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23rd January 1999

To: **Ambassador Robert L Barry**
Head of Mission
OSCE

cc: Prof. Nad`er Mili~evi}, National Working Group
Deborah Schein, OHR
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Liz Hulme, OSCE
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Aylin Arslaner (Zenica)
Herta Eckert (Tuzla)
Dora Plavetic (Bjeljina)
Boyd McKechnie (Br~ko)
Roger Bryant (Banja Luka)

References: a) The General Framework Agreement for Peace in Bosnia and Hercegovina, Annex 3
b) *ibid*, Annex 4
c) my original submission, *Electoral Systems in Bosnia*, dated 22.11.98

A DRAFT BALLOT PAPER

Dear Ambassador Barry,

In the light of your request and in the wake of quite a few discussions with, and suggestions from, members of the National Working Group and others, the following is forwarded as an example of what a ballot paper might look like if the elections were to be conducted under the principles of the Quota Borda System, outlined in reference c).

I have taken the example of the *Zastupni~ki Dom* BH because, in this instance, it is possible to propose a system which is almost entirely in accordance with the spirit of reference a) and Article IV para 2 of reference b). The only exception to this concerns the identification which each candidate/party/coalition will be required to undertake, and whether or not some will be allowed, either to identify themselves as '*other*', or not to identify themselves at all; (see para iii) below).

ELECTORAL CRITERIA

Accordingly, the following criteria are suggested. Some of these, the size of constituency and so on, may be varied, but I trust the general principles will nevertheless be clear.

- i) Parties may nominate more than one constituency candidate, if they so wish, and candidates names will be listed on the ballot paper, as well as the name of their party or coalition if any, as appropriate.
- ii) Parties may wish to merge into a coalition, but if they do so for any one election, they must also stand as that coalition in any other election taking place at the same time. There will be no alliances.

(If such a rule had been applied in the 1998 elections, the total of contesting candidates/parties/alliances/coalitions on the ballot paper would have been reduced considerably, and the following numbers would not have been required at all: 1, 2, 3, 7, 9, 16, 22, 23, 26, 27, 28, 39, 40, 41, 43, 45, 47, 49, 50, 51, 55, 56, 61, 66, 69, 73, 78 and 81.)

- iii) Candidates/parties/coalitions should identify themselves according to one or other *~lanstvo*. This can be done in one of two ways. Either (plan one) they identify themselves as Bosniac, Croat or Serb, in which case the election procedure will still comply with reference a). Or (plan two) they identify themselves as Bosniac, Croat, Serb, or “*Other*” (Multi-ethnic). If plan one is adopted, a party wishing to describe itself as multi-ethnic need not classify itself as anything; and plan one will be workable and Dayton-compliant, if those “*others*” who do get elected are indeed deemed to be multi-ethnic. Plan two would require a change to Dayton and/or subsequent agreements. Hence the importance of candidate/party registration, and so forth.

This paragraph might cause certain parties to undergo a re-alignment, and the GDS for example, might not want to stay in the KCD if that coalition is to identify itself as Bosniac.

- iv) Each voter shall have only one vote, of course, but he/she will be able to exercise that vote by casting preference points for a maximum of six of his/her most favoured candidates, with a maximum of two from any one *~lanstvo*.

(The figure of six has been chosen so that those wishing to vote across the ethnic divide may do so across all three *~lanstvo*). A smaller number may be used in this or other elections, either because the spread of parties is smaller, or because the figure of ‘six’ is considered to render the vote and subsequent count too complicated.)

- v) RS will be divided into two constituencies, each sending five representatives; a further four representatives will be chosen from a top-up. (The threshold in either constituency will therefore be of the order of 20%, and in RS as a whole, circa 7%.)

(I fully understand that there are political considerations to be taken into account, if RS is to be split into two. This paper, however, is based mainly on electoral-cum-geographical factors.)

- vi) In like manner to para v), the Federation will be divided into four constituencies, each containing one or more Cantons so that each constituency has a roughly equal number of voters. Again, each constituency will have five representatives, and a further four will be chosen in each of two top-ups, four in each pair of top-up constituencies. (The corresponding thresholds will therefore be the same as in para v.)

- vii) Each candidate, whether or not he/she is independent or aligned to a party/coalition, stands as an individual, and those who gain a sufficient number of votes will be elected; (see THE COUNT below). The top-up will be based on the points totals of all the various independent candidate, parties or coalitions.

