state, it would consist of two entities: the Republika Srpska and the Federation of Bosnia.<sup>62</sup> The creation of these separately controlled

56. See Cousens, *supra* note 2, at 792 (noting the evils that resulted from the war, including a toll of dead and missing of 279,000 people, or about seven percent of the population before the war).

57. See MAAS, *supra* note 4, at 27 (stating that the fear of Bosnian independence stemmed from Serbian fear of persecution as in the case of Croatian independence).

58. See Cousens, *supra* note 2, at 791 (detailing the Bosnian Serb plan whereby they would "ethnically cleanse" the region, declare an independent republic, and then eventually join Serbia proper); see also COHEN, *supra* note 33, at 247-48 (describing the close relationship between Serbia and the Bosnian Serbs).

59. See Cousens, *supra* note 2, at 790-91 (explaining the ties between the Bosnian Croats and Croatia); see also COHEN, *supra* note 33, at 248-49 (defining Croatia's role in relation to the Bosnian Croats during the Bosnian war).

60. See Cousens, *supra* note 2, at 791 n.5. Increasingly, 'Bosniac' is used to refer to non-Serb and non-Croat Bosnians, replacing the designation 'Muslim' with a term marginally less exclusive. See *id.*

61. See generally HOLBROOKE, *supra* note 18, at 231-312 (detailing the twenty-one day international negotiations in Dayton, Ohio between the three warring parties). Slobodan Milosevic, President of Serbia, represented the Bosnian Serbs. Croatian President Franjo Tudjman represented the Bosnian Croats. See *id.* Alija Izetbegovic represented the Bosniacs.

62. See Dayton Agreement, *supra* note 15, Annex 7, art. 1, cl. 3, 35 I.L.M. at 117-28 (delineating the boundaries between Republika Srpska and Federation of Bosnia and Herzegovina); see also Cousens, *supra* note 2, at 797 (explaining Bosnia and its two entities). The Federation of Bosnia and Herzegovina is made up of Bosniacs and Bosnian Croats while Republika Srpska is home to Bosnian Serbs.

regions divided Bosnia into two distinct areas, each under the control of a specific ethnic group, with relatively few inhabitants from ethnic minorities.<sup>63</sup> The apperception of these regions accentuates the need for the return of refugees if Bosnia is to become the multi-ethnic state it once was.<sup>64</sup>

## II. ANNEX 7

Annex 7 of the Dayton Accords is the necessary tool to facilitate the voluntary return of refugees and displaced persons to their original homes.<sup>65</sup> First, it provides a comprehensive plan for the return of refugees.<sup>66</sup> Second, it addresses property reacquisition and creates a commission to monitor and adjudicate these cases.<sup>67</sup>

### A. THE PROVISIONS OF ANNEX 7

The plan for refugee return established by Annex 7, agreed to by both the Federation of Bosnia and Republika Srpska, reiterates the need for cooperation among the territories to create a suitable atmos-

---

*See id.*

63. *See* UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES: INFORMATION NOTES, at 9, No. 2/98 (Mar.-Apr. 1998) [hereinafter INFORMATION NOTES—No. 2/98] (describing the two different areas and noting how few refugees have returned to a part of the country where they would represent an ethnic minority).

64. *See* Dayton Agreement, *supra* note 15, Annex 7, art. I, cl. 1, 35 I.L.M. at 137 (“The early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia-Herzegovina.”); *see also* *Minority Return or Mass Relocation*, International Crisis Group, May 14, 1998, available in <<http://www.intl-crisis-group.org/projects/bosnia/reports/bh33main.htm>> (explaining how many nationalist hard-liners want the refugees to relocate to an area where they are the majority).

65. *See* Dayton Agreement, *supra* note 15, Annex 7, art. I, cl. 1, 35 I.L.M. at 137 (asserting that the early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina); *see also* *The Dayton Accords and the Return of Bosnian Refugees*, *supra* note 7 (explaining the goal of the Dayton Accords in reference to refugee and displaced persons).

66. *See* Dayton Agreement, *supra* note 15, Annex 7, 35 I.L.M. at 137-41; *see also* *The Dayton Accords and the Return of Bosnian Refugees*, *supra* note 7 (detailing the agreement on refugees and displaced persons).

67. *See* Dayton Agreement, *supra* note 15, Annex 7, art. VII, 35 I.L.M. at 138 (establishing the Property Commission); *see* Scheib, *supra* note 4, at 120 (providing a detailed description of the Property Commission).

phere for repatriation.<sup>68</sup> Refugees and displaced persons must be able to return to their homes, free from harassment or discrimination.<sup>69</sup> Article I, Clause 3 of Annex 7 identifies the repeal of discriminatory legislation, the use of unbiased media, and the enactment of economic measures as necessary methods to secure the return of refugees.<sup>70</sup> Annex 7 also recognizes the role that international organizations, such as the United Nations High Commissioner for Refugees ("U.N.H.C.R."),<sup>71</sup> the United Nations Development Programme ("U.N.D.P."),<sup>72</sup> and the International Committee of the Red Cross ("I.C.R.C.")<sup>73</sup> must play in the repatriation of refugees.<sup>74</sup>

---

68. See Dayton Agreement, *supra* note 15, Annex 7, art. I, cl. 3, 35 I.L.M. at 137 ("The Parties shall take all necessary steps to prevent activities within their territories which would hinder or impede the safe and voluntary return of refugees and displaced persons.").

69. See Dayton Agreement, *supra* note 15, Annex 7, art. I, cl. 2, 35 I.L.M. at 137 ("The Parties shall ensure that refugees and displaced persons are permitted to return in safety, without risk of harassment, intimidation, persecution or discrimination, particularly on account of their ethnic origin, religious belief, or political opinion."); see also Boyd, *supra* note 9, at 48 (stressing that the hatred from the war must cease before there can be unification of the nationalities in Bosnia).

70. See Dayton Agreement, *supra* note 15, Annex 7, art. I, cl. 3, 35 I.L.M. at 137 (declaring that the parties shall repeal discriminatory legislation, prevent insightful propaganda in the media and other outlets, use the media to curb acts of retribution, protect ethnic minorities, and bring actions against officials who are responsible for acts against minority groups).

71. See UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *supra* note 2, at 2 (stating the United Nations High Commissioner for Refugees is responsible for the protection of about twenty-two million people throughout the world, "with around thirteen million of whom are refugees in the conventional sense of the word").

72. See *id.* at 165-66 (stating the United Nations Development Programme is responsible for the development of countries throughout the world, focusing on long-term development issues).

73. The International Committee of the Red Cross is an international organization dedicated to the assistance of people in need. The International Committee of the Red Cross helps assist with activities for people deprived of freedom, protection of the civilian population, restoration of family links, assistance to "direct and indirect victims of armed conflict and other violent situations," development of respect for international humanitarian law, and the dissemination and the promotion of international humanitarian law. See INTERNATIONAL COMMITTEE OF THE RED CROSS, ICRC ANNUAL REPORT 5-14 (1996).

74. See Dayton Agreement, *supra* note 15, Annex 7, art. IV, 35 I.L.M. at 138 (explaining repatriation assistance). But see *The Dayton Accords and the Return of*

In addition, Annex 7 establishes a Commission of nine members who have jurisdiction over claims concerning property reacquisition.<sup>75</sup> The Commission's decisions are binding over the parties and recognized as law throughout Bosnia.<sup>76</sup> When deciding these claims, the Commission will refuse to recognize any transfer of property that was made under duress.<sup>77</sup>

## B. PURPOSES OF ANNEX 7

Annex 7 of the Dayton Accords serves many purposes for both the international and Bosnian communities.<sup>78</sup> First, the adoption of Annex 7 by the parties creates a direct legal connection between the parties and their corresponding duty to facilitate the return of refugees.<sup>79</sup> Pursuant to this provision, the parties accept responsibility for the return of refugees and all the ensuing consequences.<sup>80</sup> Their commitment to this goal goes beyond mere compliance with such

---

*Bosnian Refugees*, *supra* note 7 (acknowledging the role that the U.N.H.C.R. and other relevant organizations must play in the return of refugees, but emphasizing that the "primary responsibility" falls on the Bosnian government, the Federation of Bosnia, and the Republika Srpska).

75. See Dayton Agreement, *supra* note 15, Annex 7, art. IX, 35 I.L.M. at 139 (noting that the nine members must be appointed within ninety days after the Agreement enters into force); see also Scheib, *supra* note 4, at 122 (identifying the members of the Commission as Professor Maris Riat Saulle, Chairperson; Mr. Davor Cordas; Mr. Miroslav Giadana; Professor Hans van Houtte; Mr. Jean-Pierre Hocke; Mr. Jasmin Jahjaefendic; Mr. Damir Ljubic; Mr. Mirsad Milavic; and Mr. Jovo Miskin).

76. See Dayton Agreement, *supra* note 15, Annex 7, art. XII, cl. 7, 35 I.L.M. at 140 (explaining that any action of the Commission be recognized as lawful throughout Bosnia).

77. See Dayton Agreement, *supra* note 15, Annex 7, art. XII, cl. 3, 35 I.L.M. at 140 ("In determining the lawful owner of any property, the Commission shall not recognize as valid any illegal property transaction, including any transfer that was made under duress, in exchange for exit permission or documents, or that was otherwise in connection with ethnic cleansing.").

78. See STEPHEN W. WALKER, PARTITION BOSNIA? NOT AN OPTION (1997), available in <<http://www.balkaninstitute.org/opinion/op-ed-sw-12897.htm>> (recognizing that both the United States and Bosnian policies should make the implementation of Annex 7 a priority to create a stable environment).

79. See Dayton Agreement, *supra* note 15, 35 I.L.M. at 89 (noting that the parties have accepted the provisions of Annex 7 by signing the Dayton Agreement).

80. See *id.* (noting the parties' legal obligation to fulfill their commitments under the various annexes).

documents as the Universal Declaration of Human Rights.<sup>81</sup> The parties themselves drafted and agreed to the provisions of the Dayton Accords, as a whole, and Annex 7 in particular.<sup>82</sup> They must comply with the provisions of this agreement.<sup>83</sup>

Second, as noted above,<sup>84</sup> Annex 7 provides an extensive plan for the reacquisition of property by the refugees.<sup>85</sup> This is an important provision because refugees will have more incentive to return if they know that the government will return their land.<sup>86</sup> Annex 7 provides for the enforcement of land reacquisition through the establishment of the Property Commission.<sup>87</sup> The Property Commission has the

---

81. See Alfred de Zayas, *The Right to One's Homeland, Ethnic Cleansing, and the International Criminal Tribunal for the Former Yugoslavia*, 6 CRIM. L.F. 257, 267 (asserting that the Universal Declaration of Human Rights, which was adopted by the United Nations General Assembly on December 10, 1948, secures a refugee's right to return to her country); see also Justice R. Weiner, *The Palestinian Refugees' "Right to Return" and the Peace Process*, 20 B.C. INT'L & COMP. L. REV. 1, 42-43 (explaining that resolutions from the General Assembly of the United Nations are not necessarily binding).

82. See Dayton Agreement, *supra* note 15, Annex 7, art. XVIII, 35 I.L.M. at 141 (binding the parties to the agreement and enacting the provisions). *But see* de Zayas, *supra* note 81, at 267 (claiming that "frequent invocation [of the Universal Declaration of Human Rights] by the General Assembly through the years lends further support to the declaration's status as a binding instrument.").

83. See Dayton Agreement, *supra* note 15, Annex 7, art. XIII, 35 I.L.M. at 140 (explaining the entry into force of the agreement and all provisions).

84. See *supra* note 67 and accompanying text (discussing property reacquisition).

85. See Dayton Agreement, *supra* note 15, Annex 7, art. I, cl. 1, 35 I.L.M. at 137 ("They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them."); see also *id.* Annex 7, arts. VII-XVIII at 35 I.L.M. 138-41 (developing the Property Commission and identifying its mandates, including deciding property claims in Bosnia-Herzegovina). *But see* Scheib, *supra* note 4, at 130 (noting that Annex 7 lacks a specific implementation force).

86. See U.N. GAOR, 52nd Sess., Agenda Item 112(c), at 8, U.N. Doc. A/52/490 (1997) (stating that property reacquisition is vital to achieving successful refugee returns); see also *RRTF: Report for March 1998*, *supra* note 25 (noting that settling property claims and establishing a country-wide real estate market could result in the opening of apartments, allowing the original owners to return).

87. See Dayton Agreement, *supra* note 15, Annex 7, art. VII-XIII, 35 I.L.M. at 138-40 (stating that the Commission shall decide property claims in Bosnia); see also Scheib, *supra* note 4, at 121 (explaining that to encourage refugees to return to their homes, the Dayton Accords included the creation of a neutral dispute resolu-

power to develop and apply the law concerning property claims.<sup>88</sup> The parties will be bound by these decisions.<sup>89</sup>

Third, Annex 7 isolates methods to facilitate the return of refugees.<sup>90</sup> Annex 7 suggests methods to create a safe atmosphere for the return of refugees, including the enforcement of fair legislation and fair media coverage.<sup>91</sup> Moreover, these proposals suggest a reformation of the political systems to ensure a free society rather than a nationalist state.<sup>92</sup> This is important for both Bosnia and the international community, including, but not limited to the United States, Croatia, and Yugoslavia.<sup>93</sup>

---

tion body, the Property Commission).

