

BOSNIA-HERCEGOVINA

HUMAN RIGHTS IN BOSNIA AND HERCEGOVINA POST DAYTON: CHALLENGES FOR THE FIELD

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The Dayton accord offered the promise of a lasting peace in the former Yugoslavia because it incorporated both military enforcement and strong mechanisms to protect human rights and ensure accountability for past abuses. In addition to the responsibilities assigned to the implementation force (IFOR), the Dayton accord created civilian mechanisms, including the High Representative, the International Police Task Force (IPTF), the Organization for Security and Cooperation in Europe's human rights and election monitoring mission, and the Office of the Ombudsperson. It offered the opportunity for other international organizations (IGOs) and nongovernmental human rights organizations (NGOs) to have free access to investigate and expose abuses. To date, however, each of these mechanisms has encountered significant obstacles, including unclear mandates, imprecise operating and reporting guidelines, a tendency to minimize their own responsibility and authority for the safety and security of the civilian population, and serious problems in the training and deployment of field staff.

It is fundamental to the success of the Dayton peace accord and to the long-term prospects for peace in the former Yugoslavia that both the civilian and military elements of the peacekeeping operation make the protection of human rights a high priority and devote all possible support to this effort. The civilian and military components, through a coordinated approach to the protection of human rights, have the opportunity to create the foundation for reviving a multi-ethnic society in Bosnia and Hercegovina based on the rule of law. If this opportunity is missed, human rights violations will be the seeds of further strife and ultimately will jeopardize the entire peace effort.

THE HIGH REPRESENTATIVE

The High Representative's office has perhaps the most difficult task of all the players in bringing about compliance in the Dayton agreement, and thus requires a clear vision and strong hand. It is the High Representative's responsibility fully to inform the U.N. Security Council about the state of human rights in Bosnia and Herzegovina. Security Council Resolution 1022 gave the High Representative the power to recommend the immediate reimposition of sanctions should he determine significant non-compliance with the Dayton accord. Unfortunately, to date the High Representative has insisted on a narrow interpretation of his powers and has remained silent in the face of mounting evidence of the parties' non-compliance with crucial aspects of their civilian obligations under the peace agreement.

It is critical that the High Representative take an active role in ensuring that human rights monitors are able to do their job and are not hindered in their tasks either by the parties or by a lack of support from the international community; that human rights abuses be made public by all international representatives in the region; and that any force's or government's refusal to abide by international human rights standards or to intervene to prevent or stop abuses be dealt with authoritatively. The High Representative must make clear that he will not tolerate the failure of the parties to comply with the Dayton provisions, that he will forcefully and promptly condemn such failure, and that he will use his authority, including the call for sanctions to be reinstated, to ensure that full compliance is obtained.

THE INTERNATIONAL POLICE TASK FORCE

The transfer of power in areas of Sarajevo provided the first opportunity for the IPTF to play an important role in Bosnia. Unfortunately the force was not fully operational, increasing the insecurity and fear of Serbs living in Sarajevo suburbs that were returned to the control of the Muslim-Croat Federation. As of late February, the IPTF had deployed fewer than 300 of its planned force of 1,700. Contributing nations, including the United States, dragged their feet on providing funding and staff for the IPTF.

Although the IPTF says it does not have independent powers of investigation or arrest, at the very least it should work with the human rights monitoring mission and support its work to investigate reports of serious abuses. The IPTF has a clear obligation to report cases of human rights abuse to the Commission on Human Rights as required by the Dayton accord (Annex 11, art. 6 (1)).

However, reporting alone is never enough, especially at this time when the Ombudsperson does not yet have sufficient staff to investigate. The first priority must always be to prevent further abuses. Therefore, the IPTF must be given clear orders to intervene to prevent such abuses from occurring. If the IPTF refuses to intervene to prevent or stop abuses, it will be derelict in fulfilling its responsibilities and will itself become complicit in the commission of such abuses. Further, it will compromise any semblance of professional police behavior and the very goals of its mission.