(This rule ensures that no party will want to have too many names on the ballot paper, lest few or even none reach the requisite quota. Larger parties may wish to nominate two or sometimes even three candidates, and will probably nominate one more than they expect to succeed; smaller parties will nominate probably only one name; and needless to say, no party would wish to nominate more than five names.

This paragraph also ensures that no party will suffer unduly if one candidate gets a huge total of votes while other candidates of the same party get very few.

Each party would be asked to publish top-up lists of no more than four additional names; this list may include the names of candidates listed as constituency candidates.)

- viii) Rules for gender quotas may stay as they are or may be adjusted so that each party running more than one candidate in any election has at least one male and one female in any total of two or three candidates, and at least 40% male and 40% female of any total greater than three.

THE COUNT

The count will be conducted as follows:

- a) the total number of valid votes (which includes both full and partial valid votes) in each constituency is divided by the number of constituency seats (5) to obtain the constituency (Hare) quota;
- b) and the total number of points cast in the top-up constituency is divided by the total number of seats, (14), to obtain the top-up (Hare) quota;
- c) each candidate's total of 6s or first preferences is calculated; (when a voter hands in a full vote, his/her 6 will be his/her first preference; in any partial votes, the first preference will not be a 6);
- d) each independent candidate's/party's/coalition's points total is calculated;
- e) any candidate gaining the constituency quota of first preferences gains a constituency seat;
- f) if some constituency seats remain vacant, any pair of candidates gaining the quota of first preferences shall be awarded a seat, the actual seat going to the candidate with the higher points total; (sometimes people vote for persons from the same party; on other occasions, they might vote for persons of the same gender, professional expertise or whatever, and this provision ensures the voter can take such considerations into account if he/she so wishes, and it therefore enhances the overall fairness of the system);
- g) if some constituency seats still remain vacant, any threesome of candidates gaining the quota of first preferences will be awarded a seat, the actual seat going to the candidate with the highest points total; (the above advantages also apply here);
- h) and if again some constituency seats still remain vacant, any remaining seats will be awarded to those with the highest points totals.

NB any pair or threesome cannot include an elected candidate.

- i) in the top-up, the points totals of all independent candidates, parties and coalitions are compared with the number of constituency seats awarded;
- j) the top-up quota is obviously relatively much smaller than the constituency quota, so it is highly unlikely that any one party will have more than its top-up share; even so, no constituency representative will ever be *dis-elected* in the top-up process;
- k) top-up seats are then awarded to those independent candidates, parties and coalitions which have fewer seats than the quota, in order of whole numbers or biggest remainders.

EXAMPLE¹

If such an election had taken place in 1998, each of the two RS constituencies might² have returned 2 SLOGA, 2 SDS/SRS and 1 KCD. The total score for both constituencies would therefore have been 4 SLOGA, 4 SDS/SRS and 2 KCD; and assuming the parties' relative strengths would be the same in their first preferences as they were with their points totals, the top-up would have elected 1 more SDS/SRS, 1 RS, 1 Coalition and 1 SDP.

A comparison, therefore is as follows:

	1998 system	Quota Borda System
SLOGA	4	4
SDS/SRS	6	5
KCD	3	2
RS RS	1	1
Srbska Coalicija -		1
SDP	-	1

THE BALLOT PAPER

Zastupni~ki dom

(The following instructions are written for a 'plan one' scenario, (see para iv) on page 2.)

Give 6 points to your most preferred candidate: if you wish, you may also give 5 points to your next favorite; if you wish, you may also give 4 points to your third choice; and so on.

All candidates are notated by their chosen *~lanstvo*: Bosniak, Croat or Serb. You may vote for six candidates/parties/coalitions or less than six candidates/parties/coalitions, as you like, but you may only vote for a maximum of two candidates/parties/coalitions of any one *~lanstvo*.

If you vote for six candidates/parties/coalitions (with a maximum of two from any one *~lanstvo*), you will exercise 6 points for your most preferred candidate/party/coalition, 5 points for your next favourite, 4 points for your third choice, 3 points for your fourth choice, 2 points for fifth choice, and 1 point for your sixth choice.