88. See Dayton Agreement, *supra* note 15, Annex 7, art. VII-XIII, 35 I.L.M. at 138-40.

89. See *id.* Annex 7, art. VIII, 35 I.L.M. at 139 ("The parties shall cooperate with the work of the Commission, and shall respect and implement its decisions expeditiously and in good faith, in cooperation with relevant international and nongovernmental organizations having responsibility for the return and reintegration of refugees and displaced persons.").

90. See *id.* Annex 7, art. II, 35 I.L.M. at 138 (suggesting various ways to facilitate the return of refugees and implement more democratic methods to develop fair societies for return); cf. *Bosnia and Herzegovina 1998: Self-Sustaining Structures*, Office of the High Representative, Sarajevo, Bosnia-Herzegovina, Dec. 10, 1997, available in <<http://www.ohr.int:8/docu/d971210a.htm>> [hereinafter *Self-Sustaining Structures*] (identifying other factors that must be addressed to facilitate the return of refugees including removing such hindrances as: "the levying of so-called war taxes; failure to establish a system of access to personal documents; existing registration processes; uncertainty concerning applicable customs regulations and tariffs; deficiencies in the allocation of temporary housing, and the low capacity of administrative organs.").

91. See Dayton Agreement, *supra* note 15, Annex 7, art. I, cl. 3, 35 I.L.M. at 137 (defining certain steps to build confidence in the regions and expedite the return process); cf. *RRTF: Report for March 1998*, *supra* note 25 (identifying the weaknesses that exist in the political institutions, lack of security, and hostile environment as factors impeding a conducive environment for the return of refugees).

92. See generally *Minority Return or Mass Relocation*, *supra* note 64, at 12-13 (suggesting that the securing of a safe atmosphere and the return of refugees, especially those belonging to minorities, could prevent nationalist leaders from reemerging in Bosnia).

93. See *Hearings on the Implementation of the Dayton Peace Accords Before the Senate Armed Services Comm.*, 105th Cong. (1998) [hereinafter *Hearings*] (statement of Robert S. Gelbard, Special Representative of the President and the Secretary of State for Implementation of the Dayton Peace Accords) (acknowledging that one of the goals of Dayton and the international community is the im-



Finally, and perhaps most importantly, the strict enforcement of Annex 7 could reestablish a multi-ethnic Bosnia.<sup>94</sup> If Annex 7 is fully implemented, refugees will be able to return<sup>95</sup> to areas where they are in the minority.<sup>96</sup> The safe reintroduction of minority groups would likely result in a multi-ethnic state.<sup>97</sup>

### C. FATAL FLAWS IN ANNEX 7

Annex 7 is extraordinary in the sense that a proper, specific implementation would result in the rebirth of a multi-ethnic state. This provision, however, is wrought with numerous difficulties, including problems associated with relocation, lack of military presence, lack of a specific timeline, too much power in the parties' hands, and a contradiction between Annex 7 and other provisions within the Dayton Accords. These problems have been exacerbated in the current situation and could result in a permanent partitioned state with no possibility of complete unification.<sup>98</sup>

---

plementation of democratic processes in Bosnia); *see also* Boyd, *supra* note 9, at 44 (noting that after the considerable expense in terms of troops, time, and money the United States has put into Bosnia, the failure to establish a multi-ethnic state would not only be embarrassing for the United States, but also detrimental economically for the Bosniac and Bosnian Serb regions). *See generally* COHEN, *supra* note 33, at 51-55, 241-50 (identifying the vocal nationalism that emerged after Tito and noting how this eventually evolved into war).

94. *See* Cousens, *supra* note 2, at 801 (observing that the successful implementation of Annex 7 could result in an almost complete reversal of the war's effects on the ethnic make-up of the region); *see also* UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *supra* note 2, at 170 (detailing U.N.H.C.R.'s policies that support minority returns).

95. *See* WALKER, *supra* note 78, at 1 (noting that most Bosnians want to return to their homes, as seen in the recent elections, in which 89% of voters, whether voting in person or through absentee ballot, voted in their place of original residence).

96. *See* Dayton Agreement, *supra* note 15, Annex 7, art. I, 35 I.L.M. at 137 (explaining that all refugees and displaced persons have "the right freely to return to their homes," without mentioning any limitations for ethnic returns).

97. *See* HOLBROOKE, *supra* note 18, at 232 (noting that a primary goal of the Dayton Accords is the creation of a multi-ethnic state).

98. *See* Cousens, *supra* note 2, at 817-18 (analyzing the issue of partition in Bosnia, focusing on the Bosnian people's actual desires).

### 1. Relocation

Article I, Clause 4 of Annex 7 states that the choice of return destination is up to the refugee individual or family.<sup>99</sup> According to this provision, the parties should not interfere with the decision of the refugees.<sup>100</sup> A proper implementation of this provision would enable refugees and displaced persons to return to their original homes, and in effect, recreate a multi-ethnic state.<sup>101</sup>

The drafters of the Dayton Agreement, however, failed to consider the consequences of a failure to properly implement this provision of Annex 7. They did not consider what would happen if relocation<sup>102</sup> or coerced decision-making replaced the original provision, which provided for free choice by the refugees.<sup>103</sup> The acquiescence to relocation is a major flaw of Annex 7 because relocation is a dangerous proposition for Bosnia.<sup>104</sup> In addition, it is not the refugees' desire to relocate. Relocation is simply another demonstration of the nationalists' dangerous presence and their blatant noncompliance with Article I, Clause 4 of Annex 7.<sup>105</sup>

---

99. See Dayton Agreement, *supra* note 15, Annex 7, art. I, cl. 4, 35 I.L.M. at 137 ("Choice of destination shall be up to the individual or family, and the principle of the unity of the family shall be preserved.").

100. See *id.* ("The Parties shall not interfere with the returnees' choice of destination, nor shall they compel them to remain in or move to situations of serious danger or insecurity, or to areas lacking in the basic infrastructure necessary to resume a normal life.").

101. See *id.*

102. See *Minority Return or Mass Relocation*, *supra* note 64, at 13 (defining three forms of relocation). "Voluntary relocation" is relocation after the sale or exchange of property by consent. See *id.* "Passive relocation" refers to internal displacement that is not based on free will. See *id.* "Hostile relocation" refers to the deliberate placement of groups of people in housing belonging to other ethnic groups, in order to secure control over territory and prevent minorities from returning. See *id.*

103. See *Self-Sustaining Structures*, *supra* note 90 (explaining that the Council of Europe finds it unacceptable that because of obstacles in implementation, refugees and displaced persons are being relocated to areas other than their original homes).

104. See *Minority Return or Mass Relocation*, *supra* note 64, at 12-13 (articulating reasons the Council of Europe disfavors relocation as an option).

105. See *id.* at 14-16 (describing the nationalists' use of relocation to further their goals).

## a. Nationalistic Goals

Many nationalist leaders often promote relocation, a legal option under the Dayton Accords, to separate and consolidate the ethnic minorities.<sup>106</sup> Although Article I, Clause 4 of Annex 7<sup>107</sup> stresses that the parties cannot interfere with a refugee's decision, hard-liners either ignore this clause or use more subtle techniques, such as employing the media propaganda, to encourage relocation.<sup>108</sup> For example, the Croatian Nationalist Party, HDZ,<sup>109</sup> distributed information to Croats in Germany encouraging them to return to Bosnian-Croat controlled territories.<sup>110</sup> Frequently these tactics are difficult to identify, and therefore difficult to reprimand. This makes the distinction between "voluntary" and "forced relocation" difficult to delineate.<sup>111</sup>

---

106. See *id.* at 14-15 (describing how the nationalist leaders of such parties as the HDZ and the Serb Radical Party use Article 1, Clause 4 of Annex 7 to encourage relocation and ultimately consolidate their ethnic group in a certain area).

107. See Dayton Agreement, *supra* note 15, Annex 7, art. I, cl. 4, 35 I.L.M. at 137 (explaining that the parties must provide information concerning the refugee or displaced person's choice of return and cannot interfere with this decision).

108. See *Minority Return or Mass Relocation*, *supra* note 64, at 15 (detailing some of the methods used by hard-line parties either to encourage refugees to return to an area where they would be in the majority or to discourage minority ethnic refugees from returning to specific areas); see also *Report on the Human Rights Situation in the Federation Central Bosnia Municipalities with a Special Emphasis on the Situation of Minority Groups* (last modified June 2, 1998) <<http://www.bihfedomb.org/eng-repo/rep97.htm>> [hereinafter *Report on the Human Rights Situation in Bosnia*] (noting how the local media incite suspicion and concern about minority groups). Nationalists often use reciprocity to press for relocation of minorities, explaining, for example, that if refugees of their nationality are not allowed to return to their original homes, they will not allow minority refugees to return to their homes in the area controlled by the nationalists. See *id.*

109. HDZ stands for the Croatian Democratic Union, one of the three major nationalistic parties in Bosnia. It is the Bosnian branch of Croatia's HDZ. See Daniel J. Blessington, *From Dayton to Sarajevo: Enforcing Election Law in Post War Bosnia and Herzegovina*, 13 AM. U. INT'L L. REV. 553, 560 (1998).

110. See *Minority Return or Mass Relocation*, *supra* note 64, at 15.

111. See *id.* at 13 (noting that the distinction between "voluntary" and "forced" is difficult, though "voluntary" relocation is only verifiable where refugees have the option to return to their original homes but choose not to).

### b. Effects on Housing

Relocation also results in an increased and more complex housing problem.<sup>112</sup> Refugees, intimidated by the dangerous surroundings or influenced by propaganda, are forced to relocate to another area in Bosnia.<sup>113</sup> Because the refugees occupy this other dwelling, they prevent the original home-owner from returning.<sup>114</sup> The original home-owner, therefore, must relocate, compounding the housing shortage and further segregating the people.<sup>115</sup> As previously noted, not only do most people want to return to their original homes, most people also desire a reunited rather than segregated Bosnia.<sup>116</sup>

## 2. *Lack of Military Presence*

Annex 7 also fails to utilize a military force to implement the provision and encourage the return of refugees. Although the return of refugees is for the most part a civilian matter, it does involve military issues, including the securing of a safe atmosphere for return.<sup>117</sup> The military, however, is hesitant to intrude upon domestic issues and jurisdiction.<sup>118</sup> To date, the lack of military presence has led to numer-

---

112. See *id.* at 12 (explaining that relocation prevents the refugees and displaced persons who wish to return to their homes from doing so, because their houses are occupied by "relocatees").

113. See *supra* notes 107-11 (explaining how hard-liners use propaganda to encourage the relocation of refugees to areas politically convenient).

114. See *Minority Return or Mass Relocation*, *supra* note 64, at 12.

115. See *id.* (examining how relocation negatively affects the housing stock in Bosnia); see also Telephone Interview with sixty-five year old refugee from Prnjavor, Bosnia-Herzegovina (June 17, 1998) (expressing her dream to return to her home city in Bosnia, but explaining that she would most likely have to relocate to another city because someone else is currently occupying her property).

116. See *supra* note 95 and accompanying text (explaining how the majority of refugees voted in their original residence, reiterating their desire to return to their homes).

117. See Cousens, *supra* note 2, at 807-08 (identifying numerous situations where the return of refugees changed from a civilian matter into a military matter after violence erupted).

118. See *id.* at 812 (explaining how NATO does not want to intrude on purely domestic issues, yet noting that third party implementation already interferes with domestic jurisdiction).

ous incidents of violence in such cities as Teslic,<sup>119</sup> Drvar,<sup>120</sup> and in the Kakanj municipality.<sup>121</sup> These incidents demonstrate the need for a strong military presence.<sup>122</sup>

Individuals<sup>123</sup> and even civilian forces<sup>124</sup> in both the Republika Srpska and the Federation of Bosnia have resisted minority returns through violent means.<sup>125</sup> Annex 7 provides no means to punish these individuals or the parties.<sup>126</sup> In addition, the North Atlantic Treaty Organization ("NATO")<sup>127</sup> forces decided that refugee return was not its concern or responsibility. NATO took this position even though it is the main implementing force for civilian operations in Bosnia.<sup>128</sup>

---

119. *See id.* at 807 (stating that hundreds of Bosniacs were forced to flee Teslic due to a series of verbal threats, bombings, and beatings); Telephone Interview with Amir Hanic, Refugee from Teslic, Bosnia-Herzegovina (June 13, 1998) (detailing the intimidation and threats he received before fleeing Teslic).

120. *See* Cousens, *supra* note 2, at 807 (explaining how Bosnian Croat individuals blocked 250 Bosnian Serbs from visiting their homes in Drvar). *But see This Week in Bosnia* (visited June 12, 1998) <<http://world.std.com/~slm/lastweek.html>> (noting the recent successes in Drvar, including the return of 150 Bosnian Serb families).

