

**Commission for Reforming
the City of Mostar:**

Recommendations of the Commission
Report of the Chairman



15 December 2003

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I. LETTER FROM THE CHAIRMAN OF THE COMMISSION

The Chairman of the Commission for Reforming the City of Mostar

15 December 2003

**To: Lord Paddy Ashdown, High Representative
The Council of Ministers
The Government of the Federation of Bosnia and Herzegovina
The Government of the Herzegovina-Neretva Canton
The Mayor of the City of Mostar
The Deputy Mayor of the City of Mostar**

Dear ladies and gentlemen ,

I am pleased to present the report of the Commission for Reforming the City of Mostar, in accordance with the High Representative's Decision 160/03 of 17 September 2003.

The Commission Representatives entered into this effort with a full understanding of the responsibilities such work would entail, both to comply with the requirements of the Decision, as well as to lay the legal and administrative framework for a more effective, responsive and well-administered Mostar for all of its citizens. The proposals included in this report are the culmination of the Commission's work.

The Commission was of the unanimous opinion that reform of the structure of Mostar is needed, and that the central administration of the City government must be strengthened. There was mutual understanding of the need for a single budget for the City of Mostar as well, to support a reformed central administration in the most cost-effective and transparent manner possible. Perhaps most important, the respect of the rights of the constituent peoples through protection of vital national interests was paramount in the minds of the Representatives throughout their work. A proposed Statute for the City of Mostar details the legislative reforms necessary to achieve such a vision.

The Commission reached a consensus on virtually all of the articles in this proposed City Statute, and are proud to be able to submit these legal recommendations. While the overall agreement on the need for reform was clear from the beginning, two issues continued to be points of disagreement for the Commission: the status of the City in terms of its composition and whether it should be comprised of one or more municipalities, and the most appropriate way to develop an electoral system that would guarantee the exercise of democratic participation for all of Mostar's people.

In my role, I sought compromise through the presentation of the various options suggested by the Commission members, and encouraged the Representatives to work with these various ideas and develop mutually acceptable recommendations through a process of give and take. Only the decision agreed upon by a majority of the Commission Representatives is being proposed for the question of the status of the

The Chairman of the Commission for Reforming the City of Mostar

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City. As for the electoral system, I will recommend my own compromise proposal, which contains elements of the various proposals offered by the Representatives.

The Commission was pleased with its successes, and frustrated by the inability to reach 100% consensus in the given timeframe. However, it did become clear that all Commission members agree that the reform of Mostar could ultimately herald the reform of other cities and regions in Bosnia and Herzegovina. This shared vision of a legal and administrative structure for all of the country's peoples gives the Commission hope that the solutions that will be found for these problems might contribute to the ongoing protection of human rights and democratic participation for citizens throughout BiH.

Each member of the Commission looks forward to moving ahead with this effort, and to assisting in the process of transforming the words in this report into actions that will improve the lives of the citizens of Mostar.

Chairman of the Commission



Norbert Winterstein

II. DECISION ESTABLISHING THE COMMISSION FOR REFORMING THE CITY OF MOSTAR



DECISION OF THE HIGH REPRESENTATIVE

n. 160/03

In the exercise of the powers vested in the High Representative by Article V of Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) to the General Framework Agreement for Peace in Bosnia and Herzegovina, according to which the High Representative is the final authority in theatre regarding interpretation of the said Agreement on the Civilian Implementation of the Peace Settlement; and considering in particular Article II.1.(d) of the last said Agreement, according to the terms of which the High Representative shall "Facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation";

Recalling paragraph XI.2 of the Conclusions of the Peace Implementation Conference held in Bonn on 9 and 10 December 1997, in which the Peace Implementation Council welcomed the High Representative's intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement in order to facilitate the resolution of any difficulties as aforesaid "by making binding decisions, as he judges necessary" on certain issues including (under sub-paragraph (c) thereof) measures to ensure implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities which "may include actions against persons holding public office or officials...who are found by the High Representative to be in violation of legal commitments made under the Peace Agreement or the terms for its implementation";

Mindful of the need to consolidate the functional and legal unity of the City of Mostar in a manner that promotes efficiency in the delivery of services to citizens, promotes the fundamental rights of all citizens and ensures the collective rights of the constituent peoples, in accordance with European standards;

Convinced that a comprehensive settlement on the institutional organisation of the City of Mostar requires the continued engagement of the International Community;

Acknowledging the work of the Commission established by the City Council of on 15 April;

Noting that, in the context of the Commission established by the City Council, draft Statutes for the City of Mostar were produced which provide a good basis for further discussion on the future of Mostar;

Mindful of the guiding principles outlined in my letter to the Commission established by the City Council on 21 April 2003 which are intended as guidance for those working on the reform of the institutions of the City of Mostar.

Bearing in mind that the Constitutional Court ruled in its third partial Decision in case no. 5/98 of 30 June and 1 July 2000 (Official Gazette of Bosnia and Herzegovina no. 23/00 of 14 September 2000) that exclusion of one or other constituent peoples from the enjoyment not only of citizens' but also of peoples' rights throughout Bosnia and Herzegovina was in clear contradiction with the non-discrimination rules contained in the said Annex 4, which rules are designed to re-establish a multi-ethnic society based on equal rights of Bosniacs, Croats and Serbs as constituent peoples and of all citizens;

Having considered, borne in mind and noted all the matters aforesaid, the High Representative hereby issues the following

DECISION

Establishing the Commission for Reforming the City of Mostar

Article 1

The Commission for Reforming the City of Mostar (hereinafter, the Commission), which is hereby established, shall be responsible, as directed by the Chairman of the said Commission, for drafting and proposing amendment such legislation and related regulations, as may hereafter be required to be enacted by the institutions of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, the Herzegovina-Neretva Canton, the City of Mostar and the City-Municipalities respectively, in the field identified under this decision. The Commission shall also be responsible for drafting a plan for implementing such legislation and regulations.

Article 2

The Commission shall examine the legal measures necessary to reform the institutional structures in the City of Mostar, identify constitutional, legislative or other legal provisions at variance with such requirements and propose legislation and other legal instruments to remedy such variance.

Article 3

In accordance with Article 2 of this Decision, the Commission shall prepare the following legislation or amendments thereto, as appropriate:

1. The Statute of the City of Mostar;
2. The Constitution of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of BiH No. 1/94, 13/97, 16/02, 22/02, 52/02, 60/02, 18/03) and the Constitution of the Hercegovina-Neretva Canton (Official Gazette of the Hercegovina-Neretva Canton No. 2/98, 3/98 and 4/00);
3. The Election Law of Bosnia and Herzegovina (Official Gazette of BiH No. 23/01, 7/02, 9/02, 20/02, 25/02);
4. The Law on Allocation of Revenues of the Federation of BiH (Official Gazette No. 26/96, 32/98, 54/01, 37/03);
5. The Law on Local-Self-Government of the Hercegovina-Neretva Canton (Official Gazette of the Hercegovina-Neretva Canton No. 4/00); and
6. Any other law or regulations as the Chairman deems necessary.

Article 4

The Commission shall be composed of up to twelve (12) members, including six representatives of political parties, a Chairman and up to five experts.

The High Representative will confirm all nominations made pursuant to this decision except the appointment made pursuant to article 5.

Article 5

The High Representative appoints an International Chairman to the Commission.

Article 6

The political parties represented in the Mostar City Council will each respectively nominate one representative for appointment to the Commission. The representatives of the political parties shall be empowered to speak and take decisions on behalf of their political parties.

The political parties represented in the Mostar City Council will each nominate an expert to assist their representatives in the Commission. The experts nominated by the political parties will not be members of the Commission. They will have the right to intervene in discussions at the discretion of the Chairman but will not participate in decision-making.

Article 7

The Chairman will be entitled to nominate up to five experts for appointment to the Commission. When selecting these experts, two criteria will be borne in mind:

1. the relevant qualifications of the candidates, and
2. the necessity to ensure that the composition of the Commission as a whole gives proper representation to all constituent peoples as well as to the group of Others.

Article 8

The Chairman of the Commission shall be responsible for directing the work of the Commission, shall prepare a schedule of work and shall call meetings of the Commission, which may be held as required at locations throughout the City of Mostar.

No specific quorum shall be required in order to hold a meeting of the Commission.

The Chairman shall consider means for consulting the citizens of Mostar and may call for people outside the Commission to provide expertise and evidence at meetings of the Commission, as he deems necessary for the fulfillment of the mandate of the Commission as provided for in this Decision.

The Chairman may call for the formation of sub-working groups as he deems necessary for the fulfillment of the mandate of the Commission as provided for in this Decision.

Article 9

The Chairman of the Commission will report to the High Representative on a monthly basis on progress made within the Commission.

Article 10

The Commission will make best efforts to achieve a comprehensive settlement concerning disputed questions pertaining to the organization of the City of Mostar by 15 December 2003.

Article 11

A list of legal provisions agreed upon by the Commission and a report on progress made will be sent by the Chairman of the Commission to the High Representatives, the Council of Ministers, the Government of the Federation of BiH, the Government of the Hercegovina-Neretva Canton as well as to the Mayor and Deputy Mayor of Mostar by 15 December 2003.

Commission for Reforming the City of Mostar

Article 12

The Commission shall have such support staff and technical assistance as may be required.

Article 13

This Decision shall enter into force forthwith and shall be published without delay in the Official Gazette of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, the Herzegovina-Neretva Canton and the City of Mostar.



Sarajevo, 17 September 2003.

Paddy Ashdown
High Representative

III. COMMITMENT TO PARTICIPATE IN DECIDING ON THE FUTURE OF THE CITY OF MOSTAR

COMMITMENT

To participate in deciding on the future of the City of Mostar

Considering the need for a comprehensive settlement concerning the future institutional organisation of the City of Mostar (hereafter the City) which would enable the City to function as a European city;

Mindful of the need to complete the establishment of Mostar as a unified city organised in a way that promotes efficiency in the delivery of services to citizens, ensures the collective rights of the constituent peoples and promotes the fundamental rights of all citizens, in accordance with European standards;

Convinced that a comprehensive settlement on the organisation of the City would be facilitated by a continued engagement of the International Community;

Noting efforts already undertaken to rationalise the administration of the City and its municipalities and the obstacles encountered to date;

The signatories hereby agree on the following:

1. The High Representative will appoint a Commission for Reforming the City of Mostar (hereinafter, the Commission) composed of up to twelve members, including representatives of the political parties, experts and the Chairman;
2. The Commission shall examine the legal measures necessary to reform the institutional structures in Mostar, identify constitutional and legislative provisions at variance with such requirements and propose legislation and other legal instruments to remedy this;
3. The High Representative will appoint an International Chairman to the Commission. The Chairman shall be responsible for directing the work of the Commission, shall prepare a schedule of work and shall call meetings of the Commission;
4. The Chairman shall consider means for consulting the citizens of Mostar and may also call people from outside the Commission to provide expertise and/or evidence at meetings of the Commission, as he deems necessary for the fulfillment of the mandate of the Commission;
5. The political parties represented in the Mostar City Council will each respectively nominate one representative for appointment to the Commission. The representatives of the political parties shall be empowered to speak and decide on behalf of their political parties;
6. The political parties represented in the Mostar City Council will each nominate an expert to assist their representatives in the Commission. The experts may intervene in the discussions at the discretion of the Chairman but will not participate in decision making;

7. The Chairman will be entitled to nominate up to five experts for appointment to the Commission. When selecting these experts, two criteria will be borne in mind: relevant qualifications of the candidates and the necessity to ensure that the composition of the Commission as a whole gives proper representation to all constituent peoples as well as to the group of Others.
8. The Commission will make its best efforts to achieve a comprehensive settlement concerning disputed questions pertaining to the organization of the City of Mostar by 15 December 2003;
9. A list of Legal provisions agreed upon by the Commission and a report on progress made will be sent by the Chairman of the Commission to the High Representatives, the Council of Ministers, the Government of the Federation of BiH, the Government of the Hercegovina-Neretva Canton as well as to the Mayor and Deputy Mayor of Mostar before the 15 December 2003. The Chairman will also report on a monthly basis to the High Representative on progress made in the Commission.

The signatories hereby undertake to provide full support to the Commission and to ensure that their representatives will participate constructively in the work of the Commission until completion of its mandate.

The signatories will further ensure that the necessary legislation will be enacted/amended in a timely manner pursuant to the conclusions of the Commission.

Mostar, 15th September 2003

For the signatories,

SDP BiH
Zlatko Lagumdžija 

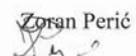
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Mladen Ivanković 

HDZ BiH
Bariša Čolak

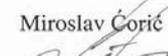
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Miro Lazović

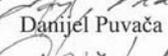
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Safet Halilović

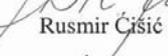
SDA
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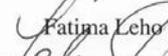
Zoran Perić 

Rudolf Sonntag 

Miroslav Čorić 

Danijel Puvača 

Rusmir Čišić 

Fatima Leho 

Witness: 
15/9

25. 9. 2003

IV. COMMISSION REPRESENTATIVES, ADVISORS AND SUPPORT

Commission Members

Norbert Winterstein, Chairman
Danijel Puvača, Goran Crnogorac (SDU Representatives)¹
Mirko Ivanišević (Returnees' Association Representative)
Fatima Leho (SDA Representative)
Josip Merdžo (HDZ Representative)
Safet Omerović (SBiH Representative)
Željko Komšić (SDP Representative)
Adisa Vučina (NSRzB Representative)

Commission Advisors

Mirsad Ćeman (SDA)
Šahbaz Džihanović (SBiH)
Ilija Filipović (HDZ)
Jusuf Jelin (SDU)
Huso Kapić (SDP)
Mile Kudić (NSRzB)

Ljubo Bešlić, Deputy Mayor of Mostar
Hamdija Jahić, Mayor of Mostar
Predrag Šupljeglav, Member of Mostar City Secretariat

Special Advisors to the Chairman of the Commission

Julien Berthoud, Political Advisor and Chief of Staff
Amela Božić, Personal Assistant to the Chairman and Political Advisor
Katrin Hett, Advisor on Financial and Budget Issues
Alexis Hupin, Legal Advisor
Zoran Pajić, Special Advisor to the Chairman
Valery Perry, Senior Report Writer
Hajro Pošković, Legal Advisor
Dario Šikuljak, Legal Advisor and Official Minute Taker

Secretariat Support Staff

Mirna Duvnjak, Interpreter/Translator
Sabina Đonlagić, Interpreter/Translator
Aldijana Karailo, Translator
Danijela Pehar-Edgecombe, Secretary/Interpreter
Irena Protić, Official Minute Taker, Interpreter/Translator

¹ Mr. Puvača served on the Commission in October, and Mr. Crnogorac served on the Commission from November through December.

