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**NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS (NDI)
COMMENTS ON POTENTIAL IMPROVEMENTS TO THE ELECTORAL
FRAMEWORK IN BOSNIA AND HERCEGOVINA**

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In order to further the Bosnia and Hercegovina transition to democracy and consolidate the peace process, political space in which democratic parties can present their messages to the voters and compete effectively in elections must be created and widened. In 1998, Bosnian citizens will elect a number of officials to fill four-year posts at the Bosnia and Hercegovina (BiH) and Republika Srpska (RS) presidencies, BiH and Federation parliaments, and Federation cantonal assemblies. Municipal elections, though unscheduled at this time, also remain on the agenda. These polls, perhaps the last ones where the international community will play a central role, will set important precedents. The Office of the High Representative (OHR) in Bosnia has the broad mandate, based on the Dayton Accords, to develop permanent election laws and a permanent election commission for future elections. At the same time, it is anticipated that the Organization for Security and Cooperation in Europe (OSCE) will continue to implement and oversee the 1998 elections in Bosnia.

From NDI's experience in elections in over 50 countries, elections are most successful when the process is fully transparent, an opportunity is provided for the political contestants to have direct participation in electoral bodies and in forming the electoral framework, civic groups are allowed to monitor all aspects of the process and appropriate time periods and requirements are provided for candidate qualification, campaigning, voter education and preparation of electoral administration. Three internationally supervised polls have been held since the fighting in BiH ended, and much has been done to establish an election framework that incorporates international standards. This is true of the election law, electoral administration, monitoring of the processes surrounding the elections and in attempting to improve the basis for fair competition among the political contestants.

In the past, elements of the international community, in their important efforts to implement the Dayton Accords, unintentionally buttressed the three nationalist parties. Since the Party for Democratic Action (SDA), the Croatian Democratic Union (HDZ) and the Serbian Democratic Party (SDS) wielded virtually unrestricted powers -- and were therefore key to the Accords -- their leaders were natural beneficiaries of Western attention and were the sole representatives to key political institutions, such as the Provisional Election Commission (PEC). This situation helped undermine the concept of choice among voters of the three ethnic communities, and opposition, multi-ethnic parties found it difficult to compete in this environment.

The international community has an opportunity in the period before the upcoming elections, as well as in approaching the framework for future elections, to establish a more level

playing field. A concerted effort should now be made to help create a more tolerant and pluralistic environment in which all parties can compete effectively, rather than reinforce a sectarian political landscape in Bosnia. NDI is aware of efforts by the OHR and OSCE to address this challenge. The Institute also supports and is participating in the informal cooperative efforts of a number of concerned nongovernmental organizations based in Washington, D.C., to offer suggestions regarding possibilities for improving electoral conditions in BiH. The comments presented below complement those efforts and are offered in hopes of assisting Bosnians and members of the international community who are working on improving the country's electoral system. The comments are not intended to be comprehensive or exclusive, rather they address several issues from NDI's experience that are important to the Bosnian circumstances.

Political Participation, Transparency and Public Confidence

Adoption of Election Laws. The design of permanent election laws for future elections, with the substantial participation of democratic opposition political parties and the public, should be a priority for the international community this year. In addition, the approach to improving the legal framework for the upcoming 1998 elections, before the permanent laws take effect, should be consistent with open and participatory methods.

Electoral legislation should be adopted as a comprehensive package -- not in a piecemeal fashion -- and should include laws on systems of representation (discussed below), delimitation of election districts at various levels, voter registration, political parties, ballot qualification, election campaigning, election administration, media and nongovernmental organizations. Each of these laws has numerous facets that are particularly sensitive in the Bosnian context, and each should conform with international standards, including those for nondiscrimination, freedom of movement, security of the person and freedoms of expression, association and assembly.

Equally as important, the international community should create an open and participatory process by which these election laws are adopted. Bosnian political leaders and citizens need to "buy in" to a new electoral and political system to govern their country. Establishing Bosnian ownership of political processes, laws and institutions through participation is central to improving Bosnians' capacity to manage elections and other political processes in the years ahead. One example of a participatory approach would entail establishing an election law roundtable that includes representatives of political parties, journalists, civic leaders, and legal experts. The roundtable could help develop draft electoral laws, and the public could be invited to comment on them. Simultaneously, public education efforts on the draft laws could take place. In short, the development of permanent election laws, and the ground rules for the upcoming elections, should not be left to a small group dominated by nationalist ideologies.