121. *See Report on the Human Rights Situation in Bosnia, supra* note 108, at 5 (stating that no Bosnian Croat refugees have been able to return due to fear and intimidation within the Kakanj municipality).

122. *See* Cousens, *supra* note 2, at 807 (noting that there was reason to include a military presence in Annex 7).

123. *See id.* (examining numerous situations where individuals in different areas throughout Bosnia prevented the return of refugees or affected the stability for return). *See generally Report on the Human Rights Situation in Bosnia, supra* note 108 (detailing numerous incidents of problems with minority returns).

124. *See* Cousens, *supra* note 2, at 808-09 (describing incidents in which local authorities used intimidation, threats, or physical action to prevent minority refugees from returning). In West Mostar, Bosnian Croat police fired into a crowd of Bosniacs attempting to visit graves on a Muslim holiday. *See id.* In other cases, the police have failed to provide protection for returning refugees. *See id.*

125. *See id.*

126. *See* Dayton Agreement, *supra* note 15, Annex 7, 35 I.L.M. at 137-41. Annex 7 does not provide for implementation through military force. *See id.* Rather the signatures of the parties are relied on for enforcement. *See id.* art. XVIII, 35 I.L.M. at 141.

127. *See id.* NATO is the main implementing force for civilian operations in Bosnia. *See id.*

128. *See* Cousens, *supra* note 2, at 807 (noting that NATO decided that securing conditions for refugee returns was not within their obligations).

Although nation-building is not normally the responsibility of the military, a strong military presence could prevent violence and help secure a safe atmosphere for returning refugees.<sup>129</sup>

### 3. *Lack of Specific Timeline*

Annex 7 provides no timeline for the enactment of its provisions, including the return of the refugees.<sup>130</sup> Although the designated international organizations have set some goals, little progress or success has occurred, especially in the area of minority returns.<sup>131</sup> Annex 7 includes a list of items that must be accomplished, including the repeal of discriminatory legislation, "the prevention and prompt suppression of written or verbal incitement,"<sup>132</sup> and the prosecution, dismissal, or transfer of certain officials without setting any deadlines for their for their accomplishment.<sup>133</sup>

Furthermore, Annex 7 does not set priorities for the enactment of its sections.<sup>134</sup> For example, the provisions of Article II, discussing the necessity for a "suitable condition for return," should be implemented before minority returns are attempted.<sup>135</sup>

---

129. *See id.* at 808 (noting the military's reservation with regard to nation-building after its experience in Somalia, yet distinguishing refugee return from provision of aid, and advocating a military presence in Bosnia).

130. *See* Dayton Agreement, *supra* note 15, Annex 7, 35 I.L.M. at 136-41 (discussing the right of refugees to return and a general plan to implement that right, but not setting any timeline).

131. *See Minority Return or Mass Relocation, supra* note 64, at 2 (noting that although international organizations have recognized the importance of Annex 7 of the Dayton Accords and have attempted to make 1998 the year for the return of minorities, most efforts have failed).

132. Dayton Agreement, *supra* note 15, Annex 7, 35 I.L.M. at 137.

133. *See id.*

134. *See id.* Annex 7, 35 I.L.M. at 138 (enumerating, for example, enumerating steps that would hinder the safe return of refugees without setting any deadlines or priorities for their accomplishment).

135. *See* Boyd, *supra* note 9, at 47-48 (reiterating that the conditions must be suitable and the effects of war must fade before the return of minority refugees can succeed); *see also* Cousens, *supra* note 2, at 803-04 (remarking that one of the failures of the Dayton Accords is its failure to prioritize its provisions).

#### 4. Too Much Power in the Parties' Hands

Annex 7 places too much power in the hands of the parties.<sup>136</sup> In Article II of Annex 7, the agreement explains that the “[p]arties [must] undertake to create in their territories the political, economic, and social conditions conducive to the voluntary return and harmonious reintegration of refugees and displaced persons, without preference for any particular group.”<sup>137</sup> Although this Article explains that this undertaking must be in compliance with the U.N.H.C.R.,<sup>138</sup> it places most of the responsibility with the parties.<sup>139</sup> The apportionment of responsibility between three parties who have so recently been at war with each other presents a significant risk of failure.<sup>140</sup> The same individuals who incited conflict during the war are now in high-ranking political positions in the parties,<sup>141</sup> including a number of alleged war criminals who hold political positions in Prijedor, Omarska, and Bosanska Samac in Republika Srpska, as well as other areas in the Federation of Bosnia.<sup>142</sup> The presence of these war crimi-

---

136. See Dayton Agreement, *supra* note 15, Annex 7, art. II, cl. 1, 35 I.L.M. at 138; see also Boyd, *supra* note 9, at 44 (implying that although many organizations have attempted to implement the civil elements of the Dayton Accords, a more successful approach would have been through a single leader).

137. Dayton Agreement, *supra* note 15, Annex 7, art. II, cl. 1, 35 I.L.M. at 138.

138. See *id.* (stating that the plan for return of refugees must comply with the U.N.H.C.R. repatriation plan).

139. See *id.* (giving the parties responsibility to create the suitable conditions for return).

140. See *Hearings*, *supra* note 93, at 1 (arguing that Bosnia needs the support of the international community to prevent the return of conflict to the region).

141. See *The Dayton Accords and the Return of Bosnian Refugees*, *supra* note 7, at 1 (claiming that the Dayton Accord's reliance on the parties is somewhat hypocritical because it encourages the parties to secure the environment for return when the parties themselves were responsible for the “ethnic cleansing” in the region in the first place).

142. See BRINGING WAR CRIMINALS TO JUSTICE: OBLIGATIONS, OPTIONS, RECOMMENDATIONS 12 (The Balkan Institute, Aug., 1997), available in <<http://www.balkeninstitute.org/conference/bwjc-aug97.html>> (identifying the presence of war criminals in influential public positions throughout the Republika Srpska, as well as the presence of the influential Radovan Karadzic and Ratko Mladic). Accused war criminals also play a role in the Bosnian Croat part of the Federation of Bosnia. See *id.* at 13.

nals within the parties hinders the safe and expedient implementation of Annex 7.<sup>143</sup>

### 5. *A Contradiction Leading to a Separated Bosnia*

Annex 7 creates a confusing discrepancy within the Dayton Accords.<sup>144</sup> The Dayton Accords respects the separation between the Federation of Bosnia and Republika Srpska.<sup>145</sup> It even allows each area to derive certain political and legal rights as provided in the Bosnian Constitution in Annex 4.<sup>146</sup> Article I, Clause 1, however, allows refugees to return to their original homes, and Article I, Clause 2 insists that the parties shall respect their decision to return and allow for their safe return.<sup>147</sup> This individual choice given to refugees regarding whether to return or relocate could, however, destroy the very ethnic separation between the Federation and Republika Srpska recognized by the Dayton Accords.<sup>148</sup>

---

143. See *id.* at 14 (declaring that the presence of war criminals hinders the return of minority refugees because the refugees are intimidated by either fear or threats).

144. See Cousens, *supra* note 2, at 804 (finding a contradiction between the recognition of the separation between Republika Srpska and the Federation of Bosnia and the Annex 7 mandate that the parties accept the return of refugees).

145. See Paul C. Szasz, *Introductory Note to the Bosnia and Herzegovina-Croatia-Yugoslavia: General Framework—Agreement for Bosnia and Herzegovina with Annexes*, 35 I.L.M. 75, 79 (recognizing the two entities within Bosnia as the Republika Srpska, comprised of Bosnian Serbs, and the Federation of Bosnia and Herzegovina made up of both Bosniacs and Bosnian Croats).

146. See Dayton Agreement, *supra* note 15, Annex 4, 35 I.L.M. at 118-28; see also Boyd, *supra* note 9, at 46 (arguing that Dayton purposely created a weak central government so that the minorities would be assured security); Szasz, *supra* note 145, at 79 (noting that the central government has "a few defined responsibilities," but that the rest of the power lies with the Entities).

147. See Dayton Agreement, *supra* note 15, Annex 7, art. I, cl. 1-2, 35 I.L.M. at 137.

148. See Cousens, *supra* note 2, at 804 (noting that the facilitation of returns could reverse the division between the two entities); see also Boyd, *supra* note 9, at 43 (alleging that the Bosnian Serbs and Bosnian Croats do not wish to live in areas dominated by Muslims, thereby implying that the actual implementation of Annex 7 and its return of refugees to areas where they would belong to ethnic minorities could cause problems).



Annex 7 fails to explain this contradiction.<sup>149</sup> The result is that the conception of power of the two separate entities has overpowered the ideal of individual choice in Annex 7. The result is a country with almost complete ethnic partition.<sup>150</sup> The failure of Bosnia and the international communities to enforce the provisions addressing refugee return detailed in Annex 7 has resulted in a separated Bosnia, with few minority returns.<sup>151</sup>

#### D. BOSNIAN IMPLEMENTATION OF ANNEX 7

The governments in Republika Srpska and the Federation of Bosnia have had little success implementing Annex 7.<sup>152</sup> Although more than 350,000 people have returned to Bosnia, few have returned to places where they would comprise the ethnic minority.<sup>153</sup> In the two years following the end of the war, only 30,000 people have returned to those places that are "ethnically hostile,"<sup>154</sup> and a mere 2,200 minorities have returned to Republika Srpska.<sup>155</sup> The return of refugees has been merely symbolic.<sup>156</sup>

---

149. See generally Dayton Agreement, *supra* note 15, Annex 7, 35 I.L.M. at 89-152.

150. See Boyd, *supra* note 9, at 46 ("Partition is what exists in Bosnia today."); cf. Cousens, *supra* note 2, at 816 (recognizing that the time to influence the nature of the country's partitioning is now, for the implementers could go either way).

151. See Cousens, *supra* note 2, at 816 (discussing the possibility of a complete partition of Bosnia).

152. See *Self-Sustaining Structures*, *supra* note 90, at 7 (identifying certain failures in the implementation of Annex 7).

153. See *Dayton at Two Years*, *supra* note 9 (stating that as of mid-1997, 300,000 refugees and displaced persons had returned, but that Bosnia's "divided communities" have prevented many more from returning); see also *Minority Return or Mass Relocation*, *supra* note 64, at 3 (recognizing the goal of partition by nationalist leaders).

154. See *Dayton at Two Years*, *supra* note 9. But see INFORMATION NOTES—No. 1/98, *supra* note 19, at i (recognizing U.N.H.C.R.'s primary goal in 1998 as the achievement of minority returns of 50,000 minority refugees or displaced persons).

155. See *Minority Return or Mass Relocation*, *supra* note 64, at 3.

156. See *Report on the Human Rights Situation in Bosnia*, *supra* note 108 (identifying the symbolic meaning of the return of refugees by noting the somewhat hopeless situation for return where people within a single municipality cannot return to their homes).

The refugees and displaced persons are intimidated by several factors including single-ethnicity police forces, propaganda spread by the media, and general discrimination and harassment.<sup>157</sup> In some areas, the local people completely disregard the laws concerning the return of refugees.<sup>158</sup> Through intimidation or even physical force, the local people deny refugees the right to return, as well as the reacquisition of their property.<sup>159</sup> In the Kakanj municipality in the Federation, a single Croat refugee has yet to return.<sup>160</sup> When refugees tried to return they were compelled to leave within days.<sup>161</sup> An armed Bosnian Army Special Unit<sup>162</sup> passed through the areas in which the Croats wished to return and destroyed Croat homes. Additionally, a police force that was comprised of only one ethnic group and the media propagated ethnic tensions thereby making return a dangerous option.<sup>163</sup> In another area in Bosnia, on April 8, 1998, a group of approximately sixty angry Serbs accosted a group of Bosniac displaced persons and refugees when the group attempted to visit damaged homes in Novi Grad on the Muslim holiday of Bajram.<sup>164</sup>

---

157. See *id.* (elaborating on specific situations where return has been impossible because of such factors as a police force comprised of a single ethnic group and harassment).

158. See U.N. GAOR, Agenda Item 112(c), *supra* note 86, at 5 (recounting various stories where the local people destroyed the property or used violence to prevent the return of refugees); see generally *Report on the Human Rights Situation in Bosnia*, *supra* note 108, at 4-17 (providing several examples where the local people prevented refugee return through violence or intimidation).

159. See *Report on the Human Rights Situation in Bosnia*, *supra* note 108 (noting that people are afraid to return because of the threats, and that some people even leave after resettling due to physical abuse or intimidation); see also U.N. GAOR, Agenda Item 112(c), *supra* note 86, at 7.

160. See *Report on the Human Rights Situation in Bosnia*, *supra* note 108 (explaining that before the war, 29.8% of the 5,857 people in the Kakanj municipality were Bosnian Croats, but now no Bosnian-Croat citizens currently residing in Kakanj).

161. See *id.* (describing different circumstances that caused Bosnian Croat refugees to leave including the destruction of their property and biased television coverage).

162. See *id.* (noting that the "Black Swans," the Army Special Unit, have been involved in destroying the property of refugees who wished to return).