V. EXECUTIVE SUMMARY AND RECOMMENDATIONS

The Need for Reform

Mostar, a city with an historic and noble past, has in the past 10 years become emblematic of the political divisions and structural inefficiencies that have prevented reform and progress in many of the traditionally multiethnic regions of Bosnia and Herzegovina. The Commission for Reforming the City of Mostar was established by the High Representative to actively engage local authorities in determining the future structure, administration and functioning of Mostar, and to develop a long-term legal framework capable of ensuring that Mostar can develop as a normal, unified city in line with European norms and standards.

From October through December 2003, the Commission members have worked to negotiate a set of recommendations aimed at enabling Mostar to better meet the needs of all of its citizens. This report presents the Chairman's recommendations, and details the proposed legal framework, administrative organisation and power-sharing mechanisms needed to end the status quo that ill serves the people, and usher in a new era of responsible and representative governance. The Commission reached a consensus on several important issues, including the need for a single budget, a single law regulating the City and the importance of mechanisms to protect vital national interests. The Commission was unable to reach consensus on the status or structure of the City as a unit of local self-government, or on the design of the electoral system, but did propose several alternatives for consideration.

In its present form, Mostar is a complex administrative structure that has failed to deliver acceptable levels of service and responsible local self-government to its citizens. Parallel systems exist to serve the interests of specific Constituent Peoples rather than existing to perform a more general civic duty. Additionally, the present complex and dysfunctional structure has diffused responsibility for results among various different (often redundant) levels of government, resulting in a system in which elected and appointed government authorities can too easily renege on their responsibilities.

The Interim Statute of the City of Mostar, issued on 7 February 1996, was a direct result of the Washington Agreement (confirmed by the Dayton Peace Agreement) and of its basic purpose: ending the bloodshed in Bosnia and Herzegovina. Mostar is a reflection of a state founded upon such a purpose.

Although developed under specific circumstances and at very difficult times, the Interim Statute of the City of Mostar managed to provide the framework for gradually overcoming the consequences of war, for establishing necessary institutions and for normalizing living conditions and mutual relations. (See Appendix A for a more detailed explanation of early reform efforts.) However, the time that has passed demonstrated that the implementation of the Interim Statute and the overall organization of the City of Mostar in six City-Municipalities primarily served to mark the "achievements" of the formerly warring divisions and are based exclusively on

national grounds, reflecting the demarcations and divisions that existed between Bosniaks and Croats at the time of the end of the conflict.

Unfortunately, virtually all of the provisions of the Interim Statute of the City of Mostar remained mere declarations on paper, and none were implemented in accordance with the original intentions contained in the Statute. The City of Mostar has never come to life nor exercised the basic predispositions of its competencies. Additionally, the competencies of the City Council, the Mayor, the Deputy Mayor and the City Administration have not been realized.

Six City-Municipalities – three Bosniak and three Croat- were established along the former wartime demarcation lines without any other objective or legal criteria for establishing municipalities. These administrative structures have completely assumed all of the competencies that, by their very nature and according to widely accepted organizational standards, as well as by the Interim Statute of the City itself, should belong to the City of Mostar.

Each one acting solely for itself, the City-Municipalities have turned into small and unnatural administrative units. These virtual “fiefdoms” have administered natural, communal and infrastructure resources, acquired and disposed of financial and other revenues and administered the rights and obligations of the authorities each solely for the good of “their own people.”

The City of Mostar, as an institutional organization of the Interim Statute, has remained a dead letter on paper. Today, almost eight years after 7 February 1996, instead of a normal or close to normal situation, the following situation prevails:

- The City of Mostar is physically divided into two parts, so called “east” and “west,” along the former confrontation line of Bulevar - Santića Street.
- The six City-Municipalities were established and are organized according to the warring demarcation lines, exclusively on national grounds.
- The City-Municipalities have become virtual fiefdoms, which, without any common standards and criteria administer natural, economic, social and other resources, without the prospect of establishing any functional City Administration in the future.
- The six City-Municipalities function in reality as two separate blocks, a Bosniak and a Croat Mostar, whose interests are basically contrary to one another, and which have brought the City of Mostar to the edge of collapse.
- The Central Zone has never been implemented in accordance with the stipulations of the Interim Statute, nor has there ever been any content to the term “Central Zone.”

All City functions and bodies that were formally established according to the 1996 Interim Statute have also been divided, resulting in the following:

- The City Council has not realized any of its functions as established in Articles 15, 16 and 37 of the Interim Statute, as those functions were taken over by each of the six separately established City-Municipalities.
- The Mayor and the Deputy Mayor work in parallel to each other using their own administrations divided on national criteria.

- The City Administration, which was formally established by the Interim Statute with full organizational capacity, consists of a City Council with 29 councillors (one position remains vacant); the Mayor, the Deputy Mayor and Secretariat; Support Services; Urban Planning, Infrastructure, Financial and Transportation Departments; and the Housing and Cadastre Departments. This City structure employs 124 officials and employees and spends significant budget resources, yet in reality performs virtually no tasks useful to the citizens or for the functioning of the City.
- The City Administration has itself been established as a divided structure along ethnic lines, being even physically and spatially separated until 2002.
- At the same time, virtually identical municipal administrations have been established within the six City-Municipalities, providing services for general administration, finances, economic and social tasks, urban planning, transport, housing, infrastructure, property-legal affairs and cadastre, communal issues, various inspections and secretariats. The City-Municipalities employ over 550 people in a structure which, together with the employees of the City administration, represents a totally bloated, inefficient and unacceptable administrative structure.
- In addition to all of these noted divisions, there are also two separate treasuries, so that all expenditures of the City are paid from ethnically separated accounts.

All infrastructure functions in the City of Mostar are also organized in the City-Municipalities, with no such functions existing at the City level. Therefore, today Mostar has:

- Divided institutions and functions in health care
- Divided institutions in child care, elementary, secondary and higher education
- Two universities; two financial, fee and tax policies; two spatial, urban and regulatory planning agencies overseeing the use and exploitation of natural resources; and a divided communal infrastructure (including public city transportation, the water supply, the sewage systems, the fire protection systems, city waste facilities, environmental protection measures, etc.)

If in the course of the past eight years there has been progress made for the benefit of all citizens of Mostar on any vital issue (for example, the city waste dump), such progress can only be attributed to the strong pressure and presence of the International Community. The unrelenting continuation of divided life in the city during this time has been skilfully and disingenuously wrapped into the so-called protection of vital national interests of one's own people. As a result of such a situation, the life of ordinary people on this artificially divided space has become absurd.

To summarize, living conditions on the territory of the City of Mostar, which by all characteristics and standards should form one natural, urban, spatial and organizational living environment, have been established and organized on unnatural divisions based on territorial demarcation achieved by force and the results of war.

The 1991 demographic structure of the pre-war municipality of Mostar (43,856 Bosniaks/ 34.6%; 43,037 Croats/ 34%; 23,864 Serbs/ 18.8 %; 12,768 Yugoslavs/ 11.1%; 3,121 Others/ 2.5%), has been fundamentally modified during the past 10

years, resulting in important changes in the demographic picture of the City of Mostar. As a consequence of the east/west division of Mostar, of years of obstruction to the return of displaced persons and refugees who were prevented from repossessing their properties, of the re-settlement in Mostar of displaced populations from other parts of BiH and of the illegal allocation of socially-owned construction land without any comprehensive urban planning, the demographic balance between the Croat and Bosniak populations has also been fundamentally changed. This imbalance has become a tool to foster mutual fears and distrust among people, and makes the normalization of the overall conditions and communal relations in the city difficult. Perhaps most notably, of the almost 30% Serbs and Yugoslavs who lived in the region before the war, today's representation of these two categories is below 1%.

The current structure of Mostar represents one of the major obstacles to changing this situation. It also makes the process of developing a new statute and organizational structure difficult. However, such reform is necessary so that the City may develop in accordance with democratic and European standards and the decision of the Constitutional Court of Bosnia and Herzegovina on the constituency of all three Peoples (and Others) on the entire territory of Bosnia and Herzegovina. It is clear that the current situation is unsustainable and unacceptable. The reform of the City of Mostar cannot wait as change is needed in order to provide a better life and better future to the citizens of Mostar, and for the future of the entire state of Bosnia and Herzegovina.

A New Statute for Mostar

The High Representative has given the Commission for Reforming the City of Mostar the following guiding principles:

1. No changes to the current boundary of the City of Mostar
2. A unified and downsized administration for the City of Mostar that ends parallel structures and ensures efficiency and the integration of the City of Mostar
3. A composition of the City Administration that reflects the last census
4. A single budget for the entire City of Mostar
5. Sufficient revenues to ensure the City can meet its responsibilities
6. A single Assembly and electoral system ensuring:
 - I. Representation of all Constituent Peoples and Others
 - II. Representation from all parts of Mostar
7. Full respect for the principle of responsibility of office
8. An institutional mechanism to safeguard the vital interests of the Constituent Peoples

During its work, the Commission has reached consensus to change the structure of the administration, strengthen the central functions, establish a more efficient administration and organize it in such a way as to ensure that the responsibility for political actions is transparent to citizens. Public hearings with representatives of the business, trade union, intellectual, youth and journalism communities both confirmed

citizen dissatisfaction with the status quo, and provided further impetus for serious reform.

The Commission has produced a draft of the new Statute of the City of Mostar. All Commission members have contributed to the establishment of a new basis for self-government through the new Statute.

The disputable issues of the draft Statute shall be explained later in this report, detailing the issues that could not be consensually agreed during the principle deliberations among the members of the Commission. It must be noted that the Representative of the SDP, while participating in the review and revision of the texts and documents throughout the work of the Commission, consistently advocated that the draft prepared by them was the best and only compromise possible.

The following provides a review of the key issues:²

1. Vital National Interests of the Constituent Peoples

It was unanimously agreed that, due to the composition of the population of Mostar, and due to the experiences of the war and the post-war years which have not yet been overcome, a mechanism guaranteeing the protection of Constituent Peoples must be incorporated in the Statute. The Commission was unified in the position that the procedure, which already exists at the Federation level, should be applied in Mostar (see Articles 34 and 35 of the proposed Statute). The Commission is aware that this will require a change in the Constitution, in order to ensure recourse to the Constitutional Court.

2. Additional Provisions for the Protection of Peoples

Consensus was also reached on the following regulations:

- To ensure fair representation of all Constituent Peoples within key City positions, the Mayor, the President of the City Council and the Chief Advisor of the City should not belong to the same People.
- All public institutions can be used by all people, in accordance with regulations and under equal conditions, without excluding anyone from use based on his/her national, religious or cultural identity.
- The composition of the City Administration should reflect the 1991 census in terms of Constituent Peoples' representation. The adoption of this provision in the Statute was facilitated by applying the legal provisions of the Constitution of the Federation of Bosnia and Herzegovina and the Law on Civil Service.

Protection provisions in the electoral system shall be presented separately (see below, Item 9).

² See Appendix B for a detailed explanation of these issues and alternatives.

3. Transparency

Consensus was reached on the strengthening of measures to ensure transparency. The mistrust of the people and of the parties towards governmental administration, as well as mistrust among the parties, is very high, due both to poor performance by city authorities and politicians as well as from the fact that current City-Municipality Assemblies are still largely dominated by mono-ethnic parties.

In order to ensure the transparency of the Administration's actions on all issues related to financial matters, a process of internal audit should be introduced (Art. 54). The internal audit will be independent. It will serve the Mayor, the Head of the Finance Department and the City Council to ensure and control the regularity of financial management.

4. Budget

There was a consensus that all communal (municipal) revenues will go to the City Budget, which should be adopted by the City Council.

Ms. Leho (SDA) added a restriction that the term "unified budget" must be used, and that the City-Municipalities (which she wants to keep) should also participate in its formulation. She advocated for a "unified budget," rather than a "single" one, in order to emphasize the continuing role of City-Municipality structures and budgets. However, there was full agreement that all expenditures should be specified in accordance with the F BiH Law on Budgets and Federation Chart of Accounts.

The majority (all Representatives except for SDA and SDP) preferred the formulation "a single and unified budget" in order to avoid any misunderstandings.

5. Unity of Administration

All Representatives agreed that the City Administration must exist as one administrative body. As well as strengthening competencies at the City level, Ms. Leho also advocated the *unity* of the City Administration, because this implies the continued existence of City-Municipalities. Additionally, according to her proposal, the employees of the City-Municipalities should become the staff of the City and fall under the organizational authority of the City Mayor.

6. Public Enterprises

There was consensus that public enterprises that perform communal tasks, particularly in terms of infrastructure services, must be subject to central management. The members of the supervisory bodies of the enterprises should be elected by the City Council, so that those politically responsible will have an insight into all business practices- particularly into the basis used for the

calculation of fees. The internal audit structure (Art. 54, Para. 12) should also extend its mandate to include this issue.

7. Competencies

Based on Article 37 of the Law on Local Self-government of the Herzegovina-Neretva Canton which defines the competencies of a municipality, the Commission discussed which tasks should be centrally observed. The majority of Commission members – Mr. Merdžo (HDZ), Mr. Omerović (SBiH), Mr. Crnogorac (SDU), Ms. Vučina (RzB) and Mr. Ivanišević (the Returnees' Association) – believed that all tasks should belong to the City, and that the City-Municipalities should be abolished.

Ms. Leho (SDA), who was generally in favour of preserving the City-Municipalities, also supported the relocation of substantial competencies to the City level. The following list represents the competencies to be held by **the City**:

1. *Shall undertake all necessary steps with the purpose of protection of the rights and freedoms stipulated in the articles II. A. 1 –7 of the Constitution of the Federation of BiH,*
2. *Shall provide development programs for activities of importance for the functioning of the municipality,*
3. *Shall pass the Budget and shall adopt the Final Account (all incomes entering into the City budget),*
4. *Shall ensure the conditions for the protection of the environment, in accordance with the Law,*
5. *Shall ensure the establishment and the updating of the cadastre and of the register of real-estate rights,*
6. *Shall ensure settlement planning, quality of housing conditions and utility facilities, performance of utilities and other services, fire protection, local infrastructure, construction planning, maintenance and use of local roads, streets and bridges and other public facilities of interest to the municipality,*
7. *Shall organize local traffic,*
8. *Shall undertake activities to ensure public peace and order, including the protection of citizens and property, in accordance with the Law,*
9. *Shall dispose, use and govern public goods in public use, unless these rights are exercised by other physical or legal entities, in accordance with the Law,*
10. *Shall ensure the conditions for the work of local radio and TV stations, in accordance with the Law,*
11. *Shall administer the tourist resources of the Municipality,*
12. *Shall be in charge of urban and housing policies, shall implement regulations of importance for the municipality and its development and shall ensure town planning,*

13. *Shall establish public institutions and other legal entities in order to promote economic, social, communal and other social interests and the needs of the citizens,*
14. *Shall announce a referendum and a public loan, decide on municipal liabilities, conduct the assessment and the collection of taxes, reimbursements and fees belonging to the municipality and draft and administer the execution of the Budget, in accordance with the Law,*
15. *Shall provide for the local needs of the citizens in the field of child care, education, public health (emergency rooms, medical centres, etc.), health care for animals and plants, social care, culture, physical culture and sports, in accordance with the Law,*
16. *Shall establish municipal services and determine their organization and scope of activities,*
17. *Shall conduct the duties transferred by the Law from the jurisdiction of the Canton or the Federation,*
18. *Shall conduct other duties in direct connection with the interest of the municipality in its economic, cultural and social progress, which are not under the scope of other bodies' activities, and shall organize other issues in accordance with the Law.*

According to Ms. Leho's proposal the City-Municipalities should *share* with the City the above mentioned competencies numbered 1, 2, 9, 14 (referendum only), 16, 17 and 18. Additionally, according to Ms. Leho the City-Municipalities should be exclusively competent for the following:

1. *Shall dispose of and govern municipal assets, and shall determine and dispose of the rent from construction land,*
2. *Shall provide the register of information on the personal status of citizens (registry, voters' register, etc.)*
3. *Shall use and administer the construction land and the housing fund owned by the municipality, and shall determine the titles for parts of a settlement (streets, squares, etc.), in accordance with the Law.*

The Chairman supported the position of the majority that all of the above-mentioned tasks should be the competency of the City.