If you vote for only five candidates/parties/coalitions, (with a maximum of two from any one *~lanstvo*), you will exercise 5 points for your most preferred candidate/party/coalition, 4 points for your next favorite, 3 points for your third choice, 2 points for your fourth choice and 1 point for your fifth choice.

If you vote for only four candidates/parties/coalitions, (with a maximum of two from any one *~lanstvo*), you will exercise 4 points for your most preferred candidate/party/coalition, 3 points for your next favorite, 2 points for your third choice and 1 point for your fourth choice.

If you vote for only three candidates/parties/coalitions, (with a maximum of two from any one *~lanstvo*), you will exercise 3 points for your most preferred candidate/party/coalition, 2 points for your next favorite and 1 point for your third choice.

If you vote for only two candidates/parties/coalitions, you will exercise 2 points for your most preferred candidate/party/coalition and 1 point for your next favourite.

And if you vote for only one candidate/party/coalition, you will exercise 1 point for your most preferred candidate/party/coalition.

¹ I will endeavour to do an analysis of what might have been the results in the Federation shortly.

² please see para (v) above.

BALLOT PAPER			CLANSTVO			YOUR VOTE
	CANDIDATE	PARTY	B	C	S	POINTS
8	First name	Hrvatska stranka prave		C		
9	First name	Demokratska stranka RS			S	
10	First name	Srpska Coalicija			S	
10	Second name	Srpska Coalicija			S	
11	First name	Bosna~ka Stranka Zelenih	B			
12	First name	Srpski pokret			S	
13	First name	BH Patriotska	B			
15	First name	Jugoslovenska Lijevice				
17	First name	KCD (SDA+GDS+Lib+SBH)	B			
17	Second name	KCD (SDA+GDS+Lib+SBH)	B			
18	First name	Srpski Otadobinski Front			S	
29	First name	Penzionerska stranka RS			S	
33	First name	DS Penzionera				
37	First name	Bosnja~ka Stranka Prava	B			
38	First name	Radikalna Stranka RS			S	
38	Second name	Radikalna Stranka RS			S	
46	First name	SLOGA (SNS+DSRS+DCRS+SNSD)			S	
46	Second name	SLOGA (SNS+DSRS+DCRS+SNSD)			S	
46	Third name	SLOGA (SNS+DSRS+DCRS+SNSD)			S	
54	First name	SDBH+SDRS+MBO+KoalCnt+StrCnt+Inv				
59	First name	HSSBH + HDZ		C		
60	First name	DNZ	B			
63	First name	HDZ BH		C		
64	First name	SDP + SPP + Lib-Soc				
64	First name	SDP + SPP + Lib-Soc				
67	First name	Stranka za Jug.				
68	First name	NHI		C		
74	First name	BOSS + Pol Klub	B			
75	Zdravko Grebo					
76	First name	SRS RS + SDS (Lista+Zemlja) + za BL			S	
76	Second name	SRS RS + SDS (Lista+Zemlja) + za BL			S	
76	Third name	SRS RS + SDS (Lista+Zemlja) + za BL			S	
80	First name	Koalition + Savez za Kralja			S	
82	First name	Srpska Selja~ka Stranka			S	

CONCLUSIONS

Finally, as a supplement to this paper, may I add a few further thoughts, firstly, on the elections for the B-H presidency, and secondly, on decision-making in the various elected chambers.

PRESIDENTIAL ELECTIONS

I was asked to draft a further sample ballot paper for the presidential elections, and this I will endeavour to do shortly. Such, however, may require some changes to references a) and b).

There again, it should be remembered that the present system may itself contradict the spirit of Dayton. As has been pointed out by many, a Bosniac from Srebrenica, for example, should have the right to stand as a candidate for the presidency B-H in the constituency of his/her residence; in accordance with reference a) para 7.5. At the moment, he/she cannot stand, unless he/she changes his/her *~lanstvo*.

DECISION-MAKING

Article IV paragraphs 3b and 3d of reference b) are both very majoritarian, and one consequence of such wording is that any debate and its subsequent vote will often involve only two options.

It may nevertheless be possible for elected chambers to use a non-binding multi-option vote, and therefore, before that, to hold a more pluralist, multi-option debate, prior to any binding majority decision. As is well known, this formula was used in 1992 in New Zealand, when the country as a whole held a non-binding multi-option referendum, (admittedly based on a plurality rather than a Borda count), prior to a binding majority vote in a subsequent two-option referendum. The fact that such a procedure was used amongst a nation-wide electorate suggests the procedure could easily be adapted to any parliament or *skupština*.