Participation in Election Administration. All election administration structures -- from the PEC downwards to the local level -- should have multi-party representation beyond their present composition, for the 1998 elections and beyond. Currently, only the HDZ, SDS and SDA

representatives sit at the PEC. Democratic opposition parties have complained on numerous occasions to NDI since 1996 that their viewpoints are not represented, and often are not even considered, at this most important level of election administration or at its subsidiary bodies.

The OSCE head of mission has the mandate to appoint additional representatives to the PEC immediately. Considering that there are 98 parties in BiH, criteria could be set so that at least the parties with parliamentary seats have the opportunity to participate fully and formally in the PEC. This practice will set an important precedent when the PEC eventually becomes a permanent election commission, as foreseen by the Dayton Accords. Similarly, regional and local election commissions should have representation from parties elected to the cantonal and local municipalities, respectively. If the number of parties that would qualify for representation at any level of election administration exceeds a workable number, the additional parties could participate in a lottery to fill the seats or could submit names to form a pool from which the OSCE head of mission would appoint members.

Access and Transparency. The international community should lead by example and ensure that Bosnian institutions, including the PEC, abide by such democratic principles as access to information, transparency and accountability, during the 1998 electoral process and in the permanent election law. Article 23 of the 1996-7 PEC rules and regulations allows members of the international community accredited by the PEC to have access to all documents and be permitted to attend working groups, planning meetings and official sessions of the election commissions. It is within the purview of the PEC, led by the OSCE head of mission, to broaden this to include representatives of political parties, nongovernmental organizations and media. Without broader access, only ruling parties, through their agents on the election commissions get access to important documents, such as the voter lists.

Voters Lists. The availability of the voters lists to political parties, journalists and other interested actors is accepted internationally as a necessary component of democratic elections. Accurate voters lists allow for proper monitoring of the voting process, so that agents of political parties and observers can satisfy themselves that ineligible persons are prevented from voting, multiple voting is prevented and eligible voters are allowed to cast their ballots. This helps the process to be open and transparent and helps to secure fair electoral competition.

Release of Results for Each Polling Station. In addition, election results by polling station should be released publicly as soon as they are available to the PEC. This would allow the political parties and election monitors to verify the vote tabulation and would provide political parties with important information for ascertaining their relative strengths and weaknesses, so that they may target their future election campaigns.

Electoral Complaints and Provisions Relating to the Dayton Accords. Another important aspect of any electoral system is providing for enforcement of election-related laws and electoral regulations. A complaint mechanism that provides access to all political contestants and voters, expedited procedures and effective remedies is important for peacefully resolving disputes and

building public confidence. These matters should be carefully addressed in the permanent election law, and the role of the Election Appeals Sub-Commission should be maintained and strengthened in the 1998 elections. Specific aspects of the present legal framework that relate to goals of the Dayton Accords should also be preserved, such as the right of refugees and displaced persons to vote at their place of former residence.

Monitoring and Public Confidence. Election laws, whether permanent or for the upcoming elections, should provide explicitly for access to all aspects of the election process for nonpartisan domestic election monitors and international observers, as well as political party agents. This will greatly increase transparency of the election process and help increase public confidence in the elections. Such provisions also will ensure that the election laws are in compliance with the obligations of each OSCE member state, established by the OSCE's 1990 Copenhagen Document (Paragraph 8), to provide for election observation by foreign and domestic organizations.

The upcoming elections provide an opportunity to strengthen the role and expand the presence of Bosnian nonpartisan election monitors. A significant segment of Bosnian civil society has expressed an interest in monitoring the elections. Promoting this activity is more cost effective than deploying international supervisors in each polling station, as has been done in the past, and it builds the capacity of Bosnians to ensure the integrity of the election process after the international community's role is diminished.

Presidential Debates. Opportunities for multi-ethnic parties to be on the same platform with nationalist parties should be created. This could be done by organizing multi-party fora, where each party could present their message to a common audience. One such forum could be organized by an advisory committee to conduct presidential debates. The advisory committee could have representatives from the political parties, media, the civic sector and the international community. This could provide the basis for a presidential debate committee, which could in the future become a permanent part of the Bosnian democratic framework.

Campaign Resources

Media. Democracy depends on all contesting points of view being fairly and equitably communicated so that the people may make informed choices. The ability of the political contestants, especially those not in power, to avail themselves of the mass communications media is critical in this regard. There cannot be meaningful and vigorous debate of fundamental issues facing a country without a vehicle for expressing views. The mass communications media provide that vehicle in many instances. The mass media, to play their roles as conveyors of information and as watchdogs of government processes, must be free from censorship -- in both its direct and indirect forms. The media must also be free from intimidation and attacks from nongovernmental or quasi-governmental forces as well, which goes to the government's obligation to protect freedom of expression.