There is substantial evidence that local police forces have been responsible for many abuses against civilians, both during the war and into the present. However, evidence of police attacks upon citizens have frequently been dismissed as acts by "rogue elements". Law enforcement agencies in the region must investigate cases against their own officers and take appropriate action, up to and including criminal sanctions, against those found to be responsible for abusive conduct. The vetting of current police forces should be a high priority. The IPTF should strongly encourage police departments to tie adherence to human rights to promotions and assignments. Further, the IPTF should train the local police forces in international human rights norms and should insist that all police forces act in accordance with those norms.

THE ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE (OSCE)

The OSCE's operations have been hampered by practical problems, mostly involving the deployment of qualified personnel in the field. We are concerned by reports that insufficient attention has been given to obtaining qualified human rights monitors and that new monitors have been sent into the field with little or no training. The neglect of staff qualifications and training has serious implications for the safety of the monitors and of persons under threat. (In an early stage of human rights monitoring in Rwanda, monitors were rushed to the country without proper training. Tragically, an inexperienced monitor's report to prison authorities about prisoners' statements of torture resulted in the deaths of some prisoners. Now that the mission has come under more experienced leadership, such incidents should be less likely to occur.) Despite the problems the OSCE has experienced thus far, however, Human Rights Watch welcomes the commitment to human rights protection expressed by its field representatives. It is up to the OSCE leadership to ensure that its monitors are qualified and have the proper training prior to deployment, and that they have the unwavering support of OSCE political bodies to expose human rights abuses and protect vulnerable populations.

THE OFFICE OF THE OMBUDSPERSON

The Office of the Ombudsperson will face many challenges, including funding. Support for her office is critical for the future of human rights in Bosnia and Hercegovina. The Ombudsperson's office will interface with many local groups interested in human rights and will be directly involved in increasing the capacity to investigate and provide remedies for victims of human rights violations. If the Ombudsperson is to be successful, she must receive adequate funding to enable her to develop her own investigatory staff.

THE INTERNATIONAL IMPLEMENTATION FORCE (IFOR)

IFOR's reluctance to play a role in human rights issues is clearly inconsistent with its mandate. While we recognize that IFOR's principal task is to supervise the military aspects of the agreement, the Dayton accord also states that IFOR leaders are responsible for creating an environment in which human rights are respected and human rights activities can be conducted. Ensuring access, freedom of movement and an appropriate response to "deliberate violence to life and person" are all critical aspects of IFOR's peacekeeping role. [See Dayton Accord, Annex 1A, art.6 (3)] To fulfill this aspect of its mandate, IFOR should not limit its deployment to zones of separation, but should regularly patrol inside the territory. The presence of IFOR troops may help discourage human rights abuses and create an environment in which inter-ethnic reconciliation can occur and civil society can be reestablished -- goals that the civilian component is unlikely to achieve independently.

IFOR should explicitly agree to inform the proper entities of human rights abuses observed or reported to its troops in the field, including but not limited to murder, rape, unlawful arrest or detention, harassment, knowledge of places of detention, knowledge of location of mass graves. IFOR troops as well as humanitarian and human rights monitoring organizations must be informed, by the IFOR senior command and the High Representative respectively, as to how and to whom these incidents must be reported and that they are required to do so within a short, specified period of time.

Also of critical importance, IFOR must support the work of the International Criminal Tribunal for the Former Yugoslavia. IFOR should support the Tribunal in its collection of evidence by protecting mass grave sites from any effort to destroy or hide evidence. IFOR should also support the arrest and detention of those indicted by the Tribunal. IFOR seems to have made the political decision that arresting indicted war criminals who are encountered would upset its mission under the Dayton accord. We believe that is a serious miscalculation which greatly increases the chance of renewed conflict and is contrary to its stated mandate of arresting those it encounters in the normal course of business. The failure of IFOR to support the Tribunal jeopardizes a lasting peace by demonstrating that there is no price to be paid for past or future slaughter.