Furthermore, such preliminary non-binding ballots would still be Dayton-compliant, as long as the binding decision was taken only in the subsequent majority vote. In such circumstances, of course, any majority vote decision based on what a multi-option ballot has already shown to be popular, will be more likely to produce a result acceptable to all concerned.

Yours sincerely,

Peter Emerson.

THE ELECTORAL SYSTEM

If the democratic process is to be part of the peace process, the electoral system itself should be relatively peaceful. In many elections, however, and in all of Bosnia's post-war elections, the chosen system is rather, if not very, adversarial. This is because in most of these systems, the voter is able to choose only one preference. And in some circumstances, the election has actually led to an unfair result.

In 1998, for example, Nikola Popla{en won the RS presidential election on the basis of only 43% of the valid vote. In other words, a majority of 57% did not vote for Popla{en. And yet he won! Extraordinary.

* * * * *

In choosing an electoral system, therefore, it is advisable to first lay down two definite principles, as follows:

- a) Every voter should be able to express more than one preference. Certainly, in a post-war situation as is the case in Bosnia, or in other lands which have suffered from conflicts and/or bitter divisions - Ireland, Cyprus, Azerbaijan, Rwanda, Lebanon and so on – every voter who so wishes should be able to vote for a second and maybe too a third preference. Furthermore, again if he/she so wishes, everyone should be able to vote, not only for one or more than one candidate of his/her own clanstvo, but also for other candidates of other clanstvo.
- b) For such an election to be fair, all preferences cast by the voter should be taken into account during the vote. Strange as it may seem, there are some preference voting systems like the Irish one, which do not have this property.

* * * * *

Accordingly, for any election in Bosnia-Herzegovina, and let us take the elections for *Zastupni~ki Dom* B-H as our example, the following criteria are relevant.

- i) Every election can be contested by independent candidates, party candidates, or coalition candidates. Any party wishing to join a coalition may do so, but it must stand as that coalition in both presidential and parliamentary elections, not as a coalition in one election, and separate parties in another. Furthermore, alliances are also not necessary. This paragraph will make the ballot paper much less confusing for the voter.
- ii) The names of all persons standing in any one constituency should appear on the ballot paper. (Big parties may want to put down more than one candidate; small parties will probably not want more than one name.
- iii) Each candidate and each party or coalition will be required to identify themselves as being either Bosniac, Croat, Serb, or Multi-Ethnic.

* * * * *

Given the fact that every child at school gets to know the points system of voting, the introduction of preference voting based on a points system should be readily understood. The count, of course, may be a little more difficult, but with the existence of computers and so on, that should not be too big a problem, nor should it directly affect too many people.

As a practical suggestion, therefore, we could say each voter should be allowed to vote for six persons, only two of whom can be from any one *~lanstvo*. Accordingly, the voter can give 6 points to his/her most preferred candidate, 5 points to his/her next favourite, 4 points to his/her third choice, and so on.

If a voter participates only partially in the democratic process, he/she will have only a partial influence on the outcome. And if a voter participates fully, he/she will have a full influence.

In other words, if someone gives 6 points to candidate X, and nothing to anyone else, X will receive only 1 point from that voter. If someone else gives candidate Y 6 points, candidate Z 5 points, and nothing to anyone else, Y will get 2 points and Z just 1 point from this voter.

If a voter wants his/her favourite to get the full 6 points, therefore, he/she should hand in a full ballot paper, 6 points to one candidate, 5 points to another, 4 points to yet another, and so on, with a maximum of two candidates from any one *~lanstvo*.

The winners will be those with the most points. And the success of any one candidate will depend, not only on the points of those voters who gave them 6s and 5s, but also on the points of those voters who crossed the sectarian divide, and voted for candidates and parties of more than one *~lanstvo*.

The peace process, after all, depends on everyone, i.e., on every single voter. Accordingly, the vote itself should enable those who want to be ‘peaceful’, who want to cross the sectarian divide, who want peace and reconciliation, to express such a desire in the democratic process. Unfortunately, not every electoral system is truly democratic; but hopefully, the new electoral law for Bosnia will be exactly that!