8. The Status Issue

The question of competencies emerged as closely related to the issue of the unity of self-government, as defined in Art. 3, Para. 2 of the draft Statute:

“The City shall be one unit of local self-government.”

Mr. Komšić (SDP) insisted on his party's proposal to organize the city in accordance with the Federation Constitution on two levels, i.e., to keep the City-Municipalities, but to reduce them to four with new boundaries so that

they would be multiethnic. All other members declined this proposal and it was not further discussed.

Ms. Leho held her position of maintaining the present City-Municipalities. In support of this stance she repeatedly referred to the Dayton Agreement, which, in her opinion, can only be changed by consensus. She argued that the establishment of City-Municipalities with negligible competencies could be a model for the entire Bosnia and Herzegovina, and would also correspond to the European Charter on Local Self-government.

The majority of the Commission argued against this position, saying that with the competencies over municipal assets, construction land, rent from the construction land, public goods, etc., the parallelism between the City and the six City-Municipality administrations would not be eliminated, but rather could lead to the blockade of City decisions, particularly in the sphere of City development and the economy.

There is a legal line of reasoning against Ms. Leho's proposal as well, as it could be argued that a municipality *without* essential competencies (such as the budget and self-determination of the administration) could neither be a unit of self-government nor a legal entity. Additionally, the legal interpretation that Dayton could not be changed could also be dismissed: by marking the Statute as "Interim" it was understood that the Statute had to be changed upon the establishment of normal relations.

9. Electoral System

All members of the Commission presented their own proposals for an electoral system:

NSRzB :	30 seats. One electoral constituency or multiple constituencies of proportional size. Minimum quota 4/4/4/1. ³ No maximum quota.
HDZ:	30-50 seats. One electoral constituency or multiple constituencies of proportional size. Minimum quota 3/3/3/1. No maximum quota.
SBiH/ SDU Returnees:	31 seats. City list electing 6 seats, 6 electoral constituencies electing 4 seats each, Central Zone 1 seat. Minimum quota 4/4/4/1. Maximum quota 12.
SDP:	28 seats. 4 electoral constituencies that must correspond to 4 municipalities, 2 electing 3 seats

³ 4 Bosniaks/ 4 Croats/ 4 Serbs/ 1 Other.

each and 2 electing 5 seats each. A City list electing 12. Fixed quota 10/10/6/4 corresponding to the 1991 census.

SDA: 28 seats. 7 electoral constituencies (6 City-Municipalities and Central Zone), each electing 4 seats. Fixed quota 9/9/9/1.

Present situation: 30 seats. City list filling 12 seats, 6 electoral units electing 3 seats each. Quota 10/10/10 (Bosniaks – Croats – Others)

Based on these proposals, additional options were discussed. A rapprochement of the various positions could not be reached by the Commission Representatives.

The final, mediated proposal of the Chairman was the following:

- **The City Council has 31 seats. The City list elects 13 seats, and 6 electoral constituencies elect 3 seats each. A minimum quota of 4/4/4/1 applies to the City list.**

This proposal has been added to the Statute (see Articles 14, 15, 16, 17).

This proposal takes into consideration the existing system and contains elements of all of the proposals:

1. Electoral constituencies are preserved, ensuring the representation of all city parts (see map in Appendix C)
2. At the same time, a City-wide election reflects the principles of unification and proportionality
3. Minimum quotas ensure the representation of all Constituent Peoples and the Others

This proposal should be seen as a political compromise. With the normalization of relations, new considerations could take their place. Present political circumstances require finding special regulations for Mostar.

10. Transfer of Rights and Obligations to the Unified City

Upon the coming into force of the Statute, all rights and obligations of the former City-Municipalities shall be transferred to the City, i.e. to the new unit of self-government. It is clearly noted (Chapter IV, Article 55) that the employees of the former City-Municipalities will be taken over by the City. The former tasks of the City-Municipalities will be taken over by the City.

At the administrative level, there is still a need for the implementation plan that must be prepared before coming into force. The Chairman therefore

proposes an initial transition and implementation plan, as noted in Section VI, part C.

11. Changes to the Constitution

The Commission agreed to amend the Constitution of the Federation of Bosnia and Herzegovina in order to strengthen self-government. In the case of a dispute with the Canton or the Federation, the cities and municipalities shall have recourse to the Constitutional Court.

The Commission agreed that the mechanism of protection of vital national interests, as defined in the Constitution, shall also be applied to the cities and municipalities.

Deviating from the opinion of SDA Representative Ms. Leho, the Commission proposes to re-define the term “City.” According to the proposed definition, municipalities with substantial urban development and over 60,000 inhabitants may become a city. A city may, but need not have more municipalities. If a city has no municipalities, it may establish administrative areas with branch offices in compliance with their respective City Statute. These areas may serve as electoral constituencies, in order to ensure that all parts of the city are represented in the City Council. With this provision, a special regulation for Mostar shall not be required.

Finally, it is proposed that a person who is not a Councillor in the City Council may be elected as Mayor. However, he/she must be a citizen with a right to vote in the City.

12. Cantonal Constitution and Other Laws

With its recommendations for changing the Constitution of the Federation of BiH, the Commission has established the basis upon which Mostar can be organized according to the terms of the Draft Statute. Special regulations that would establish Mostar as an exception are no longer required.

The Constitution of the Federation is the supreme law. The provisions of the Cantonal Constitution and other laws, which stipulate a special status for Mostar, shall become ineffective with the changes to the Constitution. The Commission decided not to propose such legal-technical formulations, as future provisions shall be in accordance with Constitutional Law.

An amendment to the BiH Election Law shall be required, since the electoral system proposed in the Statute deviates from the existing regulations. This should progress with the upcoming changes of the Election Law.

In sum, rapid adoption of the necessary legislation and constitutional amendments is necessary to begin the transition process in time to prepare for municipal elections scheduled for autumn 2004. More importantly, committed reforms are necessary to ensure that Mostar is an asset rather than an obstacle to eventual BiH participation in accession talks with the European Union. There is therefore an immediate and long-term urgency to the task now facing the politicians of BiH.

In many ways Mostar represents both the best that BiH has to offer, and the challenges that must yet be overcome. Successful reform in Mostar could serve as a new benchmark for urban revitalisation throughout BiH. Reform will pull together legislative and judicial decisions made over the past several years, including the rights of Constituent Peoples, the protection of vital national interests, means to ensure effective representation, civic participation and non-discrimination in all walks of life. While the cost of stagnation is high, the benefits to be enjoyed by normalisation will improve the lives of all of Mostar's citizens. It is with a clear recognition of this "peace dividend" that the Chairman of the Commission presents this report, the proposed Statute and recommendations for reform.

VI. RECOMMENDATIONS

A. Proposed Statute of the City of Mostar

STATUTE OF THE CITY OF MOSTAR

In accordance with Chapter VI.A of the Constitution of the Federation of Bosnia and Herzegovina, Chapter V of the Constitution of the Herzegovina-Neretva Canton and Article 64 of the Law on Local Self-government of the Herzegovina-Neretva Canton, the following Statute for the City of Mostar is promulgated:

CHAPTER I: COMMON PROVISIONS

Article 1

Principles

1. This Statute shall regulate the right and obligation to decide on the interests and needs of the City of Mostar (hereinafter: the City), the scope of local self-government, organisation, financing of the City, as well as other issues, rights, obligations and responsibilities referring to the City.

2. In performing its tasks, the City shall respect the fundamental rights of every individual and the Constituent Peoples in accordance with the Constitution and laws, grant equal rights to all citizens taking into consideration their national, religious and cultural identity, and foster their peaceful coexistence. Its bodies as prescribed under Article 13 shall promote equal living conditions for all.

Article 2

Self-Government

The City shall foster the welfare of its inhabitants in democratic self-government through its elected bodies.

Article 3

Legal Position

1. The City of Mostar is a legal entity. It may, on its own behalf, make commitments and take on commitments; charge and be charged in court. The City of Mostar has property, which consists of movables, real estate and property rights.

2. On its own area, the City shall be one unit of local self-government.

Article 4

Name, Seal and Insignia

1. The name of the City is: “The City of Mostar.”
2. The City has an official seal, the appearance of which shall be determined by a special decision in accordance with the law.
3. The City shall have a Coat of Arms, a flag and other symbols, the appearance of which shall be determined by a special decision, which shall require a two-thirds majority of the vote of the elected City Councillors.

Article 5

Area of the City

The City shall be a single, undivided area according to the state of the area span marked by cadastre lines of the skirting areas on 1 January 1991 as modified by the General Framework Agreement for Peace in Bosnia and Herzegovina signed on 14 December 1995.

Article 6

Unity of the Administration

1. The City shall be a unit of local administration.
2. Enterprises to which tasks of the City are transferred shall be supervised by the City.
3. In order to ensure the unity of the Administration, the City shall be responsible for the administrative tasks delegated by Bosnia and Herzegovina, the Federation of BiH or the Canton. The City shall be reimbursed for the costs involved.

Article 7

City Areas

1. In the City of Mostar, 6 City areas shall be formed corresponding to the former City-Municipalities.
2. Branches of the City Administration shall be formed in the City areas.
3. The City areas of the City of Mostar are electoral constituencies according to Article 15 of this Statute.

Article 8

Tasks of the City

The City shall provide the necessary public institutions and facilities for its citizens, within its financial, personnel and material abilities.

Article 9

International and National Co-operation

1. The City may perform its tasks in co-operation with other cities and municipalities in Bosnia and Herzegovina in accordance with the law. For this purpose, joint institutions may be established in order to fulfill tasks of common interest.

2. The City may join international associations of cities and municipalities, as well as enter into bilateral co-operation with cities and municipalities of other States.

Article 10

Decisions of the City and Participation in Local Self-government

1. The City shall regulate issues of self-government by decisions of its bodies and by referendum.

2. All citizens of the City may take part in the self-government of the City. The citizens may vote and stand for elections in the elections for the City Council in accordance with the law.

3. The citizens may directly decide about particular issues of the City by referendum.

4. A Citizen's Assembly shall be convened in accordance with the law.

Article 11

Rights and Duties

1. The inhabitants of the City have the right to use all public institutions and facilities in the City, within the framework of existing regulations and under equal conditions. No one shall be excluded from use or hindered in using them because of his/her national, religious or cultural identity.

2. The inhabitants of the City shall participate in the financing of tasks of the City through taxes, fees and contributions in accordance with the laws.

3. The regulations of paragraphs 1 and 2 shall apply to the legal entities, with their seat in the City.

Article 12
Supervision

1. The City shall be subject to the supervision of the institutions of the Federation and the Canton as provided by the law.

2. The supervision shall protect the rights of the inhabitants of the City and ensure their fulfilment. The supervision shall prevent the bodies of the City from violating the law and this Statute.

CHAPTER II: BODIES OF THE CITY

Article 13

Bodies

The bodies of the City are the City Council and the Mayor.

Part One: City Council

Article 14

Composition of the City Council

The City Council of the City of Mostar (hereinafter: City Council) shall consist of 31 Councillors, who are elected at free, democratic and direct elections in accordance with the BiH Election Law.

Article 15

Elections for the City Council

1. The Councillors in the City Council shall be elected in electoral constituencies.

2. The electoral constituencies in the City of Mostar shall be the area of the City of Mostar and six City areas, as defined in Articles 5 and 7 of this Statute and the enclosed map, which is an integral part of this Statute.

Article 16

Representation in the City Council

A minimum of four (4) representatives of each Constituent People and one (1) of the Others shall be represented in the City Council.

Article 17

Allocation of Seats

1. Each City area shall elect three (3) City Councillors. The remaining thirteen (13) Councillors shall be elected in the area of the City of Mostar as one electoral constituency (hereinafter: the City list).

2. Four (4) candidates of each Constituent People and one (1) candidate of the Others from the City list, who win the highest number of votes, shall be elected to the City Council.

3. Allocation of seats in the City Council shall be conducted in accordance with Chapter 9 of the BiH Election Law. A more detailed method of the seat allocation shall be regulated by the acts of the BiH Election Commission.

Article 18

Bodies for Implementation of Elections

1. The bodies competent for implementation of the elections in the City of Mostar shall be the Election Commission of the City of Mostar and the Polling Station Committees.

2. Provisions of the BiH Election Law regulating the Municipal Election Commissions shall apply to the appointment and composition of the Election Commission of the City of Mostar.

3. The members of the Polling Station Committees shall be appointed for each elections in accordance with the stipulations of the BiH Election Law.

Article 19

Independence

1. The City Councillors perform their duty according to their free convictions, directed only to the welfare of the City of Mostar and its inhabitants.

2. The City Councillors are not bound by anybody's orders, instructions or wishes.

Article 20

Compensation for the City Councillors

For the exercise of their duty, the City Councillors are entitled to receive salary and allowances as determined by the City Council.

Article 21

Conflict of Interest

1. The City Councillors in the exercise of their public duty shall act in a responsible and conscientious manner. They shall not compromise the confidence and trust of the inhabitants of the City and shall abide by the regulations governing their rights, duties and responsibilities.

2. The City Councillors shall be subject to the Law on Conflict of Interest of Bosnia and Herzegovina and all subsequent laws and regulations pertaining to this matter.

Article 22

Secrecy

1. The City Councillors shall be accountable for keeping secret all information classified as confidential by an authorised body.
2. The obligations from Paragraph 1 shall not cease at the end of the mandate of a City Councillor.

Article 23

Clubs

1. City Councillors may form Clubs. The President of the City Council and the Mayor shall receive notification of the establishment of a Club. The notification shall include the name of the Club, the names of its members, and of its chairman.
2. The City Council shall further regulate this matter in its Rules of Procedure.
3. Should a member of a Club lose his/her membership in the Club by his/her own decision or a decision of the Club, he/she shall retain his/her seat as a City Councillor.