While the situation in the Federation has somewhat improved during the last year, media in the eastern RS remains dominated by one party. The international community can contribute to the improvement of media behavior by working simultaneously on several tracks. The role of the Media Experts Commission should be maintained and strengthened to better ensure proper media behavior towards political contestants and a better environment for a free, professional and independent media to operate. With the financial and technical help of the international community, the distribution of independent press could be widened.

The international community should not rely solely on recent international media efforts, in the form of Free Election Radio Network (FERN) and Open Broadcast Network (OBN). Local independent media outlets and initiatives should continue to be supported. During the pre-election period, free broadcast and print media, specifically outlets that cover the entire territory of Bosnia, should be secured for all parties. Media behavior towards the various political contestants should be monitored by the OSCE, as well as by Bosnian political parties and nonpartisan election monitors. Such media monitoring would help determine whether broadcasts meet standards for fairness in news reporting and access for political contestants to provide their messages to the electorate. Broadcast media also should be encouraged to produce quality programs featuring candidates in a debate format.

Financing. During the past elections, some political party financing took place as part of assistance provided by the international community. If possible, this practice should be continued, and moreover, should be conducted in a more transparent manner and earlier in the pre-election period, with a goal of helping to create a level playing field for the political contestants. If direct financing is not possible, resource centers for political parties could be created. Many democratic opposition parties do not have the funds to maintain local offices to meet and train their volunteers, to develop party materials or to communicate with their headquarters. A resource center, for example, could have a meeting room, a photocopying machine, computers, fax and telephone. Political parties could reserve the center facilities to produce voter contact materials, communicate with their colleagues in other municipalities and conduct training or planning meetings. In addition, regulations for campaign financing and disclosure requirements should be established as part of the legal framework for elections.

System of Representation

The following options are offered for consideration of how Bosnia's system of representation might be modified to better level the political playing field. The options are based on the assumption that peace and the democratic process would be enhanced if the opposition, particularly moderate parties, are strengthened in relationship to the three large ethnically based parties that are presently in power. The options described below are presented with acknowledgments of and cautions about the limits and unintended consequences of "electoral engineering," which at a minimum requires considerable attention from election system experts and more attention from those who are familiar with a country and those who will live with the consequences of any electoral framework. Also, such changes could benefit Bosnian political

moderates only in relatively modest ways and are no substitute for building broad popular support for peaceful and pluralistic approaches to politics.

Option 1

Keep the basic feature of the present system (full proportional representation), but change ancillary elements, which include a closed party list and use of the "Hare" method for determining the electoral quotient (described below) in combination with the "greatest remainder" method for awarding seats based on votes cast for each party. More than one of the methods presented below for determining voting results could benefit smaller political parties. A precedent for such changes was set in Bosnia's last elections, when the seat allocation method was changed from the D'Hondt method (which favors the majority party) to the Hare/greatest remainder combination (which favors smaller parties). It would take focused attention by experts in these matters and Bosnian experts and political and civic leaders to determine which method or combination would best fit the actual conditions facing Bosnia.

Party Lists. The present system employs a closed party list, which sets forth candidates in an order chosen by the party, while voters are given no ability to express their preferences for a different order. This could be changed to a "preferential vote," in which voters could indicate their own ranking of the candidates on the list. Voters would still select only one party list, and each party would be awarded seats according to full proportional representation. This could allow voters to express a preference for more moderate candidates on a party's list (or for more extremist candidates, if they choose).

Method of Seat Allocation. The "Hare/greatest remainder combination" method could be replaced with different methods for determining (a) the electoral quotient (the divider used to determine how many seats a party gets immediately, when its votes are compared to the total number of seats to be decided in the election) and (b) the award of seats after the remainders of votes for each party (described below) are calculated and allocated. While the present method favors the smaller parties more than the previously used D'Hondt method, other methods also favor such parties. The Saint-Lague method (used in modified forms in Denmark, Norway, Sweden and somewhat in Poland), for example, counteracts D'Hondt's favoritism and provides greater opportunities for smaller parties. This could be compared with the present method in order to determine which benefits smaller parties more in the Bosnian context.