163. See *Report on the Human Rights Situation in Bosnia*, *supra* note 108, at 5.

164. See INFORMATION NOTES—No. 2/98, *supra* note 63, at iv (describing a situation where about 500 Bosnian Muslim refugees could not embark on an or-

In addition to intimidation by local residents, the local authorities usurp power and directly violate the refugees' rights.<sup>165</sup> In the Jajce municipality, the local authorities have denied Bosniacs and Serbs not only the right to register, but also the right to visit homes in the area.<sup>166</sup> In the Municipality of Zepce, local authorities have used the "reciprocity principle" to prevent minorities from returning.<sup>167</sup> In one case, local authorities prevented two Bosniac women from returning to their flat in the Zepce municipality by invoking the "reciprocity" principle.<sup>168</sup> The local authorities claimed that since the Bosniacs were not accepting the return of refugees in the Bosniac controlled areas of Zenica, Zavidovici, and Maglaj, the women could not return to Zepce.<sup>169</sup>

Finally, in some regions, even if specific laws have been adopted, the local governments refuse to enforce them.<sup>170</sup> In the Zenica municipality,<sup>171</sup> the government adopted the Law on the Transfer of So-

---

ganized trip when an angry crowd of Bosnian Serbs attacked them); *see also* U.N. GAOR, Item 112(c), *supra* note 86, at 5 (recounting another story of tension when a group of displaced persons tried to inspect their homes in Republika Srpska, but did not have the government's permission).

165. *See generally* Report on the Human Rights Situation in Bosnia, *supra* note 108 (describing situations throughout the Federation of Bosnia where local authorities have assumed power and used it to affect the peoples' rights).

166. *See id.* (noting how policemen in the Jajce municipality have violated fundamental rights, preventing Bosniacs and Serbs from registering or visiting their homes).

167. *See id.* (explaining how the Bosnian-Croats in the Zepce municipality rely on a theory of reciprocity to deny the return of Bosnian Muslim refugees). The "reciprocity principle" is a situation where one ethnic group denies the return of members of another ethnic group, claiming a right to do so based on the fact that the other ethnic group first denied its members' return. *See id.*

168. *See id.* (describing the case of Prasko Selma and her mother, Babinjac Semka, who were unable to return to their original home).

169. *See id.* (detailing the Bosnian Croats use of the "reciprocity principle" to deny the return of Bosnian Muslim refugees).

170. *See generally* Report on the Human Rights Situation in Bosnia, *supra* note 108 (presenting stories where the authorities used the law in a biased or unfair manner, including police who refused to enforce laws and government officials who implemented laws unfairly). There are no cantonal municipal forces in central Bosnia. *See id.* Rather, the police forces are comprised of one ethnic group. *See id.* This affects the enforcement of laws as well as police reaction to events such as murder and desecration of property. *See id.*

171. *See id.* at 3 (recognizing that the Zenica municipality according to a 1991

cially-Owned Property into State Property.<sup>172</sup> When the Executive Board to enforce this law was established, however, it ignored the rights of the Croats, appointing just three Croats out of a total of 115 members.<sup>173</sup> This creates a situation in which people are not accorded the same legal and political rights.<sup>174</sup> In effect, this determines not only where people are able to return, but also affects the political power within the area. Moreover, it affects the passage of future laws that would facilitate returns and the reacquisition of property.<sup>175</sup>

#### E. RECENT ACTIONS IN THE BOSNIAN FEDERATION

Local governments have made little progress in their attempt to implement Annex 7.<sup>176</sup> Recently, however, the Federation of Bosnia has taken some steps to advance the enforcement of Annex 7.<sup>177</sup> On April 4, 1998, the Federation of Bosnia's government amended some important property legislation that was necessary to allow refugees and displaced persons to reacquire their land.<sup>178</sup>

First, the Law Regulating Application of the Law on Temporarily Abandoned Real Property<sup>179</sup> allows those refugees who own private

---

census had 145,577 people with 80,477 (55.2%) Bosniacs; 22,651 or (15.6%) Bosnian Croats; 22,592 (15.5%) Bosnian Serbs and 19,957 or (13.7%) others).

172. *See id.*

173. *See id.* at 4 (noting that the failure to include Bosnian Croats was the will of the SDA party, the Bosnian Muslim party, which has complete power in Zenica).

174. *See id.* (explaining how the harassment and discrimination affects the ethnic minorities and their return).

175. *See id.*

176. *See supra* notes 152-75 and accompanying text (examining the implementation of Annex 7 within Bosnia).

177. *See Sarajevo Declaration, available in* <<http://www.pscebih.org/sardec.htm>> (last modified Feb. 3, 1998) (exploring methods for implementing Annex 7); *see also* INFORMATION NOTES—No. 2/98, *supra* note 63, at 3-5 (discussing the most recent property legislation in the Federation of Bosnia in attempts to implement Annex 7).

178. *See* INFORMATION NOTES—No. 2/98, *supra* note 63, at 3-5 (detailing the new legislation and explaining that the legislation was printed in the *Official Gazette* in Bosnia on April 3, 1998).

179. *See id.* at 3 (explaining how the Law on Temporarily Abandoned Real Property Owned by Citizens overturns the law that was adopted during the war).

property to file a claim to reacquire their property.<sup>180</sup> If the property is abandoned or someone is illegally living there, the owner may take ownership immediately.<sup>181</sup> Second, the Law on Cessation of the Application of the Law on Abandoned Apartments<sup>182</sup> applies to socially-owned apartments and determines that the decisions ending occupancy rights of refugees and displaced persons are null and void.<sup>183</sup> Third, the Law on Taking Over the Law on Housing Relations legislation that had stated that an occupancy right could be canceled if the occupant had not resided in the apartment for a continuous period of six months, by making it inapplicable to people with the right to return under Annex 7.<sup>184</sup> Finally, the Law on the Purchase of Apartments with the Occupancy Rights<sup>185</sup> deals with the applications to socially-owned apartments.<sup>186</sup> This legislation by the Federation is a first step in local government action to ensure the return of displaced refugees.<sup>187</sup>

Republika Srpska has, to this date, made no advancements in amending their property legislation.<sup>188</sup> Property laws in this area still

---

180. *See id.* (noting that people may reclaim their land at any time and that the authorities must resolve the claims within thirty days).

181. *See id.* (noting that if the property is vacant or someone is illegally living there, the person may move in immediately, yet explaining how if there is a temporary owner, the person must wait ninety days).

182. *See id.* (detailing the differences between the old law that was issued during the war and the new law recently adopted).

183. *See* INFORMATION NOTES—No. 2/98, *supra* note 63, at 3 (explaining that the law overturns the previous Law on Abandoned Apartments, which allowed authorities to take property and call it abandoned if the person left).

184. *See id.* at 4 (explaining the Law on Housing Relations and its applicability to “socially owned” apartments).

185. *See id.* at 4-5 (noting the amendments to the law that were passed on March 4, 1998). A person who acquired rights to an apartment that was declared “abandoned” since 1991, is not allowed to purchase the apartment. *See id.*

186. *See id.*

187. *See* INFORMATION NOTES—No. 2/98, *supra* note 63, at 5 (explaining that a campaign will inform people of their rights, but that there must be adequate implementation for these laws to be effective).

188. *See id.* (discussing how the property laws in the Republika Srpska have not been amended at this time but noting that a group has been established to work on amending the laws).

fail to meet international standards.<sup>189</sup> There is hope, however, that with the new government in the Republika Srpska, progress will soon follow.<sup>190</sup>

#### F. THE UNITED NATIONS ROLE

Annex 7 offers the U.N.H.C.R. a significant role in implementing the Dayton Accords.<sup>191</sup> Article I of Annex 7 identifies the U.N.H.C.R. as the organization responsible for developing a comprehensive plan for refugee return.<sup>192</sup> The parties in the Federation of Bosnia and the Republika Srpska are responsible for implementing and working in compliance with this designated plan.<sup>193</sup> Article III of Annex 7 further specifies that:

Parties shall give full and unrestricted access by UNHCR, the International Committee of the Red Cross ("ICRC"), the United Nations Development Programme ("UNDP"), and other relevant international, domestic, and nongovernmental organizations to all refugees and displaced persons, with a view to facilitating the work of those organizations in tracing persons, the provision of medical assistance, food distribution, reintegration assistance, the provision of temporary and permanent hous-

---

189. *See id.*; *see also* UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *supra* note 2, at 170 (stating that the government in the Republika Srpska has not complied with the provisions of Annex 7 and with the return of refugees). Property laws must meet with international standards including the standards designated in the Dayton Accords, which ensure the people that they are able to reacquire the land that they were deprived of during the war. *See* INFORMATION NOTES—No. 2/98, *supra* note 63, at 7. The lack of action in amending property laws in Republika Srpska demonstrates their refusal to reform the current property situation and in disparity with international standards. *See id.*

190. *See* UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *supra* note 2, at 170 (suggesting that the new government in the Republika Srpska could expedite property reform); *see also* *Minority Return or Mass Relocation*, *supra* note 64, at 3 (noting that the international agencies have discarded the deferential approach to Bosnia's nationalist leaders and are now "taking them on" as seen with the appointment of Milorad Dodik).

191. *See* Dayton Agreement, *supra* note 15, Annex 7, art. I - IV, 35 I.L.M. at 137-38 (detailing the role of the United Nations High Commissioner for Refugees in the implementation of Annex 7 and the return of refugees).

192. *See id.* Annex 7, art. I, cl. 5, 35 I.L.M. at 137 (explaining how U.N.H.C.R. will develop a plan with the parties that will facilitate the early return of refugees).

193. *See id.* (noting that the parties agreed to implement the plan designed by U.N.H.C.R.).

ing, and other activities vital to the discharge of their mandates and operational responsibilities without administrative impediments.<sup>194</sup>

These sections of the agreement grant considerable power to the U.N.H.C.R.<sup>195</sup> They allow the U.N.H.C.R. to assist in developing and implementing a plan without constraints from the parties.<sup>196</sup> The U.N.H.C.R. has utilized this mandate to assist in the return of over 350,000 refugees and displaced persons.<sup>197</sup> It has also adopted numerous plans to encourage returns.<sup>198</sup> These plans include activities such as running buses for refugees and displaced persons to bring them to their original homes and cities,<sup>199</sup> and building new homes to create more habitable apartments thereby decreasing the housing shortage.<sup>200</sup>

The "Open City Initiative," however, is the fundamental U.N.H.C.R. plan enacted to encourage and facilitate minority returns.<sup>201</sup> An "Open City" must be genuinely dedicated to the minority

---

194. See *id.* Annex 7, art. III, cl. 2, 35 I.L.M. at 138.

195. See *id.* Annex 7, arts. I-IV, 35 I.L.M. at 137-38 (explaining the roles of U.N.H.C.R. in facilitating of the return of refugees).

196. See Dayton Agreement, *supra* note 15, Annex 7, arts. I-IV, 35 I.L.M. at 137-38 (noting the parties acceptance of Annex 7 and the agreement to implement the U.N.H.C.R. plan).

197. See *Dayton at Two Years*, *supra* note 9 (quoting the number of refugees that have returned to date); see also UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *supra* note 2, at 170 (elucidating the roles of U.N.H.C.R. in the return of refugees).

198. See UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *supra* note 2, at 170 (detailing different plans by which U.N.H.C.R. has attempted to implement Annex 7).

199. See *id.* (describing a project developed through U.N.H.C.R. to raise the confidence of those wishing to return by allowing them to visit their original homes and cities on U.N.H.C.R. buses); see also Interview with Katie Byrne, Worker for the Hungarian Refugee Support Group, in Washington, D.C. (June 16, 1998) (explaining how the U.N.H.C.R. visit from the refugee camp in Debrecen, Hungary to Sarajevo, Bosnia-Herzegovina helped to reassure the refugees that the situation was safe to return).

200. See UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *supra* note 2, at 170 (explaining how sixty percent of the housing stock was ruined in Bosnia during the war and how U.N.H.C.R. attempted to address this issue by repairing homes only if the governments would accept minority returns).

201. See *NATO/SFOR: Joint Press Conference*, M2 Presswire, Jan. 26, 1998

return process and demonstrate this commitment to the U.N.H.C.R.<sup>202</sup> The U.N.H.C.R. works with local governments to design a plan for being "open."<sup>203</sup> To date, the U.N.C.H.R. has accepted fourteen cities as "Open Cities."<sup>204</sup> The international community's involvement is necessary, however, to ensure each city's dedication to being "open."<sup>205</sup> This international support and involvement will lead to strict and accurate implementation.

Although the "Open City" plan and the role of the U.N.H.C.R., as described in Annex 7, appears strong, it has encountered numerous problems.<sup>206</sup> First, the U.N.H.C.R.'s selection of "Open Cities" is random,<sup>207</sup> and does not adequately apply a specified selection process.<sup>208</sup> Second, the "Open City" plan fails to address other crucial problems.<sup>209</sup> These problems include, but are not limited to, property

---

(explaining how U.N.H.C.R. will use 80% of their funding for the "Open City" initiative); see also *NATO: Report of the Secretary-General on the United Nations Mission in Bosnia & Herzegovina*, M2 Presswire, June 20, 1997, available in 1997 WL 11935590 [hereinafter *NATO: Report on U.N. Mission*]. "Building upon grass-roots initiatives, U.N.H.C.R. and its partners offer support and material assistance to villages and municipalities which volunteer to declare themselves 'Open Cities' by welcoming previous residents from all ethnic communities who wish to return." *Id.*

202. See *NATO: Report on U.N. Mission*, *supra* note 201 (explaining how the recognition of an "Open City" depends on the city's dedication to being open).