Article 24

Caucuses of the Constituent Peoples

1. A caucus of each Constituent People shall be established in the City Council.
2. This issue shall be further regulated by the Rules of Procedure of the City Council.

Article 25

President and Vice-Presidents

1. The City Council shall have a President and two Vice-Presidents. The President and the Vice-Presidents shall respectively carry the title “President of the City Council” and “Vice-President of the City Council.”
2. The President and the Vice-Presidents shall not come from the same Constituent Peoples.
3. The mandate of the President and Vice-Presidents shall end at the same time as the mandate of the City Councillors.

Article 26

Election and Dismissal of the President and Vice-Presidents

1. At the first session of the City Council after the elections, the City Council shall elect the President and the Vice-Presidents among the City Councillors. Until the President is elected, the sessions of the City Council shall be chaired by the oldest City Councillor.

2. The President of the first session of the City Council shall call for nominations for the position of the President.

3. Each Councillor, club or caucus of the Constituent Peoples shall have a right to propose candidates for the position of the President of the City Council. The caucus of the Constituent Peoples shall nominate by a majority vote, out of the proposed candidates from its members, one candidate for the election for the position of the President.

4. Voting on the nominated candidates shall be conducted for each candidate individually through an open ballot. Every City Councillor may only vote for one candidate.

5. The candidate who receives the highest number of votes shall be elected. Should two candidates receive the same number of votes, the younger one of the two shall be elected President.

6. The election of the two Vice-Presidents shall subsequently proceed in accordance with this Article.

7. The President may not come from the same Constituent People as the Mayor of the City. Should this be the case, the President shall resign from his/her position and the election of a new President shall take place in accordance with this Article.

8. The President and Vice-Presidents may be dismissed by a two-third majority of votes of the elected City Councillors. In such case, the election of the new President or Vice-Presidents shall take place in accordance with this Article.

Article 27

Rights and Duties of the President and the Vice-Presidents

1. The President is responsible for the work of the City Council and shall notify the Mayor about the decisions of the City Council. The President shall represent the City Council on public occasions.

2. The Vice-Presidents shall support the President in the exercise of his/her duties and assume his/her duties in his/her absence, subject to the approval of the President, unless the President is prevented from doing so.

3. Personnel and material means necessary for performing their duty shall be put at the disposal of the President and the Vice-Presidents by the City Administration.

4. The President and Vice-Presidents shall have offices at their disposal, which are run by a Secretary of the City Council.

5. The Secretary of the City Council is a civil servant of the City Administration under the authority of the President. He/she shall have his/her own staff.

Article 28

Competencies of the City Council

1. The City Council is the highest body of the City and shall be competent for all important issues of the City.

2. The City Council shall supervise the entire administration of the City, including the Mayor's Office. City Councillors shall be entitled to ask questions concerning the items on agenda at sessions, and to request written inquiries. The Mayor shall answer the inquiries within two months. Upon his/her own initiative, he/she shall keep the City Council informed about important issues.

3. The City Council shall be entitled to have an overview of the implementation of its decisions, especially regarding the management of the City revenues and expenditures. For this purpose, it may, upon the request of a Club or a quarter of the City Councillors, form a Committee, which may examine documentation in the premises of the City Administration. The Committee must submit a report on the results of the examination. City Councillors may also at any time examine documentation in the premises of the City Administration.

Article 29

Sessions of the City Council

1. The City Council shall meet as often as necessary and at least once a month. The City Council shall be convened without delay whenever one third of the City Councillors submit a written request including an agenda. The request shall be submitted to the President of the City Council (hereinafter: the President).

2. Every City Councillor is entitled to put a motion on all affairs regarding the City on the agenda.

3. At least three days shall pass between the submission in writing of the invitations and the day on which the session is held.

4. When convening the session, the President shall propose an agenda, in consultation with the Vice-Presidents of the City Council (hereinafter: the Vice-Presidents). The agenda shall be sent with the invitation for the session. Items may be added to the agenda during the session upon approval of two-thirds of the elected City Councillors. If those items do not receive the necessary majority, they shall be included on the agenda of the next session.

5. The President shall chair the sessions of the City Council and ensure its conduct in an orderly manner in accordance with the Rules of Procedure of the City Council.

6. The City Council shall meet for the first time within a two-week period after the announcement of the certified Election results. In such case, the City Council shall be convened by the oldest member, as determined by the Election Commission of the City of Mostar when the Election results are announced.

Article 30

Publicity of the Sessions of the City Council

1. The sessions of the City Council shall be public and shall be announced to the public in a timely manner.

2. The City Council may on particular issues decide to hold its session closed to the public. The result of the session shall be announced to the public. This issue shall be further regulated by the Rules of Procedure of the City Council.

Article 31

Participation of the Mayor and the Heads of Departments

1. The Mayor and the Heads of Departments shall participate in the sessions of the City Council. They shall not be entitled to vote.

2. The Mayor shall be entitled to address the City Council during a session at any time on any point of the agenda. Upon request, he/she shall provide the City Council with all information on all issues discussed. The Mayor may delegate these duties to one of the Heads of Departments.

Article 32

Quorum

The City Council can hold sessions and pass decisions if more than half of the elected members are present. The quorum shall be determined at the beginning of the session. It is assumed that quorum exists until the opposite is determined upon request.

Article 33

Voting

1. The decisions of the City Council of the City of Mostar shall be adopted by a majority of votes of the elected City Councillors, unless this Statute or law prescribes otherwise.

2. Voting procedure shall be further regulated by the Rules of Procedure of the City Council.

Article 34

Definition of Vital National Interests

Vital national interests of Constituent Peoples to be protected in the City of Mostar shall be those defined in the Article IV.5.17.a of the Constitution of the Federation.

Article 35

Procedure for the Protection of Vital National Interests

1. If more than one President or Vice-President claims that a decision comes within the list of vital interests referred to under Article 34, the adoption of such a decision shall require a majority vote within each caucus of the Constituent Peoples represented in the City Council.

2. The President and the Vice-Presidents shall decide, within one week, whether a decision comes within the list referred to under Article 34.

3. If only one President or Vice-President claims that a decision falls within the list of vital interests, a two-third majority of the respected caucus of the Constituent Peoples in the City Council may declare the issue concerned to be an item within the list of vital interests.

4. In case a two-third majority of one of the caucuses of the Constituent Peoples in the City Council decides that a decision affects a vital national interest, adoption of such a decision shall require a majority vote within each caucus of the Constituent Peoples represented in the City Council.

5. If the majority referred to in the previous Paragraph is not reached, the issue shall be referred to the Constitutional Court of the Federation, which shall take a final decision whether the disputed decision relates to a vital interest of a Constituent People.

6. In such a case, the Constitutional Court of the Federation shall proceed in the manner provided for in Article IV.6.18.a of the Constitution of the Federation.

7. If the Constitutional Court of the Federation decides in favour of a vital interest, the decision shall fail and the document shall be returned to the proponent for a new procedure. In that event, the proponent may not re-submit the same text of the decision.

8. In the event that the Constitutional Court of the Federation decides that no vital interest is involved, the decision shall be adopted by a majority vote.

Article 36

Other Elections in the City Council

1. Elections are conducted by secret ballot.

2. Unless this Statute or the law determines otherwise, the person who receives more than a half of the valid votes shall be elected. If none of the nominees receives the necessary votes in the first ballot, a second election between the two candidates who managed to poll the largest number of votes is carried out. If two candidates receive the same number of votes, the younger of the two remaining candidates shall be elected, unless one of the candidates renounces.

3. The ballot paper shall clearly indicate the recipient of the vote. The ballot paper shall otherwise be considered as spoiled. Abstentions are also considered spoiled. Those votes considered spoiled shall however be taken into consideration when establishing the quorum.

4. The election committee, consisting of one member nominated from each Club, shall collect and count the votes and determine the Election results. If there is a dispute about the Election results, the City Council shall make a decision by open ballot after having heard the Election Committee.

5. If there are more seats of the same kind to be taken up, then voting according to the lists shall follow and the allocation of seats according to the Saint Lague's method shall be applied. This method may be waived if the City Councillors come to an agreement on a common list and if the City Council gives its approval by a two-third majority.

Article 37
Committees

1. The City Council shall form Committees out of its members in order to prepare its decisions.

2. The Committees shall be formed according to proportion of Clubs' size. The Clubs may nominate as many members to the Committees as they are entitled and submit the names to the President in writing. If a member of a Committee withdraws from his/her office, the Club concerned shall nominate a new member. The Committee members may authorise other City Councillors from the same Club to represent them in the Committee in a particular case.

3. The Committees shall elect a President and a Deputy among its members.

4. The President and the Vice-Presidents of the City Council may participate in all Committees' sessions without the right to vote, and other City Councillors may participate as observers even in those sessions closed for public.

5. The Mayor shall participate in the sessions of the Committees. He/she may authorise one of the Heads of Departments to represent him/her.

6. The provisions of the City Council are accordingly applied to the Committees.

7. The number and competencies of the Committees as well as other issues not regulated by this Statute shall be prescribed by the Rules of Procedure.

Article 38
Minutes

1. The minutes of the essential contents of discussions and decisions of the City Council and its Committees shall be taken. The minutes shall indicate the attendees, the issues discussed, the elections carried out and the decisions adopted.

2. The Secretary of the City Council or his/her delegate in case he/she is prevented from attending, upon the request of the President or the Chairman of the Committee, shall be responsible for taking the minutes of the City Council and its Committees.

3. The minutes shall be signed by the minute-taker and by the President at sessions of the City Council, and by the Chairmen of the Committees at sessions of the Committees, and delivered to the Mayor, as well as to all participants in the sessions.

Article 39

Rules of Procedure

1. The City Council shall pass its own Rules of Procedure, which regulates its internal affairs, as well as the affairs of the Committees.

2. The Rules of Procedure shall refer to the provisions on maintenance of orderly course of sessions, form of invitations, details on invitation periods, sitting arrangements, formal voting procedures and elections, as well as the general course of work.

3. The provisions of the Rules of Procedure shall be in accordance with this Statute.

Article 40

Contest of Decisions

1. If a decision of the City Council is deemed to violate the laws in force or jeopardises the welfare of the City, the Mayor shall contest it within three days.

2. The Mayor shall clarify the contest. The contest shall have a suspending effect.

3. The City Council shall vote again on the disputed decision at a newly convened session within two weeks. If the City Council confirms the disputed decision, the Mayor shall contest it again if the laws are violated, and submit the issue to the supervising authorities within a week. The relevant laws are applied in further procedures. If the dispute refers to a decision, which in the Mayor's view violates the welfare of the City, the decision is final after having been confirmed by a decision of the City Council and shall be implemented.

Part Two: Mayor

Article 41

Representing the City

1. The Mayor shall represent the City.

2. The Mayor is the bearer of executive authority.

3. The decisions of the City Council are implemented by the Mayor. Decisions of the City generating rights and duties shall be issued in writing with the official seal of the City.

Article 42

Tasks of the Mayor

1. The Mayor shall be responsible for the proper functioning of the City Administration, within the limits of the budget adopted by the City Council. He/she is the Head of the City Administration and is superior to all civil servants and employees of the City. He/she shall appoint them, promote them taking into consideration the staff plan and dismiss them from their office in accordance with the law.

2. The Mayor shall organise the City Administration as economically and efficiently as possible, and shall in particular divide it into individual Departments. For this purpose, he/she shall prepare the Rulebook on internal organization and general instructions on duty, which are approved by the City Council. The Rulebook on internal organization shall envisage up to 6 Departments.

3. The Mayor has general policy making powers over the Departments.

4. The Mayor shall in particular:

- a) prepare and implement the decisions of the City Council;
- b) solve the issues which are incumbent on him/her according to this Statute;
- c) apply the laws and regulations, which should be implemented by the City upon instruction of the Canton or the Federation;
- d) produce the budget plan and implement it according to the decisions of the City Council;
- e) manage public institutions of the City assets, and supervise City-owned enterprises;
- f) ensure the co-operation between the City Administration and the Ombudsmen.

Article 43

Election of the Mayor

1. Every citizen of Bosnia and Herzegovina eligible to vote in the City of Mostar may be elected Mayor.

2. The election shall be carried out at the first session of City Council after the Elections.

3. Every City Councillor shall be entitled to nominate candidates.

4. Before the elections, the nominees shall declare in writing that they accept their candidacy.

5. A majority of two-thirds of the elected City Councillors shall be required to elect a Mayor. If none of the

candidates receives the necessary votes in the first ballot, the second election from a short-list of the two candidates, who polled the largest number, shall be carried out. If none of the remaining two candidates receives a two-third majority in the second round, a third election shall be carried out. In the third round a simple majority of the elected City Councillors shall be required to elect a Mayor from the remaining two candidates. If the remaining two candidates poll the same number of votes in the third election, the younger one of the two shall be elected Mayor.

6. Immediately after the elections, the elected nominee shall declare whether he/she accepts his/her election. If he/she does not accept it, the elections shall be repeated as provided in this Article.

Article 44

Voting Out of Office

1. The Mayor may be relieved from his/her Office before the end of his/her mandate by a City Council decision.

2. The motion shall require support of more than half of the elected City Councillors. The decision on the Mayor being relieved from his/her mandate shall be passed at a special session of the City Council.

3. A two-third majority of the elected City Councillors is required.

Article 45

Inauguration and Attestation

1. After his/her election, the Mayor is inaugurated in Office at a public session, and shall make an attestation to conscientiously fulfill his/her duties by taking an oath.

2. He/she shall receive the Charter on his/her Appointment signed by the President.

Article 46

Incompatibility

If a member of the City Council is elected a Mayor, he/she shall resign from his/her seat upon being elected in Office.

Article 47

Heads of Departments

The Heads of Departments shall be civil servants appointed and dismissed by the Mayor in accordance with the law.

Article 48

Tasks of the Heads of Departments

1. The Heads of Departments shall meet once a week at a session, which shall be convened by the Mayor, with an enclosed agenda. The Heads of Departments shall jointly discuss all the tasks incumbent on the City Administration and give recommendations concerning preparation and implementation of the City Council's decisions to the Mayor for him/her to decide upon. Minutes should be taken at the session. This shall be further regulated by the Rulebook on internal organization of the City Administration.

2. On the basis of the discussions and in accordance with Paragraph 1, the Heads of Departments manage their Departments independently within the framework of the Mayor's policy-making powers.

Article 49

Compensation for the Mayor

For the exercise of his/her duty, the Mayor is entitled to receive salary and allowances determined by the City Council.

Article 50

The Chief Advisor of the City

1. The Mayor shall be entitled to a Secretariat, which co-ordinates all preparatory and executive activities of the entire City Administration, and assists the Mayor.

2. The Secretariat shall be managed by the Chief Advisor of the City, who is appointed by the Mayor, after consultations with the Caucus of the Constituent People the proposed candidate belongs to, with the prior consent of the City Council.