THE ROLE OF NONGOVERNMENTAL ORGANIZATIONS IN HUMAN RIGHTS IN BOSNIA

The Dayton accord recognizes the important role that nongovernmental organizations can play in securing human rights protections and requires that the parties “allow full and effective access” and “refrain from hindering or impeding” NGOs in the exercise of their human rights mandates. Nongovernmental human rights organizations will contribute to the civilian component of Dayton in a number of ways, including:

- Reporting observations and concerns to the appropriate agencies, e.g. the OSCE or the Office of the Human Rights Ombudsperson, and making formal requests for investigations;
- Following up reports or requests for investigations to ensure cases are not lost in the system;
- Publicizing abuses and insisting on corrective action;
- Monitoring the response of the international mechanisms created by the Dayton accord to human rights violations and publicizing any serious failure to fulfill their respective mandates.
- Participating in human rights capacity-building projects, such as to develop locally based human rights organizations, create reconciliation projects, plan assistance programs in areas where minorities are under threat, and develop special projects, e.g. landmine awareness programs.

RECOMMENDATIONS:

A number of conditions must be met if the effort on behalf of human rights is to be successful.

1. Both the military and civilian representatives must have a clearly articulated duty to expose human rights abuses. Any international representative who witnesses human rights abuses should be required to inform IFOR and IPTF field personnel so that they may intervene to prevent or stop such abuse. There should be a clear duty to report abuses in the field. Precise guidelines should be created and made known to all representatives of IGOs, as well as IFOR personnel, about how and to whom to report abuses.

2. Human rights operations by intergovernmental organizations must be "transparent". While sources and other information must obviously be protected, reports of human rights abuses should not be withheld from the public for political reasons, and disclosure should be timely. Public reports should be issued monthly by each of the IGOs for NGO and media use, or one IGO should agree to report on the general human rights situation, including information about specific incidents, having gathered information from other human rights sources. Issues of particular importance might include disappearances, attacks upon returnees or minorities (especially by police or soldiers, and including reports of rape), any forcible displacement or relocation, bureaucratic and/or legal persecution, threats in the media, arbitrary arrests or detention, interference with freedom of movement, association, assembly, expression, and interference with election procedures.

3. IFOR has an obligation to facilitate the arrest and extradition of indicted war criminals who come within its grasp. Pursuant to Security Council Resolution 1022, IFOR must cooperate with the Tribunal by:

- issuing clear orders to all IFOR troops that they are to arrest any indicted war criminal whom they encounter.
- ensure that all IFOR troops are adequately educated so they will recognize those under indictment when encountered.
- undertake an active intelligence effort to identify the location of persons indicted for war crimes, then

deploy adequately armed IFOR troops in the vicinity, not to conduct search and seizure operations but to increase the likelihood that indicted war criminals will be encountered.

- Make public and ensure that the High Representative condemns any occasion on which IFOR fails to arrest persons indicted for war crimes who they have encountered. Several such incidents have already occurred, and the failure to make them public and to guard against their repetition undermines the peace effort overall.

4. Failure by the Parties to cooperate with the Tribunal should be recognized as significant non-compliance with the civilian components of Dayton. The lack of cooperation should be an important component of any report of overall compliance with the Dayton accords. Cases of non-compliance should immediately be brought to the attention of the U.N. Security Council by the High Representative and should result in the reimposition of sanctions against the party involved, as per Security Council Resolution 1022.

5. Full and unrestricted access to all places at all times by international Tribunal investigators, U.N. and OSCE human rights monitors, ICRC, IPTF staff, UNHCR, and international human rights organizations should be guaranteed.

- Human rights IGOs should coordinate their activities to ensure that the whole of Bosnia and Hercegovina is covered. Human rights monitors should be strategically deployed to those areas where human rights violations are most severe or the threat of renewed violations is the greatest. "Crisis teams" might be created for immediate dispatch to places where human rights abuses erupt. Crisis teams could be dispatched whenever needed once early warning signals are detected. These teams should advocate strongly on behalf of victims with the local authorities, the IPTF, IFOR and others with the ability to prevent or stop abuses. Crisis teams should bring such situations to the attention of both human rights IGOs and NGOs.