203. See *Minority Return or Mass Relocation*, *supra* note 64, at 4 (explaining that U.N.H.C.R. assistance with an open city plan depends on the commitment of the local government to abide by the plan's terms).

204. See *NATO/SFOR: Joint Press Conference*, M2 Presswire, Aug. 18, 1998, available in 1998 WL 16518508 (identifying U.N.H.C.R.'s current recognition of fourteen "Open Cities").

205. See *NATO/SFOR: Joint Press Conference*, M2 Presswire, Oct. 23, 1997, available in 1997 WL 15140620 (noting the need for international compliance with regard to the "Open Cities").

206. See *NATO/SFOR: Joint Press Conference*, *supra* note 204 (explaining how two mayors in "Open Cities" claimed that the cities are no more than status); see also *Minority Return or Mass Relocation*, *supra* note 64, at 4 (noting that although U.N.H.C.R. has invested eighty percent of its funds into "Open Cities," the project has seen minimal success).

207. See *Minority Return or Mass Relocation*, *supra* note 64, at 4 (claiming that one of the failures of the "Open City" initiative is the lack of an adequate selection process).

208. See *id.*

209. See *id.* (detailing how the "Open City" initiative does not address certain



issues and housing shortages.<sup>210</sup> The "Open City" initiative attempts to facilitate returns without addressing these other issues.<sup>211</sup> Finally, Annex 7 fails to designate a specific international implementation force to oversee the "Open City" initiative.<sup>212</sup> Rather, it relies on implementation by the international community in broad terms. The lack of an implementation and monitoring force has culminated in disappointing results, including few minority returns.<sup>213</sup>

### III. LESSONS TO BE LEARNED

#### A. BRIEF HISTORY OF PALESTINIAN REFUGEES

The refugee situation in Bosnia has historical precedent.<sup>214</sup> In fact, one has only to look to the situation in Israel with the Palestinian refugees to understand the complexities that exist with the failed return of refugees and the possible disastrous results of a failed implementation.<sup>215</sup>

The Palestinian refugee situation extends back fifty years and therefore is considered by some to be the "oldest and largest refugee problem."<sup>216</sup> To date, according to the United Nations Relief and

---

issues such as housing).

210. See *id.* (explaining how "Open Cities" do not address "property rights violations, housing shortages, and double occupancy").

211. See *id.* (stating that "Open Cities" attempt to facilitate minority returns, but fail to address other issues such as property rights).

212. See Dayton Agreement, *supra* note 15, Annex 7, art. I-IV, 35 I.L.M. at 137-38 (mentioning U.N.H.C.R.'s promise to develop a plan for the return of refugees but failing to mention how this plan will be implemented and monitored).

213. See *Minority Return or Mass Relocation*, *supra* note 64, at 4 (examining the reasons for the disappointing results of U.N.H.C.R.'s "Open City" plan).

214. See UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *supra* note 2, at 175 (offering examples of numerous countries where refugee return has been a problem including Afghanistan, Guatemala, Mozambique, and Rwanda).

215. See Weiner, *supra* note 81, at 1 (noting that the basis of the Palestinians' conflict with Israel is the refugee return issue); see also *Palestinians Act Out Killing of Israeli Soldier in West Bank Protest*, AGENCE FRANCE-PRESSE, May 12, 1998, at 1 (detailing an incident where Palestinians acted out the killing of an Israeli soldier to demonstrate their demand for the return of the Palestinian refugees).

216. See Palestinian National Authority Official Website, *Palestinian Refugees: Fifty Years of Injustice* (visited July 12, 1998) <[http://nmopic.pna.net/un/un\\_pal\\_1948.htm](http://nmopic.pna.net/un/un_pal_1948.htm)> (stating that the Palestinian refugee problem is five decades old).

Works Agency ("U.N.R.W.A."),<sup>217</sup> there are 2.7 million Palestinian refugees.<sup>218</sup> These refugees are scattered throughout the Middle East, with highest concentrations in Jordan<sup>219</sup> and Lebanon.<sup>220</sup>

The refugees that exist today originate from two different time periods, 1948 and 1967. The origination of the 1948 refugees exacerbates the present-day conflict, with a virulent debate occurring today over exactly what happened.<sup>221</sup> During the 1948 time period, some 750,000 Palestinians were compelled to leave.<sup>222</sup> The Israelis claim that the Palestinians voluntarily left at the command of Arab leaders

---

and has been an issue since the creation of the United Nations); UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *supra* note 2, at 249. The United Nations Relief and Works Agency for Palestine ("U.N.R.W.A.") defines Palestinian refugees as those people, or their descendants, who lived in Palestine two years prior to 1948 and lost their homes as a result of the hostilities between Israel and Palestine. *See id.*

217. *See* ARZT, *supra* note 10, at 23 (explaining that the U.N.R.W.A. provided food, shelter, health services, and training for Palestinians in the host countries to which they fled); *see also* RAMZIH RABAH, PALESTINIAN REFUGEES AND DISPLACED AND THE FINAL STATUS NEGOTIATIONS 5-7 (1996) (discussing the issues of Palestinian refugees and their displacement from the West Bank and Gaza Strip). The U.N.R.W.A. is the organization that addresses the Palestinian refugee problem. *See id.*

218. *See* Weiner, *supra* note 81, at 8 (stating that as of 1992, according to the U.N.R.W.A., there were 2.7 million Palestinian refugees). Israel, however, disagrees with this figure, arguing that it does not discern between 1948 refugees and 1967 displaced persons. *See id.* One Israeli researcher estimated that the total number of Palestinian refugees is 1.9 million. *See id.* On the other hand, a Palestinian refugee estimated that there are four million refugees. *See id.*

219. *See* Rex Byrnen, *Palestinian Refugees and the Middle East Peace Process*, in NEW HAMPSHIRE INTERNATIONAL SEMINAR/YALE-MARIA LECTURE IN MIDDLE EAST STUDIES 3 (1991) (noting that as of June 1997, there were 1,413,252 registered Palestinian refugees living in Jordan).

220. *See id.* (noting that as of June 1997, there were 359,005 registered Palestinian refugees living in Lebanon).

221. *See id.* at 1 (describing the conflict that exists over the origin of the 1948 Palestinian refugees).

222. *See* Palestinian National Authority Official Website, *supra* note 216, at 1 (claiming that there were 750,000 Palestinian refugees as a result of the 1948 war and establishment of the state of Israel). *But see* Weiner, *supra* note 81, at 7 (reporting that while the U.N. estimates the number of 1948 refugees to be approximately 604,000, about half of the Palestinian population living in Israel at the time, independent researchers state that the number is about 540,000, while Arab states argue the number is closer to 900,000).

to avoid the ensuing conflict and to protest the establishment of a Jewish state.<sup>223</sup> The Palestinians, on the other hand, argue that they were forced to leave by the omnipresent militarism brought on by the Israelis' desire for a Jewish state.<sup>224</sup> After the Palestinians left, their property was taken and they therefore were unable to return.<sup>225</sup>

The other large faction of Palestinian refugees is a result of the Arab-Israeli "Six-Day War" in 1967. This war was prompted by an Israeli strike against Egypt, Syria, and Jordan, when Gamal Abkel Nasser, the leader of Egypt, stated his intentions to destroy Israel and concentrated troops along the border.<sup>226</sup> During this time period, the U.N.R.W.A. estimates that 250,000 Palestinians were forced to leave their homes in Israel.<sup>227</sup>

## B. INTERNATIONAL LEGAL AUTHORITY

The Palestinians claim that their right to return is an "integral part of an individual's fundamental rights."<sup>228</sup> They base this claim on international legal authority, including numerous United Nations documents.<sup>229</sup> These documents include the following: United Decla-

---

223. See Byrnen, *supra* note 219, at 2 (arguing that the Palestinians chose to leave Palestine either by their own will or at the command of the Arab leaders); see also Weiner, *supra* note 81, at 21-22 (relating the Israeli's' position regarding the Palestinian refugees of 1948).

224. See Byrnen, *supra* note 219, at 2 (stating that the Palestinians were forced from their homes for reasons, including the formation of a Zionist state); see also Weiner, *supra* note 81, at 15-16 (explaining the position of the Palestinians regarding Palestinian refugees of 1967).

225. See Byrnen, *supra* note 219, at 2.

226. See THOMAS L. FRIEDMAN, FROM BEIRUT TO JERUSALEM 15-16 (1995) (recounting the beginnings of the "Six Day War").

227. See Weiner, *supra* note 81, at 7 (noting that Israeli researchers have argued that only 250,000 Palestinian became refugees as a result of the 1967 war). *But see* Palestinian National Authority Official Website, *supra* note 216 (arguing that 325,000 Palestinians became refugees as a result of the 1967 war).

228. Manuel Hassassian, *Historical Justice and Compensation for Palestinians* (visited Nov. 22, 1998) <[http://www.pna.net/peace/historical\\_justice.htm](http://www.pna.net/peace/historical_justice.htm)> (asserting that a refugee's right of return is fundamental and undeniable).

229. See *id.* (detailing the numerous international documents asserting a person's right to return to their country); see also ARZT, *supra* note 10, at 63-66 (discussing the imperative question if there is a Palestinian "right of return" within the context of the international law).

ration of Human Rights,<sup>230</sup> the Human Commission on Human Rights,<sup>231</sup> United Nations Resolution 194,<sup>232</sup> and United Nations Resolution 237.<sup>233</sup>

Each of these international documents reiterates a person's right to return to his or her country.<sup>234</sup> For example, the Universal Declaration of Human Rights states that a person has a right to leave and return to their country.<sup>235</sup> The Human Commission on Human Rights furthers this point by declaring, "[e]veryone is entitled, without distinction of any kind, such as race, color, sex, language, religion, political, or other opinion, national or social origin, property, birth marriage, or other status to return to his own country."<sup>236</sup>

Although these documents serve as a general legal basis for return, Palestinian refugees cite United Nations Resolution 194 most often when declaring their right to return.<sup>237</sup> United Nations Resolution 194 discusses the situation in Palestine and specifies in paragraph 11 that:

refugees who wish to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.<sup>238</sup>

---

230. *Universal Declaration of Human Rights*, *supra* note 29.

231. Human Commission, *supra* note 30.

232. G.A. Res. 194, U.N. GAOR, 3d Sess., pt. 1, para. 21, U.N. Doc. A/810 (1948).

233. S.C. Res. 237, U.N. SCOR, 22nd Sess., 1361st mtg., at 5, U.N. Doc. S/INF/22/Rev.2 (1967).

234. See *infra* notes 235-40 (discussing documents that reiterate a refugee's right of return).

235. See *Universal Declaration of Human Rights*, *supra* note 29, art. 13 (declaring that "[e]veryone has the right to leave any country, including his own, and to return to his own country").

236. Human Commission, *supra* note 30.

237. See RABAH, *supra* note 217, at 4 (identifying United Nations Resolution 194 as the main source of reference for Palestinian return).

238. G.A. Res. 194, *supra* note 232, para. 11.

This resolution also specifies that a Conciliation Commission should advance the return of the refugees or compensation payment.<sup>239</sup>

These documents collectively form a foundation for the Palestinian refugees' plea for return.<sup>240</sup> To date, the Israelis and Palestinians have developed five legal agreements outlining such areas as military presence, the Gaza strip, and administrative matters.<sup>241</sup> Although these documents advanced the goal of peace in the area, they make little mention of returning the refugees.<sup>242</sup>

### C. CALAMITOUS MISTAKES WITH PALESTINIAN REFUGEE RETURN

The parties of Palestine and Israel have made several mistakes with the facilitation of the return of the Palestinian refugees.<sup>243</sup> First, the great length of time between the period when the refugees first came into existence, 1948, and the present time has heightened tensions and minimized the chance for adequate and complete returns.<sup>244</sup>

---

239. *See id.*

240. *See* Byrnen, *supra* note 219, at 13 (identifying documents such as United Nations Resolution 194 as forming a basis for right of the Palestinian refugees to return to Israel).

241. *See* Weiner, *supra* note 81, at 3-4. The Declaration of Principles on Interim Self-Government Arrangements ("D.O.P.") formed a foundation for negotiations between Palestine and Israel. *See id.* at 3. The Israel-Palestine Liberation Organization Agreement on the Gaza Strip and the Jericho Area ("Cairo Agreement") developed a plan for the partial withdrawal of military forces in the Gaza strip and Jericho area and the transfer of local administration to the Palestinian Authority. *See id.* The Agreement on Preparatory Powers and Responsibilities ("Erez Agreement") granted a transfer of authority to the Palestinian Authority in such areas as health, tourism, and social welfare. *See id.* The Protocol on Further Transfer of Powers and Responsibilities ("Further Transfer Protocol") transfers authority in the West Bank to the Palestinian Authority in such areas as labor, industry, and local government. *See id.* The Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip ("Oslo II") supersedes previous agreements except the D.O.P. *See id.* at 4. Oslo II set standards for Palestinian residents in the area and gave PLO chairmen jurisdiction over much of the West Bank and Gaza strip. *See id.*

242. *See id.*

243. *See* Palestinian National Authority Official Website, *supra* note 216 (identifying the numerous problems involved with the Palestinian refugee situation and the need for a solution).