Electoral Quotient. The Hare quotient is obtained by dividing the total number of valid votes cast by the number of seats to be decided in the constituency; there are other methods for determining the electoral quotient. Some of the other methods favor smaller parties, for example, the Hagenbach-Bischoff method (used in Austria, Greece and Switzerland), the Imperial method (used in Italy, that may favor smaller parties even more, depending on which variant of the method is used) and the Droop method (used in Ireland, which produces a slightly higher threshold than Hagenbach-Bischoff). These

could be compared to the Hare method to determine which favors smaller parties most in the present context.

Remainders. Once the initial distribution of seats is completed using the electoral quotient, allocation of remaining seats must be done with consideration for votes left over for each party (remainders). This also can be done by different methods, for example the "greatest remainder" and the "highest average" methods. The "greatest remainder" method favors smaller parties. There are, of course, various ways of combining the methods for determining the electoral quotient and the remainder allocation formula that could benefit the electoral fortunes of moderates in Bosnia. While the Hare/greatest remainder combination favors smaller parties, other combinations could be tested to determine whether they are more favorable.

Option 2

The "single transferable vote" (STV) is used in the Republic of Ireland, Northern Ireland (for some elections) and in Malta. Like all systems it is imperfect, but it is generally considered to be to be the fairest election system, offering the most latitude to voters and giving value to the most votes cast. STV employs multi-member districts and allows vote-splitting, whereby voters *may* rank their preferences for candidates from differing parties by a number equal to the number of seats in the constituency (1, 2, 3 and so on). If the candidate ranked first by a voter has already acquired enough votes to win a seat (thus far, the Droop quotient has always been used in conjunction with STV to determine this), the ballot is counted for (transferred to) the voter's second choice, and so on until all seats are awarded. If the voter's first choice ends up with no chance of winning, the ballot is transferred to the second choice to help put that candidate into office, should seats still be unallocated. Thus the surplus of any candidates' votes that are elected and the votes of candidates with no chance of winning are transferred until all seats are settled.

STV can be used without regard to the number of candidates in a multi-member constituency. STV tends to benefit smaller parties most when a larger number of seats are at stake. Another feature of STV that could be significant in the Bosnian context is that it tends to encourage linkages between and among parties, so that parties can gain from being ranked second, third, etc., on ballots cast with a first preference for candidates from other parties.

Option 3

Introduce "limited proportional representation," by creating several electoral constituencies within each entity and distributing seats proportionately within each of them. Each constituency would contain more than one seat, creating multi-member constituencies. Constituencies would be drawn in accordance with international standards for "nondiscrimination" and respecting "equality of the vote," meaning more or less the same population in each constituency, with perhaps some differences allowed to accommodate topography or traditional administrative districts. (Acceptable practices

differ when drawing electoral constituencies in established democracies, such as the different methods used in France and the United States.)

There are many ways to proceed from this change to the election framework. One is setting up multi-member constituencies and allowing each voter to cast one equally weighted vote for each seat to be elected in the constituency, while requiring that votes cast must be for different candidates (that is, cumulative voting is not allowed).

This system permits voters to cast a ballot for their first preference (perhaps along linguistic, religious or ethnic lines) and then to cast a second, third or additional ballots for other parties/candidates (perhaps based on other criteria). Parties other than the major ethnically based parties would thus have an opportunity to gain more votes. Of course, the field of choices presented could allow a second or even third ballot to be cast along ethnic lines. Jordan used a system similar to this in the past. Luxembourg and Switzerland use systems similar to this, usually referred to as "panachage."

Option 4

Mixed proportional-majoritarian systems also present possibilities for addressing concerns in Bosnia. The relatively small number of seats (42) in the House of Representatives limits the possibilities to a degree. Under this approach, a number of seats (e.g., one-half) would be decided by a system of full proportional representation. The other seats would be assigned to single-member districts and decided by a majoritarian formula (multi-member districts could also be employed in the majoritarian component, but they are not common). The majoritarian formula could employ different systems to determine results, such as simple majority or "first-past-the-post" (e.g., U.K.), absolute majority with run-offs (e.g., France) or the preferential/alternative vote (e.g., Australia). An issue of significance would be drawing election districts, based on international standards, that could benefit politically moderate parties/candidates.

The options described above could be applied to legislative, cantonal and municipal elections. Some points could be relevant to presidential elections as well. Consistency in an election system for various levels of government is important and should be encouraged. Any benefits that can be gained by changing the electoral framework must be complemented by enhanced transparency, participation for smaller parties in decisions concerning election administration and measures to increase public confidence -- including election monitoring by Bosnian civic groups and promoting fundamental rights, such as freedom of movement and security of the person, which requires removing indicted war criminals from the election process.