3. He/she shall participate in all important administrative issues. Details shall be specified in instructions on duty issued by the Mayor.

4. The Chief Advisor shall not come from the same Constituent Peoples as the President and the Mayor.

CHAPTER III: BUDGET, PUBLIC COMPANIES AND INTERNAL CONTROL

Article 51

Budget

1. The City of Mostar has a single and unified Budget where all revenues and expenditures shall be presented. The Budget of the City shall have direct and additional revenues, which are based on fees, tax revenues, non-tax revenues and capital revenues. Revenues of the City of Mostar shall also include revenues which belong to the City in line with the law and other regulations of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and Cantonal regulations on allocation of public revenues.

2. The Budget is a financial register of plans and policy of the executive authority of the City.

3. The executive authority of the City shall insure that:

- a) the Budget plan and its execution enables continuous realization of the tasks of the City
- b) usage of the Budget resources is correct and lawful, economical, efficient, cost-effective and transparent
- c) all public revenues and incomes shall be allocated in the Budget and registered through sources from which they were collected, and that all revenues defined in the Budget are in balance with revenues and budget incomes

4. The Budget system of the City shall be realised in line with the Law on the Budget of the Federation of BiH. In accordance with the law, the fiscal year of the City shall start with the first day of January and shall finish with the last day of December of each calendar year.

5. In accordance with the Budget calendar of the Federation, the Executive authority of the City shall annually prepare and submit to the City Council the Budget, which must contain an explanation for deliberation and adoption.

The Budget, among other things, shall contain:

- a) a detailed review of all revenues and expenditures
- b) revenues and expenditures of every single budgetary beneficiary, in line with the law and valid budgetary classifications

Explanation of the Budget shall be comprised of:

- a) detailed legislative bases for all revenues and expenditures which are planned in the Budget for the following budgetary year

b) priorities and policies which determine development of the Budget, prognosis of significant trends of revenues and expenditures, summary of current debt obligations, relation between current debt and legal deadlines as well as reflection of such status to the current budgetary state and obligations, plan of debt payment, description of the process of collection of revenues of the Budget, evaluation of the relations and state between revenues and expenditures of the Budget and guidelines for expenditures for the following budgetary year

c) review (individual) of all budgetary beneficiaries, which would list all employees who are on the payroll of the Budget of the City

d) a special explanation for any significant changes (if any) in relation to the previous year which relate to the total and individual revenues, that is expenditures of the Budget, stating on basis of which legislative or other legal basis those changes were conducted

6. The executive authority of the City shall ensure, and shall be responsible for, correct, lawful, economic, efficient and cost effective revenues of the Budget

7. The City Council shall adopt the Budget and the Decision of execution of the Budget of the City at the same time. The decision on execution of the Budget closely defines issues such as harmonization and uniformity of disbursement of public revenues, priorities, method of submitting reports on execution as well as other issues of importance for expenditures of budgetary means and realization of the functions of the City.

Article 52

Public Companies

1. The City may establish, support, take over or extend public companies if this is in the public interest. To this end, the City needs to ensure that the company in question is capable of discharging the required functions adequately and that it is proportional in size to the economic viability of the City as well as its requirements.

2. The City may participate in the company if this is in line with the requirements stated in the previous Paragraph and if it is adequately represented, in particular in a steering board or a similar supervisory body.

Article 53

City Representation in Public Companies

1. In companies in which the City is the sole shareholder, the steering board or supervisory body consists of representatives elected by the City Council. The number of representatives depends on the statute of the company.

2. If the City participates in a company, the previous paragraph applies to the extent that all representatives shall be elected by the City Council.

Article 54

Internal Control

1. Internal Control is an independent and objective appraisal function of control over the financial, material and accounting business of the budget users, as well as over the legality and appropriateness of use of budget resources, in order to ensure a proper, economic, efficient and effective use of resources.

2. The key controls for Internal Control are:

a) That it is independent in its planning and operation.

b) That the Internal Control has direct access to the finance service, the City Administration, the institutions of the City and all other budget users.

3. The office of Internal Control shall be managed by the Chief of Internal Control.

4. The Chief of Internal Control shall be responsible to the City Council for his/her work and the work of the Office.

5. The Chief of Internal Control shall be appointed and dismissed upon recommendation of the Finance and Budget Committee with the approval of the City Council. The selection of the Chief of Internal Control needs to be transparent and merit-based. The Chief of Internal Control has to possess relevant qualifications and proven experience in auditing.

6. The Mayor may remove the Chief of Internal Control only with consent of a two-third majority of the elected City Councillors.

7. The internal organization of Internal Control shall be determined in the Rulebook on Internal Organisation.

8. Internal Control conducts regular internal controls of all City institutions, and the results are to be presented to the Mayor and the City Council. Recommendations by Internal Control have to be swiftly implemented upon presentation, if they are in the framework of paragraphs 9 and 12 of this Article.

9. In particular, Internal Control gives an opinion on the annual audit report of the Budget realization presented by the City executive that scrutinizes:

- a) If the Budget plan has been adhered to.
- b) If all financial transactions are properly recorded and accounted for.
- c) If all revenues and expenditures have been undertaken in accordance with the rules and regulations.
- d) If the documents are complete and correct.

10. In addition to the annual report on the annual budget execution, Internal Control scrutinizes on a regular basis all accounts in order to ensure that the statement of accounts presents accurately the financial position of the City and its revenues and expenditures for the year in question and complies with all legal requirements.

11. On a continuous basis, the Controllers supervise all accounts. In case of electronic data processing, the Controllers have to control the mechanisms before they enter into operation.

12. The Mayor, City Chief Advisor, Head of Finance or the City Councillors can assign other tasks to the Chief of Internal Control as deemed necessary, relating to the scrutiny of tenders, to the proper and economic functioning of the Administration or to the City's involvement in public companies.

CHAPTER IV: FINAL REGULATIONS

Article 55

Rights and Responsibilities

The rights and responsibilities of the City Municipalities shall be transferred to the City, referring in particular to the transfer of their employees to the City, when this Statute enters into force.

Article 56

Public Announcement

This Statute shall be published in the Official Gazette of the City of Mostar.

Article 57

Amendments to the Statute

This Statute can only be amended by a majority of two-thirds of the elected City Councillors.

Article 58

Entry into Force

This Statute of the City of Mostar shall enter into force 8 days after its publishing in the Official Gazette of the City of Mostar.

B. Harmonisation of the Legal Framework

To ensure full implementation of the proposed Statute of the City of Mostar, the Constitution of the Federation of Bosnia and Herzegovina must be amended to ensure appropriate legal harmonisation.

Following are the necessary key amendments presented in accordance with legal standards.

In Article IV C 10 (F BiH Constitutional Court) after paragraph (2), two new paragraphs (3 and 4) shall be added as follows:

“(3) A protection of rights of local self-government shall be ensured by the Constitutional Court. The initiative for the procedure before the Constitutional Court may be started by the municipal and city bodies, as well as by the Association of municipalities and cities of the Federation BiH. In disputes between the municipalities and cities and their cantons or Federal government, the Constitutional Court shall resolve the dispute upon the request by the municipal, i.e. city council, the mayor or the Association of municipalities and the cities of the Federation BiH.”

“(4) Vital interests of Constituent Peoples shall be protected in municipalities and cities in accordance with Article IV.5.17 of the F BiH Constitution. The procedure for protection of vital national interests shall be defined by the Statute of the city and the municipality. In case of a dispute, the F BiH Constitutional Court shall be the body authorised to resolve the dispute.”

The existing paragraphs (3) and (4) shall become paragraphs (5) and (6).

Article VI.A (City Governments) shall be repealed and replaced by:

“(1) A City is a local administrative and territorial unit of self-government formed on a territorially unified urban area constituting a natural, economic, social and historical whole and having at least 60,000 inhabitants.”

“(2) A City may be composed of several Municipalities.”

“(3) A City composed of Municipalities shall be responsible for:

- a) Finances and tax policy, in accordance with Federal and Cantonal legislation;*
- b) Joint infrastructure;*
- c) Urban planning;*
- d) Public transport;*
- e) Other responsibilities assigned to the City by the Federation, the Canton or municipalities.*

The organisation of the City and its Municipalities shall be regulated by law.”

“(4) Organisation of the City without municipalities shall be regulated by the Law. The Statute of the City shall define city areas in which the central City Administration may establish branch services and offices.”

“(5) City areas may be electoral constituencies, and the number of councillors, the election procedure and the duration of the mandate shall be regulated by the Election Law of BiH and the Statute.”

“(6) A city without lower units of local self-government has the same competencies as a municipality, unless otherwise regulated by law.”

“(7) Every citizen of Bosnia and Herzegovina eligible to vote in the City may be elected Mayor. The Mayor is elected and removed from office according to the procedure prescribed in the Statute.”

C. Transition/Implementation Plan

The Commission was tasked to make proposals on the implementation of its findings. Due to the tight deadline the Commission was not able to discuss these matters to the necessary extent.

The chairman of the Commission is of the opinion that the implementation of the new statute must be done in a timely manner in the run-up to the municipal elections in late 2004. The delicacy of the reached compromise needs a comprehensive implementation. In addition confidence building measures and concrete steps in the area of material reunification of the City of Mostar must be added.

The chairman is of the opinion that the implementation will need further involvement of the International Community.

VII. Conclusions

The Commission, together with its advisors and supporting staff, has to the best of its ability complied with the provisions included in the High Representative's decision. At the beginning of this process, doubters questioned whether such a body could possibly be successful, pointing out the stagnancy and stubbornness that has characterized Mostar for almost a decade. However, these cynics have been proved wrong, and Commission Representatives from six political parties participated in an intense process of discussion, debate and mediated problem-solving. While 100% consensus was not achieved, a high degree of agreement was identified, and alternatives outlined for the remaining contentious issues that challenged the Commission. This report represents the culmination of this effort. It presents a functional and achievable plan to move the City forward.

Throughout the negotiation and discussion process, one key unifying factor remained: the understanding that the citizens of Mostar deserve better. The numerous public hearings that complemented the work of the Commission reiterated the crucial point that reform is needed not for the parties, and not for the politicians, but for every man, woman and child who wants a better future in the place they call home. It is on behalf of the citizens of Mostar that the Chairman of the Commission presents these recommendations and urges timely adoption of the necessary amendments and laws, so that Mostar can begin its work to become a truly European city, and a model for Bosnia and Herzegovina.

VIII. APPENDIX

Appendix A: History, Precedent and Mandate

The Beginning of the Federation of BiH -- and Recovery

The Commission's work is the culmination of a process that began in March 1994 with the signing of the Washington Agreement. The framework for the BiH Federation was signed on 1 March 1994, and the Agreement on the Constitution of the Federation of BiH was signed on 18 March 1994. As a part of these founding documents, it was agreed that the Mostar City Municipality would be governed by an EU Administration for up to two years, to facilitate the post-war transition, coordinate reconstruction in the destroyed city and initiate the basic development of essential structures in the City in the critical early years.⁴

A Memorandum of Understanding (MOU) was signed in Geneva on 6 April, emphasising commitment to the development of a unified, multiethnic city, return, freedom of movement and the temporary establishment of the EU Administration in Mostar (EUAM). An additional MOU concerning the work of the EUAM was agreed in July 1994, and the EU would ultimately continue its work in Mostar through January 1997.⁵

The Dayton Agreement on Implementing the Federation of Bosnia and Herzegovina was signed in Dayton, Ohio on 10 November 1995. Twenty months after the Washington Agreement, this sought to strengthen the political, economic and social integration of the Federation within the larger framework for peace in the country.⁶ In addition to calling for full implementation of the EUAM MOU, this document reaffirmed agreement on a set of principles for the Interim Statute for the City of Mostar, including support for the unity of the city under an interim structural agreement.⁷

The Interim Statute – An Interim Solution

By signing the Rome Agreement on 18 February 1996 the parties agreed to support the process of unifying the City of Mostar, and to adopt the EU's plan for reform and reconstruction. The issues addressed in the Agreement included a commitment to return, the development of a unified police force and the delimitation of the Central Zone.⁸ The Interim Statute was adopted on 7 February 1996, and viewed as an important transitional stage in the development of Mostar; as an *interim*, and therefore

⁴ *Framework Agreement for the Federation*, VIII, March 1994.

⁵ The PIC recognized the potential for the EU to extend its presence after the 1996 elections in Mostar. *Peace Implementation Council Chairman's Conclusions*, Florence, 13 June 1996.

⁶ *Dayton Agreement on Implementing the Federation of Bosnia and Herzegovina*, signed in Dayton 10 November 1995, I.

⁷ *Ibid*, I, and also *Annex to the Dayton Agreement on Implementing the Federation of Bosnia and Herzegovina*.

⁸ See <http://www.nato.int/ifor/general/d960218d.htm>

temporary, arrangement to ensure the basic administration of the City and government services while a permanent legal structure was negotiated, drafted and adopted.

Six municipal districts, or “City-Municipalities,” were established through the adoption of the Interim Statute: Mostar South, Mostar South-West, Mostar West and Mostar South-East, Mostar North and Stari Grad (Old Town).⁹ The Central Zone in the middle of the traditional commercial and tourist centre of the city was to be administered directly by a City-wide administration. A map illustrating these demarcations is included in Appendix C.

The EU Administration worked to implement the Interim Statute and to prepare the ground for further normalisation of the city. This was a challenging goal, as there were few local authorities or politicians interested in promoting real reform or progress on behalf of the citizens of Mostar. Elections were organized by the EUAM and held on 30 June 1996, yet the elected officials failed to address the problems facing Mostar as a whole, focusing on the narrow interests of their parties and “their” peoples whom they claimed to represent.

These early agreements were temporary arrangements made under imperfect circumstances, and they proved to be inadequate in many ways. However, they enabled the first small steps for rebuilding the war-shattered area. The six City-Municipalities created by the interim arrangement were not developed according to historical districts or democratic legal procedure, but simply reflected the purely *undemocratic* demarcation lines established through war. As administrative units based solely on the demographic of the “dominant peoples” within, these units serve not the citizens of Mostar, but specific national groups. These initial steps provided a provisional structure for interim solutions.

The EU Administration ended its mission in July 1996, and was followed by a follow-on mission led by the Special Envoy, before transferring responsibilities on 6 January 1997 to the Office of the High Representative and a broad set of international agencies involved in the peace implementation and development process. The EUAM was involved in Mostar at a challenging time, but was successful in working with local citizens to redevelop and support basic infrastructure and community services, freedom of movement and the development of the Interim Statute. Its achievements, however, were simply the foundation for more enduring solutions and reforms to come, which together would fulfil the goals and spirit of the Dayton Agreement.

The Interim Statute provided an interim solution and framework for Mostar’s gradual recovery from war and the consequences of economic destruction and transition. Before its adoption, there was no established rule of law, and no legislation that might support its terms and intentions. It provided for the provision of a minimal level of services, and for the slow reconstruction of community and social life. It neither guaranteed nor precluded the development of a city established along more standard guidelines. However, it provided preliminary opportunities for gradual cooperation among the war-torn communities, and was an initial part of the normalisation process.