244. *See id.* (calling the fifty years of struggle of the Palestinian refugees an injustice). *But see* Weiner, *supra* note 81, at 29 (suggesting that Israel's delay in facilitating the return of the Palestinian refugees may be a result of Israel's state of

In addition, the lack of a comprehensive, detailed plan for the return of refugees allowed the problem to intensify with little hope for a resolution.<sup>245</sup>

### 1. *A Prolonged Crisis*

The U.N.H.C.R. stresses the importance of early planning to facilitate the return of refugees.<sup>246</sup> It notes that early planning and implementation are imperative because the results of a prolonged refugee crisis can be disastrous.<sup>247</sup> For example, the protracted nature of the Palestinian refugee crisis and the inability of the parties to solve the problem allowed the complexities of the situation to maximize.<sup>248</sup> Numerous problems have resulted, including adverse effects on the peace negotiations<sup>249</sup> and settlements, as well as heightened tensions and a rise in nationalism.<sup>250</sup>

#### a. *A Prolonged Refugee Situation and its Effects on Peace in the Region*

Both the Palestinians and the Israelis look at the procurement of the refugee situation as a necessary step towards achieving peace in

---

emergency with the surrounding Arab countries).

245. See Artz, *supra* note 10, at 63-66 (analyzing whether there is a definitive for the return of the Palestinian refugees based on binding international law).

246. See UNITED NATIONS HIGH COMMISSION FOR REFUGEES, *supra* note 2, at 175 (recognizing that early planning and facilitation is imperative for successful returns).

247. See *id.* at 175-176 (noting that early planning discourages dependency and provides the refugees with the necessary skills to assimilate into the community as they return).

248. See Byrnen, *supra* note 219, at 21 (stating that the refugee problem in the Middle East and the lack of a solution will result in long-term suffering the prevention of an eduring peace plan).

249. See Weiner, *supra* note 81, at 2 (claiming that the settlement of a peace project depends on the successful resolution of the Palestinian refugee situation); see also Byrnen, *supra* note 219, at 21 (asserting that the conflict between the Palestinians and Israelis cannot be resolved without a solution to the Palestinian refugee issue).

250. See Weiner, *supra* note 81, at 2 (attributing the nationalistic feelings among the Palestinian people to the plight of the Palestinian refugees).

the Middle East.<sup>251</sup> According to Israeli Prime Minister Benjamin Netanyahu, there will never be a final peace settlement if the Palestinian refugees do not give up their demand for the return of refugees.<sup>252</sup> The Palestinians, on the other hand, claim that a peace arrangement cannot be completed without the return of the refugees.<sup>253</sup> Ahmed Qurei (Abu Ala), Palestinian Legislative Council speaker, noted that the return of the Palestinian refugees to present day Israel stays at the center of the conflict.<sup>254</sup> In addition, the Palestinian National Council recently reported that even though they are in support of a peace settlement, the refugee situation must be solved before a settlement is made.<sup>255</sup>

The refugee issue is at the heart of the conflict between Israel and the Palestinians.<sup>256</sup> An adequate peace settlement depends on the resolution of the refugee problem.<sup>257</sup> To date, however, none of the agreements have adequately addressed this topic.<sup>258</sup> Perpetual conflict

---

251. See *id.* at 1 (identifying the struggle for return as a major factor affecting the peace negotiations); see also ARZT, *supra* note 10, at 2 (recognizing the use of the refugees as pawns in the conflict).

252. See *Netanyahu Resists Push on Pullback*, CHI. TRIB., June 17, 1998, at 18 (stating that the Prime Minister, Benjamin Netanyahu, would not accept a peace settlement if the Palestinian refugees continue to demand the right to return); see also *Milosevic Pledged to Stop*, WALL ST. J. EUR., June 17, 1998, at 1 (reporting that the Prime Minister would not complete a peace agreement unless the Palestinians drop their demand of right to return).

253. See *PNC Members Calls for Palestinian State*, XINHUA ENGLISH NEWswire, May 16, 1998 (stating that the Palestinian refugees will not achieve a peace agreement without the return of the refugees).

254. See Steve Rodan & Mohammed Najib, *PA Will Announce State Despite Israeli Threats*, JERUSALEM POST, June 19, 1998 (reporting that Palestinian Legislative Council speaker, Ahmed Qurei (Abu Ala) stated that the refugee issue is at the heart of the conflict between Palestine and Israel).

255. See *id.*

256. See *supra* notes 251-55 and accompanying text (noting the disagreement between the Palestinians and Israelis regarding the importance of refugee return).

257. See Byrnen, *supra* note 219, at 21 (stating that the development of a successful peace settlement between the Palestinians and the Israelis depends on a successful solution to the refugee issue).

258. See Weiner, *supra* note 81, at 4 (explaining that the five bilateral agreements between the Palestinian and Israeli parties only nominally address the refugee issue).

among the parties is the result.<sup>259</sup> The parties are unwilling to concede to political settlements due to the prolongment of the refugee crisis.

#### b. Heightened Tensions and Nationalism

The parties' inability to solve the refugee crisis has led to a society imbued with nationalism and heightened tensions.<sup>260</sup> Both the Palestinians and Israelis have turned away from relying on international legal authority and diplomatic means.<sup>261</sup> Rather, both parties have turned to more violent actions.<sup>262</sup>

The suffering of the Palestinian refugees has been a major factor in the growth of nationalism among the Palestinian people,<sup>263</sup> and has led to the increased use of violence by Palestinians. The Palestinian refugees, many of whom currently live in refugee camps,<sup>264</sup> frequently resort to violent protests in a desperate plea to return to their country.<sup>265</sup> On May 14, 1998, in Hebron, several thousand people

---

259. See *id.* (explaining that the five bilateral agreements between the Palestinian and Israeli parties only minimally address the refugee issue).

259. See *supra* notes 252-54 and accompanying text (presenting the opposing positions taken by the Palestinians and Israelis).

260. See Weiner, *supra* note 81, at 17 (explaining that the Palestinian refugee crisis is at the core of Palestinian nationalism, beginning with the first refugees of 1947 and growing with the new influx of refugees after 1967).

261. See John Quigley, *Displaced Palestinians and a Right of Return*, HARV. INT'L L.J. 171, 182-87 (1998) (defining Israel's recalcitrance in implementing international legal authority, with an emphasis on U.N. Resolution 194); see also *Israel Not the Innocent Victim of Arabs that Many Portray State to Be*, SUN-SENTINEL FT. LAUDERDALE, June 16, 1998, at 4G (stating that Israel occupies the country in contravention of U.N. resolutions); Weiner, *supra* note 81, at 18 (stating that the Palestinian National Authority has relied on a Palestinian Liberation Organization Covenant asserting that an armed revolution will free the state of Palestine, allowing the people to return).

262. See Rodan & Najib, *supra* note 254, at 2 (explaining that the creation of a Palestinian state would provoke countermeasures from Israel).

263. See Weiner, *supra* note 81, at 17 (identifying the refugee issues of 1948 and 1967 as the main source of nationalism).

264. See Byrnen, *supra* note 219, at 3 (stating that fifty-five percent of the refugees in Gaza, more than fifty percent of the refugees in Lebanon, twenty-nine percent of the refugees in Syria, twenty-six percent of refugees living in the West Bank, and eighteen percent of the refugees living in Jordan reside in refugee camps).

265. See *infra* notes 266-71 and accompanying text (offering situations where



marched across the city and released balloons that stated their right to return.<sup>266</sup> At this same protest, a band of men with black masks uttered harsh words of disapproval against the Prime Minister Benjamin Netanyahu.<sup>267</sup>

The Palestinian refugees have extended their cries to countries where they have resettled.<sup>268</sup> Their desire to return to their country is mixed with nationalism.<sup>269</sup> In a Palestinian refugee camp in Syria,<sup>270</sup> for example, the refugees have renamed the streets, villages, and shops after cities where they previously lived or defeated the Israelis.<sup>271</sup>

The prolongment of the refugee crisis has also increased nationalism among the Israeli people.<sup>272</sup> The Israeli people feel threatened by the large influx of refugees.<sup>273</sup> They believe this influx would not only threaten the security of Israel, but also affect such factors as employment and housing.<sup>274</sup> The Prime Minister and other political figures have denounced the idea of return.<sup>275</sup>

---

Palestinian refugees have turned to desperate pleas for return).

266. See Ann LoLordo, *Six Palestinians Killed in Israel Violence; 'Day of Mourning' Erupts into Confrontations with Troops; Scores Hurt*, BALTIMORE SUN, May 15, 1998, at 15A (describing the demonstration and the events that occurred).

267. See *id.*

268. See Roveida Mabardi, *Palestinian Refugees in Syria Yearn to Return to "Lost Land"*, AGENCE FRANCE-PRESSE, May 13, 1998 (noting that the Palestinian refugees espouse the hope for return while in a Syrian refugee camp).

269. See *id.* (noting that the Palestinian refugees in a refugee camp in Syria hope only for the chance to return).

270. See *id.* (describing the Yarmuk refugee camp south of the capital city of Damascus).

271. See *id.* The Palestinian refugees in Syria have renamed certain streets after places in Palestine (modern-day Israel), such as Haifa. See *id.* The Palestinian refugees have also renamed areas after Palestinian tragedies, such as "Deir Yassin" hospital, a name commemorating a village where Israeli soldiers killed 200 Palestinians. See *id.*

272. See Weiner, *supra* note 81, at 11-12 (detailing possible security threats that would arise with the return of the Palestinian refugees).

273. See *id.* at 30-31 (explaining that the return of a large population of Palestinian refugees could threaten the existence of Israel as a state).

274. See *id.* (noting that the a return of the Palestinian refugees could result in an influx of people affecting the demographics and security within Israel).

275. See *Netanyahu Resists Push on Pullback*, *supra* note 252 (quoting Prime

## 2. *The Lack of a Legal Plan for Return*

The lack of a comprehensive agreement between the parties has prevented the expedient return of the Palestinian refugees.<sup>276</sup> The Palestinian refugees rest their basis to return on numerous international legal authorities.<sup>277</sup> Although these documents ensure their right of return, they are not legally binding on sovereign states.<sup>278</sup>

The Palestinians most often utilize United Nations Resolution 194 as legal authority ensuring their right of return.<sup>279</sup> This document mentions the right of return,<sup>280</sup> however, its ambiguity has allowed the Israelis to avoid its implementation.<sup>281</sup> First, the exact language in the document says that the refugees "should" be allowed to return, rather than "must" be allowed to return.<sup>282</sup> Second, the document

---

Minister Benjamin Netanyahu's statement that if the Palestinians demand the right of return, "There will be no agreement.").

276. See Quigley, *supra* note 261, at 185 (noting that the inconsistencies with the principal source of international legal authority, U.N. Resolution 194, have led to the failure of return).

277. See *supra* notes 228-42 and accompanying text (analyzing the Palestinian's right of return according to such international agreements as the United Declaration of Human Rights, the Human Commission on Human Rights, United Nations Resolution 194, and United Nations Resolution 237).

278. See Weiner, *supra* note 81, at 41 (remarking that resolutions from the General Assembly of the United Nations usually are not binding on sovereign states). But see BARRY E. CARTER AND PHILLIP R. TRIMBLE, *INTERNATIONAL LAW* 147 (2d ed. 1995) (recognizing that although the decisions of the General Assembly of the United Nations are not a formal source of law, they do have international political significance).

279. See RABAH, *supra* note 217, at 3-4 (claiming that United Nations Resolution 194 provides legal basis for the right of refugees to return).

280. See G.A. Res. 194, *supra* note 232, para. 11 (asserting the Palestinians' right of return).

281. See Quigley, *supra* note 261, at 185 (identifying certain problems with United Resolutions 194 and suggesting these problems have allowed Israel to avoid its implementation).