Early warning signs might include the sudden or unannounced arrival of armed forces or police in an area, a rash of abuses in a particular area, any disappearance, or incitement to violence through the media, e.g. veiled or direct threats made against persons or groups. The periods prior to the elections and following the arrest of indicted persons will be especially dangerous.

6. Human rights monitors, the IPTF and others responsible for monitoring must be properly qualified for their positions and receive adequate funding and training. These bodies should be led by persons with substantial human rights experience and should include staff with field experience in human rights monitoring, forensic investigation, law enforcement and institution-building. Persons specifically trained in interviewing survivors of rape and sexual abuse are also needed. Training should include:

- Information about international human rights and humanitarian law.
- Practical information including how to conduct interviews properly, the role of various organizations, proper documentation and reporting procedures, and practical protection strategies which can be used in the field.
- Special training in dealing with trauma victims, including survivors of rape.
- Information about confidentiality issues and the protection of sources and complainants from retribution.
- Interactions with NGOs.

7. Efforts should be made to identify and support existing human rights organizations in Bosnia and Hercegovina that are independent of the government, and to develop locally based human rights organizations in towns where none exist. Support should be practical in nature and might include activities such as training on human rights and humanitarian law, systematic monitoring and reporting, and interviewing skills.

The provision of computer, fax and telephone equipment (important to ensure continuing contact with the outside, with colleagues in other parts of Bosnia, and with international human rights organizations), and infrastructure support such as sharing office space are most needed.

8. Sanctions, to be credible as a deterrent, must be a real option. Security Council Resolution 1022 clearly requires reimposition of sanctions in the event of non-compliance with the human rights provisions of the Dayton agreement. Systematic and uncorrected non-compliance with human rights standards and the requirements for legal accountability should trigger the sanctions mechanism already established, the withholding of money for long-term reconstruction aid (as stated by the European Union) and other measures as necessary. Reports to the U.N. Security Council relating to compliance must include information about compliance with human rights standards as well as the actions of the parties to remove from power and surrender persons indicted for war crimes by the International Criminal Tribunal for the Former Yugoslavia. Further,

- At minimum, the Parties should be required to investigate fully charges of ongoing, as well as past, abuses (alongside the IPTF, the OSCE, and the Ombudsperson's office) and to publicly denounce such activities. Administrative and legal sanctions should be applied by the parties to persons violating the law, ranging from dismissal to criminal prosecution.
- High Representative Carl Bildt, the highest-ranking civilian official under the terms of the Dayton accord and the final authority in theater on issues of non-compliance with the civilian components, has a particular responsibility to protest human rights violations in a prompt and forceful manner. If warranted, he must seek punitive action against any party that refuses to correct its abusive behavior or refuses to cooperate with international efforts to prosecute persons indicted for war crimes.¹

CURRENT CRITICAL HUMAN RIGHTS ISSUES

REPATRIATION AND PROTECTION

One of the biggest challenges over the coming months will be the repatriation of both internally displaced persons (IDPs) and refugees. The UNHCR estimates that there are approximately one million displaced persons in Bosnia, and another one million Bosnian refugees in Croatia and third countries.

¹ As established in U.N. Security Council Resolution 1022, the Dayton agreement and the London document.

The UNHCR has stated in its repatriation plan that repatriation should not occur until three conditions are met. The third condition holds that repatriation should not occur until "the establishment and full operation of various mechanisms aimed at the protection of human rights." In this case, then, the onus must be placed on the OSCE, UNHCR protection staff, the U.N Centre for Human Rights, and the Ombudsperson's office to indicate whether conditions have been met for safe return. Until such time as there is an indication that the protection of returnees can be adequately addressed in the field, no one should be forced to repatriate. Further, returnees must be guaranteed the right to return to their places of origin. Politically motivated resettlement, a frequent occurrence in the region, must be prohibited. All persons should be allowed to choose their place of residence, as long as the human rights of others are respected.