⁹ The first three were in Croat controlled areas, and the second three in Bosniak controlled areas.

Reform and Progress – Standing Still

The Interim Statute was envisioned “as the floor and not the ceiling,” and as a starting point for on-going serious discussions aimed at increasing the abilities and efficiency of the central administration of Mostar. Unfortunately, the reforms of the Interim Statute aimed at increasing the effectiveness and efficiency of the central authorities through the empowerment of the City Council and the development of the Central Zone did not occur. The following summarizes the most blatant inefficiencies and problems plaguing the administration of Mostar today, and over the past several years:

- The Central Zone was never achieved according to the plans of the Interim Statute.
- Power and authority were usurped from the City Council and the supporting City Administration by the administrations in the six City-Municipalities.
- The City remained divided, with rampant parallelism and a complete lack of cooperation between the Mayor and Deputy Mayor (who by law represent different national groups).
- City finances remained divided through the existence of two separate treasuries in the City, as well as additional budgets in each of the six City-Municipalities.
- Redundancy was rampant, with duplicative administrative structures at the level of each of the six City-Municipalities as well as the essentially impotent City Administration. This resulted in seven separate bureaucratic structures and expenses for services such as transportation, housing, education, health care, infrastructure, property affairs and cadastre and numerous other services.
- There was a constant and conscious lack of coordination between the six City-Municipalities and the City in spite of the fact that such coordination was a requirement of the Interim Statute.

The level of waste and duplication in this dysfunctional system has been and continues to be significant, with approximately 550 employees working on these issues at the City-Municipality level, and 124 employees working at the (virtually powerless) City level. The impact of this inefficiency and waste is most clearly visible in the budget analysis provided below in Appendix B. The impact of such expensive administrative overhead on businesses in terms of investment and job creation is also clear. At a public forum with Mostar’s business leaders, a clear concern was that all money paid in taxes is spent simply on the administration of government – not on regional development initiatives that could improve Mostar’s economic future.

Finally, the dysfunctionality of Mostar is affecting democracy and progress in less visible ways as well. The disconnect between politicians and the citizenry is growing, as there is a perception that politicians are only interested in securing their own interests, not doing the will of the people.¹⁰ The triumph to date of cronyism and corruption in government has tarnished the notion of public service, replacing this concept with one of personal gain through public means. Citizens’ electoral choices are not based upon serious consideration of the issues, platforms and qualifications of

¹⁰ For instance, this sentiment was specifically raised at the forum with business leaders held on 14 November.

candidates, but on the ongoing manipulation of voters through the politics of fear. Unfortunately for the citizen taxpayers of Mostar, serious reform and problem-solving has not been forthcoming from the authorities and political parties. The spirit and intent of the Interim Statute was frozen and neglected, and the intended goals of the City – centralized competencies, effective administration and basic functionality – were never achieved.

Support for Reform and a Lasting Framework

Since 1994, the International Community at various levels has consistently urged authorities to work together to develop a more efficient Mostar, and local officials committed themselves to such change, in word if not in deed. At the Federation Forum held on 3 February 1997, the relevant authorities committed themselves to ensuring freedom of movement throughout Mostar, and agreed on the constitution of the six City-Municipalities by 14 February. Additional commitments aimed at the normalisation of Mostar were made at the Federation Forum on 20 August 1997.

The Peace Implementation Council (PIC) has supported the progressive development of Mostar throughout this process. Specific attention to the situation in Mostar has been a feature of many of the PIC discussions, as early as meetings in Florence on 13 June 1996, and in London on 5 December 1996. At the PIC meeting in Bonn in December 1997, the Council again noted its concern that “serious problems of local administration, notably in Mostar, continue to exist,”¹¹ and urged authorities to “ensure that the City of Mostar and its unified City Administration is operational in all aspects, in accordance with the City Statute. This includes dissolution of the union of the three City-Municipalities in West Mostar.”¹² In Madrid in 1998 the PIC called on the Herzegovina-Neretva Canton to establish an integrated judiciary, including the City of Mostar, and stated that the future establishment of the capital of the Federation in Mostar depends on fulfilment of several conditions, including the establishment of a “truly unified city administration [that] exists under one leadership with one budget, and operating effectively.”¹³

In July 2000, the PIC Steering Board noted with great interest the encouraging attempts by responsible politicians in Mostar to find pragmatic forms of cooperation across the ethnic divide which aim at establishing normal life in the city and its eventual unification. In this context, the continued financial contribution of the European Union was welcomed, as was the Mostar Document signed between representatives of the European Union and of the city of Mostar and its six City-Municipalities. The Board took note of the announcement by the City authorities that they would begin working on the final status of Mostar. In addition, a recent US Government initiative to institute its business loan program in the Mostar area was welcomed.¹⁴

¹¹ *Peace Implementation Council – Summary of Bonn Conclusions*, 10 December 1997.

¹² Peace Implementation Council Meeting, *Bosnia and Herzegovina 1998: Self-Sustaining Structures. Federation Annex*. Bonn, 10 December 1997.

¹³ Peace Implementation Council Declaration Annex: *The Peace Implementation Ahead, Reinforcing the Peace in Bosnia and Herzegovina*, Madrid, 16 December 1998.

¹⁴ Communiqué by the Peace Implementation Council Steering Board, Sarajevo, 13 July 2000.

Most recently, on 26 September 2003, the PIC Steering Board issued a communiqué, noting that it “supports the aim of a unified City in accordance with European standards, which promotes the rights of all people and will not allow dominance of one part of the population of Mostar. The Steering Board considers the solution of the Mostar question as essential for the sustainable and peaceful development of BiH.”¹⁵ The International Community’s support for reform has been public and clear, and the Mostar authorities have continually professed their agreement. However, they failed to meet their stated obligations.

Numerous agreements and MOUs were developed and signed by the appropriate authorities in cooperation with the International Community, and the continued reiteration of the goals for the City of Mostar has remained the same since 1994. However, action has failed to keep pace with rhetoric. The time that has passed has allowed for discussion and debate, development of general and specific implementation and reform plans and general infrastructure and systemic development. But it has also increased the financial desperation of the city and its people, stalled business development and fostered continued division.

Throughout this challenging, gradual and often obstructed process, the citizens of Mostar have demonstrated their desire and hope for a normal life by consistently returning to their pre-wars homes, to re-build their lives and their beloved communities. This trend has been particularly evident since 2001. It is critical to note that as progress has been made in harmonising legislation across governmental levels, in ensuring the protection of human rights, in supporting a representative police force and in reducing elements of crime and corruption throughout BiH, more and more people have been able to make the decision to return. The changing environment created space for people to make this important choice.

Return to Mostar¹⁶

		Bosniaks	Croats	Serbs	Others	Totals
2003	Mostar East	0	314	293	2	609
	Mostar West	900	0	468	15	1383
2002	Mostar East	0	1240	1278	0	2518
	Mostar West	2454	0	1462	0	3916
2001	Mostar East	0	634	713	20	1367
	Mostar West	2117	0	1352	20	3489

In spite of the progress in return, the demographics of the city remain quite different than they were before the outbreak of war. The 1991 census reported the following demographic data for Mostar, which was then organized as one municipality:

¹⁵ Peace Implementation Council Steering Board Communiqué, Sarajevo, 26 September 2003.

¹⁶ This data represents registered minority returns. Data from UNHCR BiH, at www.unhcr.ba.

1991 Census Data

	Number	Percentage
Bosniaks	43,856	34.6%
Croats	43,037	34%
Serbs	23,864	18.8%
Yugoslavs	12,768	11.1%
Others	3,121	2.5%

As there has not been an official census since 1991, all recent data referenced represents unofficial statistics that, while indicative of trends and the current population, are not official or legally binding. Current estimates based on numbers compiled by the FBiH Statistical Institute suggest the following breakdown today:

Estimates in 2003¹⁷

Territorial Units	1991	2000	2003
City	126,628	104,764	105,408
South	9,862	8,068	N/A
South-East	10,250	9,503	N/A
South-West	47,649	32,970	N/A
North	15,048	11,872	N/A
Old Town	25,172	26,181	N/A
West	18,637	16,170	N/A
Central Zone	-	-	-

Driven by a variety of motivations, there have been some attempts to determine the current population breakdown of Mostar through the study of names on voter registration records. However interesting an exercise, such a process remains speculative. Perhaps the most alarming statistic is the fact that the overall population of Mostar has decreased by almost 20,000. This represents a brain drain and loss of talent that no city should have to experience.

While it is clear that there is still work to be done to ensure full implementation of Annex VII, any reform of Mostar must be based not on population numbers, but on commitment to the protection of human rights, and of the rights of the Constituent Peoples and the group of Others, through protection of vital national interests. This imperative drove the work of the Commission.

There are other signs that the people of Mostar want a normal city, organized according to normal and widely accepted European standards. At a public hearing with professors held on 19 November, a law professor at Džemal Bjedić University noted that she had conducted an informal poll among students at the law faculty. 71.83% responded that they wanted a unified (*jedinstven*) city, with 45.83% expecting that reform will lead to more employment options.¹⁸ A public opinion poll conducted in several cities, including Mostar, in the autumn of 2003 indicated that more than

¹⁷ These numbers, based on the 1991 census and data from the FBiH Statistical Institute, are merely indicative and do not represent official data. Additionally, in 1991, city-municipalities did not exist as administrative units as they do in 2003. There is no information available for the Central Zone, though the number of voters in April 2000 was 1,189.

¹⁸ 81% of regular students participated in this opinion poll.

40% of respondents characterize relations between Bosniaks and Croats in BiH as good, normal or great.¹⁹ While politics may not be changing, people are changing.

Toward a Comprehensive Plan for Reform

Following months of discussion, the High Representative supported the idea of assisting in the establishment of a multiethnic, cross-party commission that would include representatives from all of the levels of government that may be called on to make changes to their legislation or constitutions. This Mostar City-based commission, nominated by the Mostar Mayor and Deputy Mayor and appointed by the City Council on 15 April, met 15 times from April through July to discuss needed reform. During the process, the OHR and OSCE served as the secretariat of the commission, leaving the commission members fully responsible for the negotiations. The work of the commission in the spring of 2003 was guided by a set of principles outlined in a letter from the High Representative on 15 April, and presented in the Executive Summary of this report.

All of the stakeholders involved agreed that the current situation in Mostar is untenable. While this first commission was able to agree on many issues of structure and process, it failed to develop a comprehensive and final recommendation for Mostar's reform. However, it did identify many of the relevant issues, participated in open and lively debate concerning the essence of the principles and uncovered many of the difficult issues that would have to be addressed for reform to be successful.

The Commission for Reforming the City of Mostar was established by the High Representative on 17 September 2003. The decision establishing this Commission was the culmination of the process that has been ongoing since 1994. While there had been hope that a reform process would be initiated and implemented over the past years, a comprehensive solution had not been presented. Although progress had been made in return, economic development and government accountability and transparency in many parts of the country, it became clear that Mostar continued to suffer from a dysfunctional and duplicative system that failed to serve its citizens.

Commission Work Plan

To facilitate and encourage progress towards a comprehensive resolution of Mostar's problems, and to end the interim nature of the region's legal framework, the High Representative established the Commission and gave it the mandate to examine the legal measures necessary to reform institutional structures and improve administrative and financial performance. The Decision presented a framework for approaching this challenging yet necessary task, reaffirmed the principles underlying the spring 2003 efforts, provided for the appointment of an international chairperson to mediate and facilitate the process and established a 12-member Commission consisting of political party representatives empowered to speak and make decisions on behalf of their parties and legal advisors. Perhaps most importantly, the leaders of the six political parties who would participate in the work of the Commission confirmed their

¹⁹ *Dnevni Avaz*, 28 October 2003. Poll based on a random sample of 500 people in Sarajevo, Mostar, Čaplina, Travnik and Zenica.

dedication to developing a viable reform plan in a Commitment signed on 15 September 2003.

The Decision establishing the Commission also called for an effort to ensure a wide degree of civic participation in the process. While mindful of the need for a workable and efficient Commission core, the role of citizens' groups and civil society in general was acknowledged and inclusion encouraged. To this end, a series of public hearings was ultimately organized, to integrate the voices of business, the intellectual community, trade unions and public utilities, youth associations and journalists.²⁰

The business people who participated in the forum demonstrated their support for a reformed and unified City on the basis of their investment and entrepreneurial interests. They shared their (generally negative) experiences of dealing with administrative offices, and unanimously agreed that the costs of doing business in Mostar are too high due to the tax-revenue supported redundancy. Representatives from the trade unions and public utilities pointed out that their effectiveness at lobbying and representing their workers is limited by the fact that there is not a single local body representing the workers of Mostar, but smaller unions with a smaller voice as a result of the division.

The professors and intellectuals who participated in the forum acknowledged that change is needed, but that fear still drives the decisions and motivations of many of Mostar's citizens. This suggested that an effort aimed at ensuring that citizens recognize the benefits of reform will be needed to counter any potential efforts of anti-reformers to influence the people with fear-based, anti-change propaganda.

Though they too acknowledged that the need for change is real, the journalists that assembled expressed a bit more scepticism about the potential for reform, quite possibly reflecting the political biases that unfortunately affect their profession. It will be of vital importance to ensure that the media that has profited editorially from the sensational headlines that are part and parcel of the politics of division fully understands its role and responsibility in explaining the reform process to their readers and viewers. This is the essence of democratic journalism.

Finally, but perhaps most importantly, representatives of Mostar's youth convened to explain their concerns and ideas for reform. They expressed frustration at being left out of the work of the formal Commission, reflecting a need for the political parties to integrate the voices of youth in all of their work. Such important decisions should be made by the people who will have to live amidst their consequences in the next 10, 20 and 30 years, not by those who look to the past more than to the future. They demanded increased future participation in reform and demonstrated that they are the reformers and leaders of tomorrow.

While the Commission worked with continued reference to the relevant body of laws at all levels of government, it was understood throughout the process that the Commission could and should propose amendments to existing laws and constitutions

²⁰ Public hearings were held with businesspeople on 13 November, professors and intellectuals on 19 November, trade unions and public utility workers on 20 November, youth associations on 2 December, and journalists on 2 December.

where necessary to enable legal implementation of a proposed reform. Therefore, if an idea was discussed and agreed upon by all Commission members, but was not in accordance with a constitution or law, then the Commission was responsible for detailing and explaining how the constitution or law should be amended to enable implementation of the proposed reform. This process was meant to ensure that Commission members could think creatively, borrow from the experience of other European states and seek innovative solutions to unique challenges. No party could hinder reform by hiding behind the terms of the Dayton Agreement.