282. See G.A. Res. 194, *supra* note 232, para. 11 (resolving that "the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date."); see also Weiner, *supra* note 81, at 41 (quoting Professor Ruth Lapidoth that United Nations Resolution 194's use of "should" only "recommends that the refugees 'should' be permitted to return"). But see Quigley, *supra* note 261, at 189-90 (claiming that even if the language in United Nations Resolution 194 is ambiguous, numerous subsequent resolutions substantiate the right of return).

states that only those refugees willing to live at peace with their neighbors should be able to return.<sup>283</sup> Finally, the document offers no specific date for implementation.<sup>284</sup> Rather, it states the resolution must be administered at the "earliest practicable date."<sup>285</sup> The vagueness of this language allows the Israelis to circumvent permission for refugee returns.<sup>286</sup>

Apart from Resolution 194, the parties have never developed a legally binding document specifically addressing the return of the Palestinian refugees.<sup>287</sup> This has allowed Israel to ignore the refugees' cries and has prolonged the situation.<sup>288</sup>

#### IV. LEARNING FROM OTHER'S MISTAKES: RECOMMENDATIONS FOR IMPLEMENTATION OF ANNEX 7 AND THE FACILITATION OF THE RETURN OF REFUGEES IN BOSNIA

The mistakes made by the parties in Palestine and Israel serve as important lessons for the parties in Bosnia.<sup>289</sup> Bosnia must learn from

---

283. See G.A. Res. 194, *supra* note 232, para. 11; see also Quigley, *supra* note 261, at 187 (asserting that the use of the phrase "only Palestinians wishing to 'live in peace' has allowed various interpretations). But see *id.* at 187 (stating that subsequent to United Nations Resolution 194, the General Assembly omitted the phrase "live in peace" and conferred a genuine right of return).

284. See G.A. Res. 194, *supra* note 232, para. 11; see also Quigley, *supra* note 261, at 188 (recognizing that the phrase "at the earliest practicable date" has allowed the Israelis to prevent the return of refugees).

285. G.A. Res. 194, *supra* note 232, para. 11.

286. See *supra* notes 281-86.

287. See Weiner, *supra* note 81, at 43 (noting that even if the Palestinian refugees do not have international legal authority to substantiate their return, they may be able to substantiate their right of return through their presence on the land and their continued suffering); ARZT, *supra* note 10, at 66 (stating that there is not a solid legal justification for the return of Palestinian refugees within 1967 borders).

288. See Quigley, *supra* note 261, at 185 (suggesting that the ambiguities within United Nations Resolution 194 allowed Israel to ignore the cries for return of the Palestinian refugees).

289. See *supra* pt. III.C (examining why there has been a failure to return the Palestinian refugees and what has been the result). But see UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *supra* note 2, at 175 (claiming that each country must plan its own method for return, concentrating on the specific situation in the country).

these mistakes to avoid the same unfortunate consequences. The possible consequences include, but are not limited to, the resurgence of nationalism<sup>290</sup> and increased tensions among the ethnic groups in Bosnia, specifically between those parties proposing the quick and expedient return of refugees and the parties working to block the efforts.<sup>291</sup> Moreover, there is the fear that the endangerment to the peace process could result in the nullification of the Dayton Peace Accords.<sup>292</sup>

#### A. SOLVING THE REFUGEE SITUATION QUICKLY

The Bosnian refugee problem and the failed implementation of Annex 7 must be remedied quickly to avoid the disastrous consequences seen in Israel with the Palestinian refugees.<sup>293</sup> Expedient facilitation can be achieved by addressing the following problems and implementing the proposed solutions.

---

290. See *Dayton at Two Years*, *supra* note 9 (arguing the failure to implement the Dayton Accords and facilitate the return of the Bosnian refugees could motivate the refugees to use more drastic means to promote their return); see also *Minority Return or Mass Relocation*, *supra* note 64 (identifying how nationalists analyze Article 1, Clause 4, of Annex 7 of the Dayton Accords to suggest that people may go to the destination of their choice, thus promoting relocation to encourage ethnic consolidation).

291. See *Dayton at Two Years*, *supra* note 9 (noting that many Bosnian refugees are blocked by extremists); see also UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *supra* note 2, at 170 (stating that as of mid-1997, 300,000 refugees and displaced persons had returned but that Bosnia's 'divided communities' have prevented many more from returning); *Report on the Human Rights Situation in Bosnia*, *supra* note 108 (reporting that in some areas in the Federation of Bosnia and the Republika Srpska, return has been impossible due to factors such as harassment and legal inequality); *Minority Return or Mass Relocation*, *supra* note 64, at 12 (recognizing the necessity of solving the refugee issue quickly to avoid a housing situation where the majority returns take the houses of the minority and further segregate Bosnia).

292. See *Dayton at Two Years*, *supra* note 9 (explaining that failed refugee returns could result in the resurgence of fighting); see also Cousens, *supra* note 2, at 201 (suggesting that the failure to facilitate refugee returns could incite conflict).

293. See *supra* pt. III.C (detailing the results of a prolonged refugee crisis within Israel).

### 1. *Identifying the Crucial Purpose of the Dayton Accords*

The parties and international community must reemphasize the overarching purpose of the Dayton Accords, the recreation of a multi-ethnic state.<sup>294</sup> Recognition of this goal stresses the need for minority returns and the prevention of forced relocation. This can be accomplished by either supporting minority returns or preventing forced relocation.<sup>295</sup>

#### a. *Supporting Minority Returns*

The parties must actively support minority returns. The successful return of minorities will result in a multi-ethnic Bosnia. These minority returns can be supported through various means, including international incentives, enhancement of the "Open City" Project, improvement of the infrastructure within Bosnia, and the development of individualized city-by-city implementation forces.

The international community can encourage minority returns with financial incentives.<sup>296</sup> International communities can appropriate additional resources to those cities that support and accept minority returns.<sup>297</sup> In addition, the U.N.H.C.R. could improve their "Open City" initiative.<sup>298</sup> First, the U.N.H.C.R. should develop a more precise system for selecting the cities.<sup>299</sup> Then it should establish a way to

---

294. See HOLBROOKE, *supra* note 17, at 232 (recognizing one of the goals of the Dayton Accords as the creation of a multi-ethnic state).

295. See *supra* notes 99-116 and accompanying text (noting the dangerous results of relocation including a separted Bosnia, the recognition of nationalistic goals, and a complicated housing situation).

296. See *Minority Return or Mass Relocation*, *supra* note 64, at 6 (recommending that funds be appropriated to those areas where minority returns are being facilitated); see also UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *supra* note 2, at 178 (stating the need for substantial financial aid to support refugee returns).

297. See *Minority Return or Mass Relocation*, *supra* note 64, at 6 (noting the need for increased international financial involvement to support minority returns).

298. See *id.* (identifying the weaknesses with U.N.H.C.R.'s "Open City" initiatives).

299. See *id.* (noting that reconstruction is extremely expensive and that international states should contribute in the reconstruction)

confirm that the city is amenable to minority returns.<sup>300</sup> If the city has insufficient sources, the U.N.H.C.R. could subsidize the cities' development.<sup>301</sup> After the city has ample sources for the return of refugees, the U.N.H.C.R. could offer additional resources for their return.<sup>302</sup> Finally, the U.N.H.C.R. should develop a group to monitor the success and failures of the project.<sup>303</sup>

Second, the infrastructure of the cities within Bosnia must be able to support the return of minority refugees.<sup>304</sup> Property issues must be resolved, enabling the refugees to reacquire their land.<sup>305</sup> This means Bosnia must fully implement Article XI of Annex 7 concerning the Commission's responsibilities in deciding property claims.<sup>306</sup> In addition, Bosnia must encourage the passage of new, non-discriminatory legislation facilitating the reacquisition of property.<sup>307</sup>

---

300. See OFFICE OF THE HIGH REPRESENTATIVE: SARAJEVO DECLARATION, QUARTERLY IMPLEMENTATION REVIEW 3-7, available in <<http://www.ohrint:81/rrtf980507a.htm>> [hereinafter SARAJEVO DECLARATION] (suggesting methods to prepare and encourage refugee returns in Sarajevo, such as improving educational and employment opportunities).

301. See UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *supra* note 2, at 178.

302. See INFORMATION NOTES—No. 2/98, *supra* note 63, at 7 (identifying the purpose of the "Open City" initiative and the recognizing the international financial support that can be received by being deemed an "Open City").

303. See *Minority Return or Mass Relocation*, *supra* note 64, at 6 (noting there is no group to monitor the process as one of the weakness of the "Open City" initiative).

304. See *Sarajevo Declaration*, *supra* note 177, at 1-10 (suggesting different methods to facilitate the return of minority refugees including reforms with the legislation, employment, and education).

305. See *id.* (claiming that the resolution of property claims is imperative for refugee returns); *RRTF: Report for March 1998*, *supra* note 25 (identifying the resolution of the housing crisis as a necessary step for the return of refugee); *Minority Return or Mass Relocation*, *supra* note 64, at 12 (identifying the need for the expedient return of refugees to prevent a more complex, single-ethnic housing dilemma).

306. See Dayton Agreement, *supra* note 15, Annex 7, art. XI, 35 I.L.M. at 135 (recognizing the mandate of the Property Commission to solve property claims). But see Scheib, *supra* note 4, at 125 (noting the difficulties of the Property Commission in solving the claims due to the large number of claims and the limited number of people on the Commission).

307. See INFORMATION NOTES—No. 2/98, *supra* note 63, at i (commending the Federation of Bosnia's recent legislation and its expected influence on property re-

For example, Bosnia should commend the Federation of Bosnia for their recent adoption of new property legislation.<sup>308</sup> The Bosnian government should actively encourage the Federation of Bosnia to administer information about the new laws through the media.<sup>309</sup> Through this process the refugees will be able to utilize the information, reacquire their land, and return home.<sup>310</sup>

In addition, the foundation of the cities must be amenable for minority returns.<sup>311</sup> This includes the procurement of adequate housing, employment, and education.<sup>312</sup> Individual cities can work with international organizations and governments to develop non-discriminatory laws and practices for these areas.<sup>313</sup> In the employment sector, for example, international organizations could work together with the local Bosnian governments to develop an anti-discriminatory code that could be used for hiring and the maintenance of a suitable work atmosphere. In addition, in the area of edu-

---

acquisition).

308. See *id.* (noting the success of the passage of the new legislation); see also *supra* notes 176-87 and accompanying text. But see *NATO/SFOR: Joint Press Conference*, M2 Presswire, Apr. 7, 1998, available in 1998 WL 11305618 (stating that although the Federation of Bosnia should be commended for their recent adoption of property legislation, the Federation may have a difficult time with implementation).

309. See INFORMATION NOTES—No. 2/98, *supra* note 63, at 5 (acknowledging the need for adequate implementation of the new property legislation in the Federation of Bosnia); see also *RRTF: Report for March 1998*, *supra* note 25 (addressing the need for effective implementation of the new property laws in the Federation of Bosnia).

310. See INFORMATION NOTES—No. 2/98, *supra* note 63, at 5 (explaining how the implementation of the new property laws will allow refugees to reacquire their land).

311. See *id.*

312. See *Sarajevo Declaration*, *supra* note 177, at 2-8 (identifying numerous areas which need to be addressed for the implementation of the return of refugees).

313. See *RRTF: Report for March 1998*, *supra* note 25 (noting the successes with employment, yet acknowledging the numerous problems that have arisen with discrimination); see also *Sarajevo Declaration*, *supra* note 177, at 7 (addressing the need to restructure the employment system within Sarajevo, thereby protecting minorities against discrimination); James K. Boyce & Manuel Pastor, Jr., *Aid for Peace: Can International Financial Institutions Help Prevent Conflict*, 15 WORLD POL'Y J. 42, 45 (1998) (claiming that United States Assistance for International Development ("USAID") maintains that borrowers in the private sector in Bosnia must sign a contract agreeing not to discriminate).

cation, the Bosnian government could develop a national curriculum to be used by all schools.<sup>314</sup> This would prevent the teaching of nationalistic ideas and would eliminate the propagation of ethnic tensions through education.<sup>315</sup>

Finally, Bosnia needs to develop city-based implementation forces to address area-specific concerns.<sup>316</sup> Sarajevo recently established a commission responsible for reviewing issues related to refugee return, including employment, housing, and public security.<sup>317</sup> The Sarajevo Return Commission will examine the successes and failures of refugee returns in Sarajevo.<sup>318</sup> The Office of the High Representative will choose the commissioner for the Sarajevo Return Commission, in order to guarantee that a responsible, non-biased person will be in charge.<sup>319</sup>

The development of a return commission in Sarajevo should be extended to the other cities throughout the Federation of Bosnia and Republika Srpska.<sup>320</sup> The creation of return commissions within local

---

314. See *Sarajevo Declaration*, *supra* note 177, at 4-5 (noting the necessity of educating in a unprejudiced manner, and the positive effects fair education can have on refugee return).

315. See *RRTF: Report for March 1998*, *supra* note 25 (acknowledging the harmful effects of a biased educational system, its effects on nationalism, and, in turn, refugee returns).

316. See Boyce & Pastor, *supra* note 313 (identifying the need for peace-building not only at the national level, but also regionally and locally).

317. See *Sarajevo Declaration*, *supra* note 177, at 9 (placing responsibility for the implementation of the provisions of the Declaration on the Sarajevo return Commission, to be established by the High Commission). A meeting held on February 3, 1998, at the invitation of the chairman of the High Representative Carlos Westendorp addressed issues relating to refugee return including education, employment, public security, and property issues. See *id.* at 1. Numerous key players in the implementation of the Dayton Accords attended this conference, including Co-Chairmen of the Presidency of Bosnia and Herzegovina, Presidents Alija Izetbegovic and Kresimir Zubak, Prime Minister of the Republika Srpska, Milan Dodik, and Prime Minister of the Federation of Bosnia, Edhem Bicakcic. See *id.* at 10.