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23.1.99

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30.1.99

To: Ambassador Robert L Barry
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Karen Christie (Mostar)

References: a) The General Framework Agreement for Peace in Bosnia and Hercegovina, Annex 3 and Annex 4.

b) my letter of 23.1.99

A DRAFT BALLOT PAPER FOR THE MUNICIPAL ELECTIONS

Dear Ambassador Barry,

Further to reference b), at the request of Ishak Mufti}, the local municipal secretary, the following is forwarded as a proposal for the municipal elections for just the one municipality of Travnik. The following specific notes apply.

The municipality has 31 members on its council; accordingly, the municipality has been divided into four roughly equal constituencies based on purely geographical considerations; (please see the map, Annex I). Each elects 5, 6 or 7 members, such that the number of voters required to elect a representative is roughly the same in each constituency. (See Annex II.) The corresponding constituency threshold is of the order of 16%. In addition, there is a top-up to elect six further members, so to give an overall threshold of the order of 4%.

The obvious advantages of such an arrangement may be summarised as follows:

- i) dividing the municipality into constituencies will ensure fair representation to both rural and urban areas, as well as to any 'ethnic' pockets;
- ii) the exact location of the constituency boundaries will not be too contentious, as any disadvantage perceived by any one party on the 'swing' of the constituency boundaries will be seen as an advantage on the 'roundabout' of the top-up;

- iii) to ensure the full benefit of the top-up, each party will want to stand in all the municipal constituencies, and this will also help to promote a more cohesive atmosphere; in addition, of course, such a top-up will ensure the electoral system is fair to both big and small parties;
- iv) in most municipal elections, voters would be asked to vote for just three candidates, again on the basis of a Borda count as described earlier; accordingly, most municipal counts would not be too complicated.

As far as I have been able to judge, the proposals outlined in this paper are in accordance with both the spirit and the word of reference a).

If required, I will endeavour to produce a scheme for all of Bosnia-Herzegovina. If such a task were to be undertaken, then maybe further changes to the Travnik municipality would be required in order to ensure each municipality enjoyed roughly the same electoral criteria. Nevertheless, I feel the constituency size of 5, 6 or 7 representatives is about right, as too is a top-up of about six. I estimate a country-wide electoral demarcation would take about a week.

* * * * *

Finally, as a follow up to reference b), may I just make the following points. Firstly, the word 'preferendum' does not translate easily into the local language, but I am advised that maybe a suitable phrase would be "*bodovni sistem*" or "*sistem bodove*".

Secondly, the proposals outlined in both reference b) and this paper have the advantage that if adopted, they will allow for the gradual development of a more pluralist society; indeed, with very little adaptation, they could be used in a society where religion and so forth were no longer of such relevance. In the meantime, however, they ensure both proportionality and a fair degree of pluralism.

And thirdly, while the "*bodovni sistem*" is indeed a little more complicated than the present system, it is nevertheless true to say that the main complication applies to the relatively few who must carry out the count, and not to the many who actually vote. Even then, the mathematics involve only the process of addition, and much of the work could be done centrally, as at present, with the aid of a computer.

* * * * *

I trust these ideas may be of use,

Yours sincerely,

Peter Emerson.

Annex II

Travnik constituency could be divided, as shown on the map in Annex I, into the following areas:

Area I:	Constituencies	091A1001 – 091A1009
Area 2:	Constituencies	091A1011 – 091A1019
Area 3:	Constituencies	091A1020 – 091A1027
Area 4:	Constituencies	091A1028 – 091A1039

Needless to say, the three absentee polling stations 091A1555A, 091A1555B and 091A1556 are not relevant to this particular paper. Stations 091A1816 and 091A1925, however, are part of the Travnik municipality and, at the very least, they should be included into any top-up seat allocation. Ideally, of course, it would be better to know these voters' intended municipal constituency.

TRAVNIK			
MUNICIPAL CONSTITUENCIES		REPRESENTATION	
No	Constituents	Number of elected representatives	Number of voters per representative
1	6792	6	1132
2	5626	5	1125
3	7578	7	1083
4	7783	7	1112
TOP-UP CONSTITUENCY		REPRESENTATION	
	27,779 + 2,924	Number of elected representatives	Number of voters per representative
	30,703	31	992