The High Representative's decision referred to the basic principles outlined in the spring as the basis for a functional city and workable reform plan. The Commission agreed to work through the support of the Chairperson and his offices, and to discuss issues and ideas with the goal of consensus. Throughout the autumn of 2003 the Commission Representatives and legal advisors have met with the Chairperson in 14 formal Commission meetings and numerous informal sessions to discuss reform needs and options and develop a draft statute and recommendations for reform.²¹ This was a challenging process that revealed both obstacles and suggestions, which are described in the pages that follow.

²¹ The formal sessions were held on 25 September, 6 October, 14 October, 21 October, 24 October, 30 October, 4 November, 11 November, 14 November, 18 November, 21 November, 27 November, 3 December and 9 December.

Appendix B: Key Issues, Proposals and Alternatives

The following provides information on several key issues that were considered by the Commission in their development of the proposed City Statute and related reforms. As explained in the Executive Summary, the Commission achieved consensus on some of these issues, while others were not unanimously agreed. This section provides details on the issues that informed the discussion, and presents the various alternatives proposed by the Commission in the absence of consensus.

1. Status of the City of Mostar and the Structure of Local Self-Government

The structure of local self-government in Mostar is at the heart of any discussion about reform. How citizens will be represented and interact with elected, appointed or civil service officials, the collection of taxes and the provision of services are all community-based issues that necessitate community-based solutions. While an important issue in any community, this issue is particularly important and delicate in Mostar, as there is a need to balance basic services and political representation with individual and group rights and responsibilities. The Commission had lengthy discussions over what kind of structure would best ensure the protection of individuals and Peoples, and how such a structure might function in practice.

As trade and communications increases human interaction and mobility, there is a growing understanding throughout Europe, and in the United States and Canada as well, that no problems or challenges are hermetically sealed within the borders of that administrative unit; there is always overlap, spill-over and unforeseen consequences of proximity. Regional problems therefore demand regional solutions, and regional planning has been increasingly viewed as a way to conserve resources while providing necessary services and attracting new businesses. Cities are often best equipped to administer such widely shared services.

The Interim Statute envisioned a system in which the City-Municipalities would cede responsibilities and competencies to the City as necessary and appropriate. In the interest of maximum efficiency and minimal duplication of services in a geographic area of approximately 105,000 people, in the best of circumstances significant authorities would have been ceded to the City, leaving the City-Municipalities serving a minimal “liaison” function to ensure service delivery and adequate government response to citizen requests. In reality, however, the City structures were either passively ignored or actively undermined, as power was maintained in six disparate City-Municipality bodies.

Several options of administrative structure were proposed and discussed by the Commission, in an attempt to identify the strengths and weaknesses of each, and to determine how the problems that affect Mostar today could best be solved. Two essential positions emerged. One position proposed that the City of Mostar be organized as one municipality. The other position proposed that there be a unified City of Mostar, but that a system of municipalities (both four new and the present six were suggested) continues in tandem with the City Administration. Closely tied to this

second position was a suggestion that there be a unified City of Mostar, with 37 lower level units of governmental administration called *mjesna zajednica*.²²

The table below summarizes some of the key issues discussed for each alternative, and offers an overview of the options presented by the Commission representatives.

Status of Mostar: Alternatives

	Strengths	Weaknesses
One City, one municipality <i>Supported by HDZ, SBiH, SDU, NSRzB</i>	<ul style="list-style-type: none"> • One single budget • One centrally controlled treasury • Minimal bureaucracy and duplication 	<ul style="list-style-type: none"> • Would be necessary to ensure proper administrative service delivery to all parts of the city • Concerns of domination of larger population groups over smaller populations
One City, six City-Municipalities <i>Supported by SDA</i>	<ul style="list-style-type: none"> • Soothes fear of potential domination by larger Constituent Peoples' populations • Some competencies would/could be transferred to the City from the City-Municipalities 	<ul style="list-style-type: none"> • City is structured as a complex unit of LSG • Potential for continued parallelism • Budget would be "unified" but not "single" • The borders of the six City-Municipalities were determined by war, not by democratic means • Essentially a modified version of the status quo and Interim Statute
One City, four municipalities <i>Supported by SDP</i>	<ul style="list-style-type: none"> • A compromise solution between the SDA and HDZ proposals • Create new boundaries ensuring multiethnic municipalities rather than municipalities resulting from war-time divisions 	<ul style="list-style-type: none"> • Four such municipalities have not previously existed • Uncertain on what basis four "new" municipalities would be structured
One City, no municipalities, strengthened MZs <i>Supported by the Coordination of the Association for Returnees</i>	<ul style="list-style-type: none"> • Unification using existing layers of administration • Structure could ensure good service delivery • One single budget and centrally controlled treasury 	<ul style="list-style-type: none"> • Too many <i>mjesna zajednica</i> (37); could be cumbersome

These various alternatives provide several different visions of administrative organization. The Commission members were encouraged to review the recommendations, and determine how the options could affect their interests and concerns. They might have served as the basis for a genuine negotiated compromise

²² The *mjesna zajednica* (MZ) system was developed after World War II to add a layer of government that was even closer to the community than the municipality. The MZs were not legislative in function, and had no competency to interpret the law. They were purely service oriented in nature, providing basic social services on behalf of the government. MZs continue to hold a place in the legal system in BiH today, though they are often minimally functional or effective, focusing on rudimentary service delivery.

developed through mutual “give and take” of the Representatives. However, the Commission members were reluctant to reconsider or reconstruct their proposals in light of the alternatives, and were unable to reach a consensus on the status and organisation of the City of Mostar.

Closely tied to the issue of the structure and status of the City is the issue of the competencies of the city. Determination of the competencies of government at its various levels is an important part of ensuring accountability and responsibility. Who will ensure that trash is picked up regularly? Who will maintain information concerning local real estate transactions? Who should a citizen talk to regarding permits for construction on their home? These are the grassroots issues that are important to average taxpayers, and the providers of these services are the public face of government.

Article 37 of the Cantonal Law on Local Self-Government provides a legal basis for the definitions of competencies to be held by the City and City Units. Specifically, Article 51 covers the City, Article 59 covers the City of Mostar, and Article 80 covers the City-Municipalities of the City of Mostar. Once again, this issue is closely related to the question of the needed future structure of the administration of Mostar, and upon the level of centralisation or decentralisation necessary to ensure the best provision of services.

As noted in the Executive Summary, the Commission unanimously agreed that the City should hold 18 competencies. However, 100% consensus on this issue was not possible as Ms. Leho of the SDA insisted that the City-Municipalities *share* (in full or in part), seven of the competencies with the city, and hold exclusive competency over three issues. An optimistic assessment of this proposal is that the majority of competencies would in fact be held by the City. A pessimistic assessment is that the sharing of competencies by the City and the City-Municipalities could result in duplication or a lack of accountability (as in the status quo), and that granting exclusive competencies to the City-Municipalities would set a precedent for strengthening the City-Municipalities at the expense of the central City Administration. The Commission was therefore unable to reach unanimous agreement on the issue of competencies.

The Chairman and the majority of the Commission members recommend that Mostar be organized as a City, existing as one municipality, as explained in Article 3 of the proposed Statute.

2. *Budget and Finances*

The development and management of a budget demonstrates the trust and good faith that should exist between a citizenry and its leaders. Taxpayers – both individuals and businesses – provide revenues to the local administration in exchange for a promise of effective service provision, low overhead and efficiency. This trust is broken when the revenues provided fail to provide a standard level of services that is acceptable to the people, leading to incentives to evade taxes or re-locate.

In its current form, the citizens of Mostar are very poorly served by the structures supported by their tax money. Mostar’s people pay for a total of *seven* administrations

(in each of the six City-Municipalities and the Central Zone). The costs of paying for so many redundant employees, offices, copy machines, computers, supplies and other expenses are so high that a significant percentage of revenues are used simply for the operations of these administrative structures – not for the actual provision and delivery of services.

Budget data compiled by the OSCE reveals some alarming figures. In the current City-Municipality and city administrations there is one public employee for every 189 citizens. Experts suggest that a ratio of 1:500 would be a more acceptable level.²³ This bloated bureaucracy in 2003 has cost each citizen an average of 288 KM, up from an average of 234 KM in 2002.²⁴ When one considers that the average monthly salary in the Federation is approximately 470 KM, it becomes apparent that citizens devote too large a portion of their hard-earned income to pay the salaries of superfluous public employees. This represents money not spent on starting a small business, buying educational supplies for children or making home improvements.

The Commission agreed that the City should have a budget with which to achieve its goals and fulfil its responsibilities. However, there was discussion concerning whether this budget should exist as a *single* budget, or as a *single and unified* budget. A single budget connotes one budget and one budget only. This proposed terminology was considered to be the most appropriate for those Representatives who support a single City and a single municipality.

A *single and unified* budget makes a distinction, as *single* refers to the budget to be used by the City Administration, while *unified* refers to the potential for sub-units (City-Municipalities) to have their own budget lines that would in turn be unified with the City budget. Ms. Leho of SDA supported this wording, citing Article 9 of the European Charter on Local Self-government which addresses the issue of financial equalisation among municipalities, in terms of the collection of revenues and the disbursement of payments among various levels of government.

In the proposed Statute, a single and unified budget is recommended, as noted in Article 51.

3. *Public Corporations and Utilities*

Public corporations and utilities should exist as the vital structures of any city, supplying necessary infrastructure life-blood to the skeletal framework of buildings and structures. Public corporations and utilities should serve the people, and be administered as a public trust through efficient and transparent methods. They are perhaps the most immediately relevant sign of the direct role of a city in the lives of the people.

²³ The following summarizes the employee: citizen ratio of each of the current seven administrative layers: South, 1:213; Southwest: 1:259; West: 1:205; Southeast: 1:251; North: 1:351; Stari Grad: 1:196; City: NA. Statistics compiled by the OSCE Mission to BiH Public Administration Reform Unit.

²⁴ The following summarises the costs for each administrative area in 2003/2002 (all figures in KM): South, 378/329; Southwest: 293/320; West: 352/303; Southeast: 200/110; North: 369/244; Stari Grad: 290/219; City: 134/113. Statistics compiled by the OSCE Mission to BiH Public Administration Reform Unit.

As independent auditing continues at public corporation sites throughout BiH, it is becoming clear that services such as electricity and telecommunications have not been provided to the people by the managing boards in an honest and professional way. Gross negligence, abuse of office and basic corruption has been revealed as auditors review the accounts, and see that money that could be benefiting communities is often instead lining the pockets of a privileged few.

The case is similar in Mostar, though it is even more complicated due to years of division and parallelism. The following briefly reviews some key elements of Mostar's public corporations and utilities which need to be integrated into a reformed governmental structure under City management and oversight, as failure to do so could reverse even the small advancements that have been made in the provision of basic services since 1994.

Water

While separated along ethnic lines during the war, the two Mostar water supply companies were finally merged at the end of 2000 following the mediation and substantial financial investments of the World Bank. Even though the merger was quickly realized, three years later the company continues to use two different types of customer water bills depending on which side of the City a citizen lives in, therefore suggesting that all parallelism has not indeed been overcome.

Electricity/Hydroelectric Power

Mostar's location in the Neretva River valley has the ability to provide its citizens with a valuable natural resource- the generation and distribution of hydroelectric power. While a potential source of employment, however, the people of Mostar have been unable to benefit from this resource due to the continuing dysfunctionality of facility management, governance and corruption.

The City of Mostar continues to be serviced by two separate companies exploiting a total of a three hydroelectric power utilities in the Mostar area: HE Salakovac, HE Grabovica and HE Mostar. According to the Interim Statute (Chapter V, Article 4), the bodies of the Central Zone and the City Council are responsible for the administration of these sites and their resources. In practice however, the three plants are directly run by two separate state companies without any control by the City of Mostar administration. The HE Salakovac and Grabovica plants are located on property administered by Bosniaks to supply electricity to East Mostar, while HE Mostar is managed by a separate Croat concern and supplies power to West Mostar.²⁵ This disjointed, non-transparent and poorly regulated arrangement allows for corruption by vested interests, and fails to maximize the potential gains and benefits of economies of scale of consolidation (as was formally concluded in separate audit reports in spring 2003).

²⁵ See pages 133-134, Sumantra Bose, *Bosnia After Dayton: Nationalist Partition and International Intervention*, London: Hurst and Company, 2002.

Waste Disposal

Following the establishment of the EUAM in Mostar, it became evident that the City needed a new, modern garbage facility. The old site, *Uborak*, located on the east bank of the Neretva River within the boundary of the Mostar North City-Municipality was selected and almost 5 million DM spent to develop the site. The “Croat part” of Mostar refused to use the site jointly and the EU Administrator gave the communal company *Komos* (founded by City-Municipalities with a Bosniak majority) the responsibility to administer a waste dump that had a capacity to serve the entire Mostar area for 15 to 20 years. Later, reversing their original refusal, the Croat controlled City-Municipalities have tried to gain access to the *Uborak* site, but the Bosniak majority City-Municipalities have decided to use *Uborak* as a bargaining tool to attempt to officially bring back under the control of the Mostar City administration all facilities now divided between the two sides of Mostar.

More recently, the Solid Waste Management project offered by the World Bank to BiH received the support of all Canton 7 and City Mostar authorities through the signature of a Memorandum of Understanding in July 2001. In this project, the City of Mostar and its six City-Municipalities would become one regional unit with *Uborak* as the primary site. The World Bank's conditions were the following: the City should have one communal services company, the Director of which would be empowered to sign a subsidiary credit agreement with the Bank by 1 July 2003; this company needs to start managing waste disposal; and prices of solid waste disposal must be consistent with European standards and equal for all citizens. In other words, the World Bank was clearly requesting the site to be the exclusive competency of the City in the interest of the entire population.

This issue is still pending, as City-Municipalities North and Old Town have failed to transfer their funding rights to the City in order to establish the joint City company *Uborak*, and despite the fact that the City Council adopted a decision creating the company at the end of September 2003.

Stadium

Located in City-Municipality Mostar South-West, the Stadium was leased to the football club *Zrinjski* (the Croat football club of Mostar, which is separate from the Bosniak club, *Velež*) for 109 years in July 2001. The club is expected to pay a monthly amount of 15,000 KM for the lease, but in reality the rent is being paid in kind for the maintenance of the stadium. The Mostar City Administration was never asked its opinion on the leasing contract, the non-Croat councillors of the Mostar South-West assembly having invoked without success their vital national interest when the leased contract was passed through the Assembly. This is an issue that affects all citizens, and one which should not have been decided by a non-representative part of the Assembly.

City Pool

Located on the confrontation line, the city pool was significantly destroyed during the war. It was reconstructed in 1999/2000, and has been maintained by a private

company from West Mostar, *Gradjevinar*. The present status of the pool is unclear but the City-Municipality Mostar West most likely rented it for a certain period of time to the company that made the repairs, the company therefore re-paying itself through the exploitation of the pool. The Mostar City Administration was never asked its opinion on the established contracts.