While the Dayton agreement emphasizes the right to return, it is not clear who has the responsibility to protect returnees should local governments fail to do so. Already, there have been serious challenges to the right to return. Freedom of movement is an important related issue, not just for returnees but for all citizens. Local authorities should assume responsibility for creating a secure environment for the return of refugees and other displaced persons, but without backup by the international groups present, this represents wishful thinking, as it is exactly those authorities who may resist the return. It is therefore the duty of the international presence to ensure that civilians can freely exercise their right to return.

Further, IDPs and refugees will likely be reluctant to return to places where their security is not guaranteed. Information about the security situation should be provided to refugees and displaced persons. The security of routes is of great importance, and IFOR should be informed of movements of returnees so that they can bolster their presence along the way and in the place of destination so that arrival runs smoothly.

THE RIGHT TO REMAIN

Throughout the peace process, emphasis has been placed on the right to return rather than the exigent issue of the right to remain. Over 370,000 people have been displaced since May 1995. Even after the signing of the Dayton agreement, the international community has failed to insist on the right to remain.

As we have seen tragically demonstrated in Sarajevo in recent weeks, populations under pressure to leave must be assured of their security. Unfortunately, guarantees of security have not been forthcoming from the international community. There is little faith on the part of the civilian population in Bosnia in the IPTF or IFOR, which many people do not differentiate from UNPROFOR.

While the UNHCR has made every effort to point out the role propaganda was playing in the decision of Serbs to leave Sarajevo, other international organizations have done little to bolster the confidence of the fleeing Serbs in the peace plan. At one extreme of inaction, Peter Fitzgerald, of the IPTF, remarked during the Serb exodus from Sarajevo that "Nobody can guarantee the people's safety here."² In fact, the failure to address these issues seriously undermines the future of the Dayton agreement.

PROTECTION OF MINORITIES

Due to the nature of the conflict, minorities on all sides have suffered varying degrees of persecution. In some areas, persecution has taken the extreme forms of murder, rape, expulsion, and forced labor and has also included illegal evictions from homes, denial of employment and health insurance, among other practices. Minorities have often been pressured to leave areas through harassment and disenfranchisement.

² "Serbs on Trek: Weighted Down and Terrified", New York Times, February 23, 1996.

During the process of repatriation, it is likely that those attempting to return to their homes will face similar persecution. While direct attacks against minorities will hopefully occur infrequently, pressure on minorities can be expected to take other forms, such as threats, insurmountable legal obstacles to regaining property, and discrimination in hiring.

MISSING PERSONS

The issue of missing persons is critical for the thousands of people, mostly women, who have been left without answers about the fate of loved ones "disappeared" during the conflict. The pain of not knowing can never be assuaged. Families with missing members find it extremely difficult to move forward in their lives. (More than fifty years after the horror of the Nazi concentration camps, survivors still besiege the International Committee of the Red Cross with inquiries.) Information about missing persons is critical to the peace process as well. There must be "truth-telling" before reconciliation is ever possible. Those responsible for the brutal separation of families must be held accountable, and the terrible losses acknowledged and atoned for. Every effort should be made to cooperate with the ICRC, with Mr. Manfred Nowak, the U.N. Expert of the Commission on Human Rights in charge of the special process of dealing with missing persons in the territory of the former Yugoslavia, and with any commission on missing persons that is established. Specifically:

- The fate of the disappeared from northern Bosnia from the period of August to October 1995 -- whether taken for forced labor, detention, arbitrary arrest or execution -- must be immediately determined. A positive identification of those executed or otherwise killed must be made available to the victims' families.
- The truth about the mass execution of civilians after the fall of Srebrenica must be admitted by the Bosnian Serb authorities.
- Former soldiers and others should be encouraged to come forward in a confidential manner to provide information about missing persons to ICRC and to the U.N. expert on missing persons.