318. See *id.* at 3.

319. See *id.* at 10.

320. See *supra* notes 314-19 and accompanying text (detailing the creation of the Sarajevo Return Commission and its local implementation); see also Boyd, *supra* note 9, at 44 (noting the lack of a return commission to implement the return of refugees).



areas would allow for an individualized plan<sup>321</sup> for each city, without nationalistic influence.<sup>322</sup>

#### b. Preventing Forced Relocation

The Bosnian society must prevent the forced relocation of refugees.<sup>323</sup> Relocation results in a partitioned Bosnia, and with this, the possible resurgence of conflict or war.<sup>324</sup> Numerous steps can be taken to prevent forced relocation, including the denunciation of nationalist leaders and the promotion of democratic leaders and measures within the entities.

Presently, nationalist leaders and hard-liners support ethnic consolidation through forced relocation.<sup>325</sup> National and international support of democratic means, however, could prevent these nationalistic efforts from developing and maturing.<sup>326</sup> In effect, this support could create a more democratic society welcoming minority returns.<sup>327</sup>

---

321. See UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *supra* note 2, at 175 (claiming that there is a need for individualized plans for specific areas in all aspects of transitioning from war to peace).

322. See *id.* (planning the creation of the Sarajevo Return Commission, with the chief commissioner being chosen by the High Representative).

323. See *supra* notes 99-116 and accompanying text (examining the disastrous consequences of forced relocation).

324. See *Minority Return or Mass Relocation*, *supra* note 64, at 3 (noting that relocation accepts the position of the nationalists and creates a society filled with ethnic tension and hate).

325. See *id.* (identifying the goal of nationalist hard-liners to consolidate the ethnic groups through ethnic consolidation and forced relocation); see also *supra* notes 99-116 and accompanying text (discussing the nationalists' use of relocation to further their goal of creating ethnically homogenized areas).

326. See *Minority Return or Mass Relocation*, *supra* note 64, at 3 (acknowledging the necessity of the international community in altering the path of the nationalist leaders); see also UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *supra* note 2, at 169 (noting U.N.H.C.R.'s growing role in developing the legal and judicial bodies within a country to promote human rights and the return of refugees); *Hearings*, *supra* note 93, at 1 (identifying the role of the United States in the implementation of the Dayton Accords and with this the advancement of democratization).

327. See *Minority Return or Mass Relocation*, *supra* note 64, at 3 (recognizing the new international role in "taking on" the nationalist leaders and the successes achieved because of the new approach).

The international community can assist in the democratization of Bosnia by supporting democratic leaders.<sup>328</sup> This necessary international support was recently seen in Republika Srpska with the election of Milorad Dodik.<sup>329</sup> The international community supported Dodik for Prime Minister.<sup>330</sup> Dodik, since taking office, has promised to facilitate the return of refugees.<sup>331</sup> He has also pledged to assist with the reformation of the media and the police,<sup>332</sup> both of which were used by nationalist hard-liners to prevent minority returns.<sup>333</sup>

In addition, Bosnian leaders must comply with Article 1, Clause 2, Paragraph 3 of Annex 7<sup>334</sup> and reform the media to prevent propaganda which suggests relocation as a preferred option.<sup>335</sup> The leaders

---

328. See *id.* (acknowledging the international support for and subsequent election of the Prime Minister, Milan Dodik, a more democratic leader in the Republika Srpska); cf. *Dayton at Two Years*, *supra* note 9 (discussing the Clinton Administration's role in implementing the Dayton Accords). The Clinton Administration actively supported the election of Biljana Plavsic for Bosnian Serb President, as a replacement to the nationalist hard-liner Radovan Karadzic. See *id.* Plavsic, however, has not followed through with her promises pertaining to the Dayton Accords. See *id.* The Clinton Administration must learn that support for more democratic leaders will not serve as adequate implementation of the Dayton Accords. See *id.*

329. See *Minority Return or Mass Relocation*, *supra* note 64, at 3 (recognizing the new role of the international community with its active support for Milorad Dodik); see also INFORMATION NOTES—No. 1/98, *supra* note 19, at v (identifying the international support of Milorad Dodik and his initial successes with the international communities).

330. See *Minority Return or Mass Relocation*, *supra* note 64, at 3.

331. See INFORMATION NOTES—No. 1/98, *supra* note 19, at v (stating that, amongst other things, Dodik promised to facilitate the return of refugees within Republika Srpska).

332. See *id.* (noting Dodik's immediate pledge to reform the media and the police system).

333. See *Minority Return or Mass Relocation*, *supra* note 64, at 8 (identifying the nationalists utilization of the media and propaganda to propose relocation and ethnic consolidation); see also *supra* notes 99-111. See generally *Report on the Human Rights Situation in Bosnia*, *supra* note 108 (noting the nationalists' use of the police and media in preventing minority returns).

334. Dayton Agreement, *supra* note 15, Annex 7, art. 1, cl. 3, 35 I.L.M. at 137 ("[T]he Parties shall take immediately the following confidence building measures: the prevention and prompt suppression of any written or verbal incitement, through media or otherwise, of ethnic or religious hostility or hatred.").

335. See *RRTF: Report for March 1998*, *supra* note 25 (stressing the need for a

must prohibit propaganda that intimidates people from returning to areas where they would be minorities.<sup>336</sup> The elimination of this propaganda will allow refugees to make honest, informed decisions about their place of return.<sup>337</sup>

Finally, Bosnia needs to ensure the adequate protection of minorities within the entities. This includes fully implementing Article II, Clause 4 of the Bosnian Constitution, which administers rights on a non-discriminatory basis to all people, even national minorities.<sup>338</sup> The protection of minorities must extend to such factors as the recognition of the minority's culture and religious institutions.<sup>339</sup> Minority refugees will want to return to their original homes if their minority rights are protected and encouraged.

### c. Additional Measures to Prevent Forced Relocation

Numerous other methods can be taken to prevent forced relocation. These methods include the prosecution of war criminals,<sup>340</sup> the desegregation of police forces,<sup>341</sup> and the settlement of property issues.<sup>342</sup> The implementation of these methods will create a more

---

neutral media, including the prevention of nationalistic ideas being propagated through the media and the development of a nongovernmental media).

336. See *Report on the Human Rights Situation in Bosnia*, *supra* note 108 (identifying numerous situations where nationalist individuals or leaders used propaganda to intimidate minority returns).

337. See *Minority Return or Mass Relocation*, *supra* note 64, at 15 (explaining that attempts at ethnic engineering prevent refugees from making informed choices when returning).

338. See Dayton Agreement, *supra* note 15, Annex 4, art. II, cl. 4, 35 I.L.M. at 140.

339. See ARZT, *supra* note 10, at 113-16 (explaining how the protection of minorities can encourage a solution to the Palestinian refugee situation).

340. See *The Dayton Accords and the Return of Bosnian Refugees*, *supra* note 7, at 14 (stating that the prosecution of war criminals is necessary to dissipate fear within a community and secure an atmosphere suitable for return); see also *Dayton at Two Years*, *supra* note 9, at 3-5 (claiming that the capture of war criminals, Ratko Mladic and Radovan Karadzic, could result in not only the capture of other war criminals but also in progress with the facilitation of the return of refugees).

341. See *Minority Return or Mass Relocation*, *supra* note 64, at 6 (recognizing the need for minority officers in police forces).

342. See *supra* notes 112-15 and accompanying text (describing the complexities that can arise with housing if there is fixed relocation).

amenable atmosphere for minority refugee returns.<sup>343</sup> Refugees will be more comfortable in choosing to return to areas where they would be of the ethnic minority.<sup>344</sup>

## B. DEVELOPING A PLAN FOR RETURN: CHANGES TO ANNEX 7?

The lack of a comprehensive plan between the Palestinian and Israeli parties resulted in failed refugee returns.<sup>345</sup> Bosnia must prevent this same transpiration from occurring by developing a specific, comprehensive plan.<sup>346</sup> Annex 7 serves as a foundation for return.<sup>347</sup> This plan, however, has many problems that could result in its failed implementation.<sup>348</sup>

Annex 7 currently provides no implementation force to facilitate the return of refugees.<sup>349</sup> The necessity of this force is seen in failed minority returns throughout cities in the Federation of Bosnia and the Republika Srpska.<sup>350</sup> The utilization of NATO forces could greatly

---

343. See *RRTF: Report for March 1998*, *supra* note 25 (noting that certain conditions must be met to facilitate the return of refugees, especially minority refugees).

344. See *id.*

345. See Weiner, *supra* note 81, at 41-43 (noting the flaws with the U.N. resolutions granting the right of return for the Palestinian refugees); see also *supra* notes 277-88 and accompanying text.

346. See Cousens, *supra* note 2, at 789 (stating that the General Framework Agreement (Dayton Accords) is more "general" than a "framework"); see also *Dayton at Two Years*, *supra* note 9 (noting the inconsistencies with the Dayton Accords, specifically in relation to the return of refugees).

347. See Dayton Agreement, *supra* note 15, Annex 7, 35 I.L.M. at 137-41.

348. See *supra* notes 98-152 and accompanying text (describing the numerous flaws with Annex 7 including its acceptance of relocation as an option, lack of military presence, lack of a specific timeline, too much power in the parties' hands, and a contradiction which could result in a partitioned Bosnia).

349. See Dayton Agreement, *supra* note 15, Annex 7, 35 I.L.M. at 137-41.

350. See *Report on the Human Rights Situation in Bosnia*, *supra* note 108 (detailing numerous stories where individuals, police forces, or local governments prevented minority returns through violent means). But see Scheib, *supra* note 4, at 130-132 (observing that the two possible forces in Bosnia, the newly organized executive government and the local police, do not seem to be effective due to the political situation in Bosnia).

expedite the return process.<sup>351</sup> NATO would provide military support and the necessary protection to ensure return.<sup>352</sup>

Bosnia must also create a safe, secure atmosphere for refugee returns, thus implementing the factors specified in Article II of Annex 7.<sup>353</sup> The creation of suitable conditions for returns depends in large part on the creation of an implementation force to oversee the process;<sup>354</sup> the influence of the Bosnian and international communities in building the infrastructure of Bosnia;<sup>355</sup> and the prevention of nationalistic propaganda.<sup>356</sup>

Finally, Bosnia must concentrate on the future in order to successfully reach their goals of returning refugees and recreating a multi-ethnic Bosnia.<sup>357</sup> No one is able to nor should forget the past, but both the Bosnian people and leaders must realize that the return of refugees and the attainment of peace depend on looking forward.<sup>358</sup> Bos-

---

351. See *Dayton at Two Years*, *supra* note 9 (suggesting that policy-makers should not distinguish civilian matters from military ones and arguing that NATO should help secure the situation and help facilitate the return of refugees).

352. See *id.* (identifying the need for NATO for the facilitation of refugee return).

353. See *Dayton Agreement*, *supra* note 15, Annex 7, art. 2, cl. 1, 35 I.L.M. at 138 ("The Parties undertake to create in their territories the political, economic, and social conditions conducive to the voluntary return and harmonious reintegration of refugees and displaced persons, without preference for any particular group.").

354. See *supra* notes 117-29 and accompanying text (identifying the necessity of a military force to create conditions amenable for return and to provide a sense of security for the refugees while returning).

355. See *supra* notes 304-15 and accompanying text (describing how the infrastructure with in Bosnia must be suitable for refugee returns including solving property issues, the increase in employment opportunities and the prevention of discrimination in both the schools and workplace).

356. See *supra* notes 325-41 and accompanying text (noting the presence of nationalistic propaganda and the need to replace such propaganda with more democratic means).

357. See ARZT, *supra* note 10, at 7-8 (noting the necessity of looking forward with the Palestinian refugee situation, and not concentrating on the past causes of dislocation).

358. See *id.* (suggesting that the parties in the Palestinian refugee situation must "move on").

nia must listen to the advice of Shimon Peres and "divorce [itself] from the world of yesterday, and recognize the world of today."<sup>359</sup>

## CONCLUSION

The republic of Bosnia, during the Yugoslavian years, was distinguished for its diversity and heterogeneous atmosphere.<sup>360</sup> Muslims, Serbs, Croats, and Jews lived and worked together. The Bosnians took pride in their regional capital, Sarajevo, in which a Serbian church, Catholic church, Muslim mosque, and Jewish synagogue were located in close proximity to one another. The Bosnians have not forgotten the days of living in a multi-ethnic state. The facilitation of the return of refugees is imperative to reach this goal and maintain peace in the country. Although Annex 7 offers a definite foundation, the international and domestic communities must work together to enforce its provisions and ensure expedient, safe returns.

---

359. See *Jerusalem Will Not Become Another Berlin*, JERUSALEM POST, July 1, 1994, at 1.

360. See *supra* notes 32-33 and accompanying text (explaining the prewar population within Bosnia was 43.7% Muslim, 31.4% Serb, 17.3% Croat, and 5.5% Yugoslav and therefore was the most ethnically mixed of any of the republics within Yugoslavia).