City Cultural Centre

The City cultural centre, better known as *Hrvatski Dom Herceg Stjepan Kosača*, is being used exclusively by the Mostar City-Municipalities with a Croat majority. Both the name and the usage of the centre are considered by non-Croat citizens of Mostar as segregationist. This is a blatant example of division, and is an issue that should be addressed by the City.

City Graveyard

Located in the City-Municipality North, the City graveyard is accessible to all citizens of Mostar regardless of their nationality. However, as a consequence of the war, each community has been reluctant during the post-war period to use this mixed graveyard. The City graveyard is today managed by the Bosniak-managed communal company *Komos*, and it is likely that the re-unification of the divided communal services companies of the City will resolve this problem.

The Turkish Bath and the Partisan's Graveyard

While much of the world's attention has focused on the Old Bridge as the lasting symbol of cultural heritage in Mostar, the City hosts several other sites of value and historical importance. These include the Turkish Bath and the Partisan's Graveyard, among others. These sites must be maintained, preserved and available to all citizens of Mostar, for legitimate recreational, educational or research purposes.

The Turkish Bath, located in the City-Municipality Old Town, is being exploited by this City-Municipality while it should in fact be the responsibility of the City. However, the bath is freely accessible and kept in good condition.

The situation of the Partisan's Graveyard is, however, very different since the graveyard has been virtually abandoned for years. There was even consideration of its destruction, with the site planned instead for public parking. Like all structures of City-wide importance, the future of this historical site will only be secured when the City is able to assume its responsibility over the site.

The proposed Statute recommends that these and other public corporations and utilities be administered and managed by the City.

4. *Vital National Interests and Decision-making Processes*

The role of the Constituent Peoples and their vital national interests in decision-making processes was appreciated as a central part of every level of governance and administration. Two visions of protection measures were explored by the Commission. One option would be to depend on the Constitutional Court itself to

ensure adequate protection, through a judicial process and right of appeal. All Commission Representatives supported this method of protection. While a seemingly appropriate process for an issue decided by the judiciary, however, this process can be tedious.

A second option is based on the principle of subsidiarity, and the belief that rights and protections can be better protected at lower levels of government through systems and processes established for that purpose. The Chairperson encouraged the Commission to consider the subsidiarity option as well, and to expand the concept of protection of vital national interests to decision-making processes as a whole.

One example discussed is used in Brussels, which has a mechanism to ensure protection of vital national interests without continued involvement of the courts. Such a mechanism could be structured whereby a Constituent People's club may decide by majority vote that an issue is of vital interest for them, with each Constituent People's club showing their support for such a decision by a simple or 2/3 majority. While the Constitutional Court is available to make judicial decisions if such higher level appeal is necessary, such a mechanism can empower local authorities while ensuring recognition and efficient protection of vital national interests. All of the Representatives agreed that this too would provide a useful and necessary means of protection.

The Chairman proposed that this model be considered as an alternative in case it is legally not possible to refer the issue to the F BiH Constitutional Court for taking a final decision on whether the disputed decision relates to a vital interest of a Constituent People:

1. If one City Councillor claims that a decision is of interest to his/her Constituent People, the President shall invite the caucus to which the City Councillor belongs to decide by a simple majority whether the decision is of a special interest.
2. If the caucus confirms the request of the City Councillor, the adoption of the decision shall require a majority of votes of the elected City Councillors including a majority of elected Councillors within each caucus of the Constituent Peoples.
3. If the majority referred to in Paragraph 2 is not reached, the decision shall fail and the document shall be returned to the proponent.

The commission consensually agreed on including a vital national interest protection mechanism as presented in the Article 35 of the Statute. In order to have an alternative in case of a legal shortcoming in referring the issue to the F BiH Constitutional court, the above presented alternative was also discussed.

5. Electoral System

The structure of an election system is at the core of any democracy, and the Commission members discussed various ways to ensure appropriate representation for the citizens of Mostar. An election expert from the Council of Europe provided

information and ideas to the Commission to assist in the important deliberation, and meetings were held with the BiH Election Commission.

Decisions concerning Mostar's electoral structure were significantly shaped by the discussions about the ultimate structure of Mostar as a unit of self-government. The Election Commission agreed that the status and organisation of the City does not have to be limited to the definitions foreseen in the Federation BiH Constitution.²⁶

Once again, the Commission was encouraged to identify solutions that would ensure a better future for Mostar. The following general questions (basic to any democratic structure or debate) provided a framework for the Commission as it considered electoral options:

- How to ensure a direct link between the elected representatives and the voters/citizens?
- How to ensure accountability of elected representatives?
- How to balance individual voting preferences and group/Constituent Peoples' rights?

A number of specific issues were considered and discussed by the Commission as well:

- The number of electoral constituencies in the City (one electoral constituency, or more corresponding to administrative sub-divisions)
- The relationship between the element of local self-government and electoral constituencies
- If establishing multiple electoral constituencies, the composition of these constituencies (local communities; groups of local communities; current national divisions)
- The number of councillors in the City Council and minimum quotas (9-9-9-4; 9-9-9-1; 10-10-6-4; 18-18-11-3)
- The size of the City Council (from 28 to 51)
- The role of the 1991 census

The Commission also demonstrated its support for the direct election of the Mayor, and suggested that modifying the number of electoral constituencies in Mostar (whether there are one or more units of local self-government) will not be a problem.

Each Commission member was encouraged to propose their own suggestions for electoral organisation as well, to provide a starting point for discussion and consideration. A summary of these proposals follows:

²⁶ For example, the RS Constitution and the Constitution of the Republic of Croatia both envisage a City without internal divisions (examples are Banja Luka and Osijek).

Electoral Structure Alternatives Presented by the Parties

Political Parties	City Council Composition Bosniak/Croat/Serb/Others	City Electoral Constituencies (distribution of seats)
SDA (Coalition CD BiH)	- Pre-allocation of the seats (9/9/9/1) - 28 in total	7 electoral constituencies (6 City-municipalities + City electoral unit as Central Zone) Each unit elects 4 councillors
HDZ	- Allocation according to election results with minimum 3 representatives of each Constituent Peoples and 1 from the Others - 30 - 50 councillors	1 electoral constituency (As best solution)
SDP	- Pre-allocation of the seats (9/9/6/4) - 28 in total	4 Electoral Constituencies: <ul style="list-style-type: none"> • North-3 (1/1/1) • Stari Grad-5 (2/1/1/1) • Novi Grad-5 (1/2/1/1) • South-3 (1/1/1) + City wide list-12 (4/4/2/2)
SBiH	-Pre-allocation of the seats (9/9/9/4) -31 in total	Six electoral constituencies each electing 4 councillors; a City-wide list electing 6/7 councillors
SDU	- Allocation of the seats according to the 1991 census (10/10/6/4) - 30 in total	Six electoral constituencies each electing 4 councillors; a City-wide list electing 6/7 councillors
Narodna stranka Radom za Boljitak (NSRzaB)	- Allocation according to election results - Minimum of 4 representatives of each Constituent Peoples and 1 for the others - 30 Councillors	1 electoral constituency
Returnees' Association	-Allocation according to 1991 census (18/18/11/3) - 50 in total	3 electoral constituencies: <ul style="list-style-type: none"> • North-13 (4/6/3) • Centre-24 (8/8/5/3) • South-13 (6/4/3)

These proposals provided a starting point for the Chairman's development of several comprehensive electoral system proposals:

Comprehensive Electoral System Proposals

	Proposal 1	Proposal 2	Proposal 3
General presentation	- 4 electoral constituencies - Minimum 4/4/4/1 - No more than 14 representatives from one Constituent People - 30 councillors - Each electoral constituency elects at least one representative of each Constituent People	- 3 electoral constituencies - Minimum 4/4/4/1 - No more than 14 representatives from one Constituent People - 30 councillors - Each electoral constituency elects at least one representative of each Constituent People	- 30 councillors - Minimum 4/4/4/1 - No more than 14 representatives from one Constituent People
Detailed description	<u>North:</u> <ul style="list-style-type: none"> • Mostar North + MZ Vrđi, Raška Gora, Vojno, Potoci 	<u>North:</u> <ul style="list-style-type: none"> • Mostar North + MZ Vrđi, Raška Gora, Vojno, Goranci, Vihovići, Cim, Ilići & Polog 	-6 Electoral Units each electing 2 councillors -A city wide list electing a total 18

	<ul style="list-style-type: none"> • 9,000 registered voters • 6 councillors <p><u>Old Town:</u></p> <ul style="list-style-type: none"> • Mostar Old Town + MZ Cernica, Podhum, Zahum & Rondo • 19,700 registered voters • 9 councillors <p><u>New Town:</u></p> <ul style="list-style-type: none"> • Mostar South-West & West minus all MZ re-allocated +MZ A. Santić • 24,300 registered voters • 9 councillors <p><u>South:</u></p> <ul style="list-style-type: none"> • Mostar South & South-East + MZ Rodoč I & II • 11,900 registered voters • 6 councillors 	<ul style="list-style-type: none"> • 14,000 registered voters • 8 councillors <p><u>Centre:</u></p> <ul style="list-style-type: none"> • Mostar South-West, Old Town, West and Central Zone without the MZ transferred in North and South • 39,100 registered voters • 14 councillors <p><u>South:</u></p> <ul style="list-style-type: none"> • Mostar South & South-East + MZ Rodoč I & II • 11,900 registered voters • 8 councillors 	<p>councillors; or a City wide list electing 17 councillors with the Mostar Central Zone electing 1</p>
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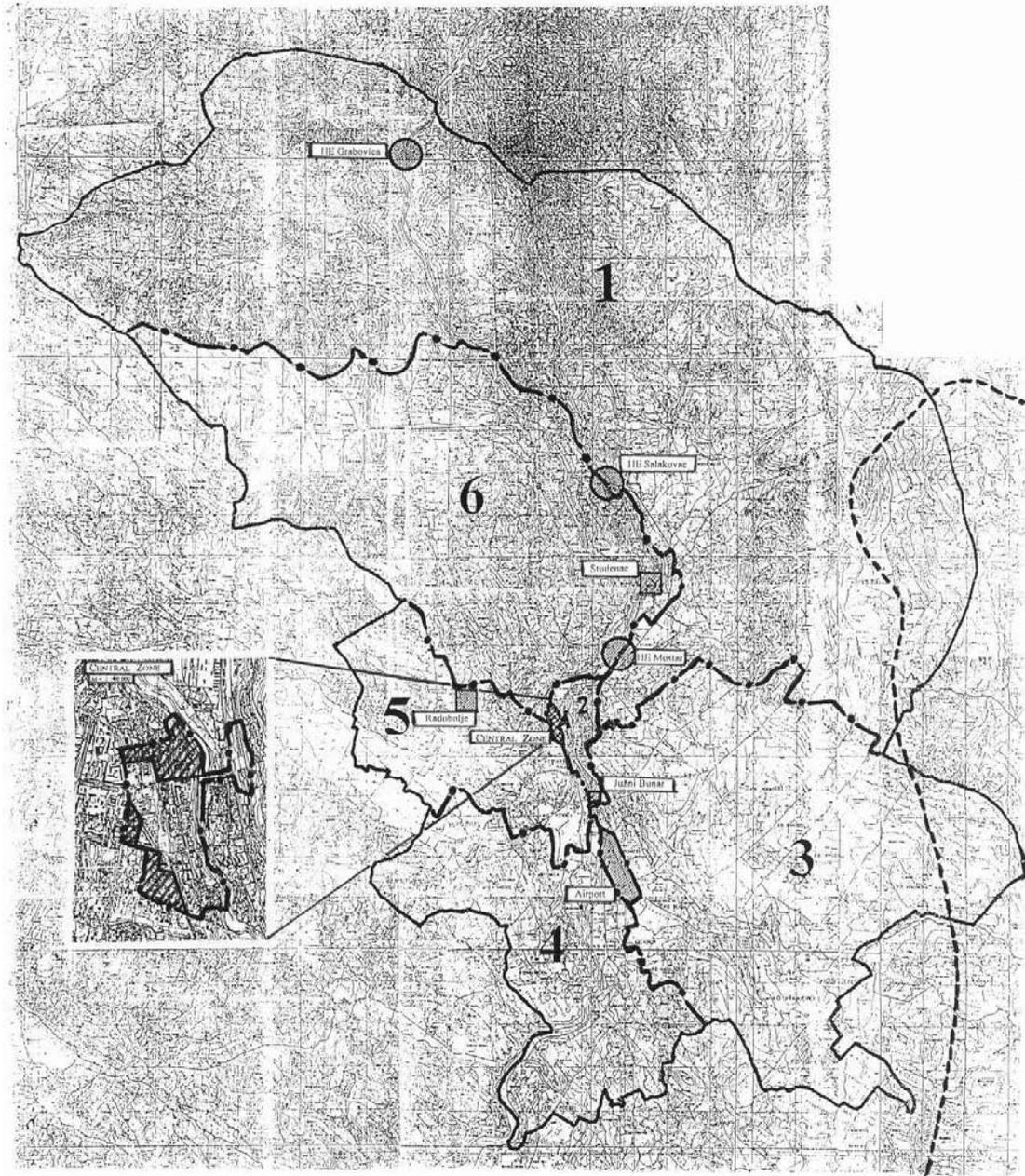
After discussing these proposals and additional variants, HDZ stated that in principle they support one electoral unit but as a compromise they would accept multiple electoral units as long as they correspond to the city administrative areas. However, they remained opposed to the idea of establishing maximum quotas for representation by any one Constituent People. The Returnees' Representative presented a proposal (included above), but noted that in the interest of compromise, he would agree with the proposal submitted by SBiH and SDU.

Three main positions on the electoral system in the City of Mostar emerged:

1. SDA would like to maintain the six City-Municipalities as electoral constituencies; and a similar proposal of SDP to organize the City into 4 City-Municipalities and electoral constituencies
2. HDZ and RzB would like to organize the City as one electoral constituency, but would accept as a compromise multiple electoral constituencies
3. SBiH and SDU envisage 6 electoral constituencies electing 4 councillors each, and a citywide list electing 6/7

Based on the explanation provided in the Executive Summary, the Chairman recommends the following electoral system: the City Council has 31 seats, in which the City list elects 13 seats, and 6 electoral constituencies elect 3 seats each; a minimum quota of 4/4/4/1 applies to the City list.

C. Map of Mostar and Explanatory Legend



City of Mostar

M = 1:50,000

LEGEND	
City boundaries	
Internal boundaries of the City areas/ electoral constituencies	
Boundary between the Republic Srpska and the federation of Bosnia Herzegovina as established by the General Framework Agreement for Peace in Bosnia Herzegovina signed on 14 th December 1995	
Area under the direct competence of the central administration of the City of Mostar (former Central Zone)	
Hydro-electrical power plants located on the territory of the City of Mostar (HE Mostar; HE Salakovac; HE Grabovica)	
Natural water sources located on the territory of the City of Mostar (Studenac, Radobolja, South source)	
Airport of the City of Mostar	