ACCOUNTABILITY AND THE RULE OF LAW

As long as those responsible for orchestrating and committing grave breaches of international humanitarian law are at large, they will continue to sow the seeds of hatred and distrust for their own purposes, and could destroy the peace. The International Criminal Tribunal for the Former Yugoslavia offers hope for justice and thus lasting peace, but the commitment to accountability for past abuses must remain firm. The Dayton accord requires all parties to "cooperate fully" with the investigation and prosecution of war criminals. Article 29 of the statute for the Tribunal imposes a similar duty on all members of the international community to "comply without further delay" in the "arrest or detention" of indicted war criminals and "the surrender or transfer of the accused to the International Tribunal."

There has been no compliance with this aspect of the Dayton accord. The Parties have failed to arrest or extradite persons indicted for war crimes, and in many instances have refused to cooperate with the Tribunal's efforts to gain access to particular sites or evidence. What is more, the international community has utterly failed to insist that the Parties comply with this aspect of Dayton. Most recently, the U.N. Security Council suspended sanctions against the Bosnian Serbs on February 27 after IFOR certified that the parties had complied with the military aspects of the agreement, ignoring the significant non-compliance with the equally important civilian aspects.

Furthermore, the parties to the conflict must be urged at every opportunity to acknowledge and denounce the abuses their own forces have committed. Efforts by the parties themselves to establish the nature and extent of abuses, the identities of victims, and the identities of those who planned or carried out such abuses should be

encouraged. This "truth-telling" can take place at many levels. Naturally, such an effort carries risks for those involved in the establishment of such commissions, and they will therefore need the support of the international community in their endeavors.

FREEDOM OF THE PRESS

The use of propaganda to instill fear and bias in the citizens of Bosnia and Hercegovina has been a hallmark of the conflict. Efforts to support the free press in the region are crucial to the peace process. Human rights IGOs and NGOs should make a concerted effort at the local level to get stories about human rights issues out to the public, and should use the media to educate the public about rights and responsibilities. At the same time, organizations should be watchful for misuse of reporting of human rights issues for propaganda purposes.

The role of the free media is especially critical during the election process. The media must be able to move freely and report independently in all regions of Bosnia and Hercegovina. Currently, there are few independent media outlets. Programs are transmitted through fixed transmitters, resulting in the isolation of the population from the free flow of signals and information across borders. There must be frequencies provided for independent radio and television stations, and free trade of print media across the boundaries. Local authorities currently control what can be sold. The role of press associations in creating a membership open to all and bound to a strict code of ethics is also important.

Internationally produced programs such as Voice of America, the BBC and Deutsch Welle might assist in communicating information in preparation for elections. People may be prevented from the public expression of ideas because the local press is controlled, but the international media can help counteract this by conducting interviews with a range of politicians.

FREE AND FAIR ELECTIONS

Citizens of Bosnia and Hercegovina must be permitted to choose representation without fear and intimidation. Freedom of expression, association and assembly, as well as freedom of movement, are key aspects of free and fair elections. The creation of a "politically neutral environment" in which such elections can take place is of course the responsibility of the parties, but this process must be closely monitored by the OSCE, which has stated that elections and human rights monitors will be closely allied in the field. It is important for NGOs to report interference with the elections process to OSCE monitors immediately and to request a response to such reports.

A concrete plan should be developed by the High Representative's office, in collaboration with the OSCE, to respond to potential acts of violence against or intimidation of political opponents or voters. The current failure to publicize abuses and to prosecute those responsible will do little to deter offenders during elections. The readiness of IGOs to respond to abuses during the elections will be crucial if the population in Bosnia is to feel secure to express its true political will. The future of the peace process depends largely on the fairness and free nature of these elections.

CONCLUSIONS

After four years of war

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Massive violations of human rights were at the heart of the armed conflict in Bosnia and Hercegovina. They were the means by which the war was waged and can be the spark that ignites further conflict. An enduring peace must be built on the resolute protection of persons from further human rights violations and the guarantee of accountability for past abuses. It is incumbent upon all international actors operating in Bosnia and Hercegovina to insist on full compliance not only with the military but also with the civilian components of the Dayton accord. To do otherwise would be to condemn the people of Bosnia and Hercegovina to the continuing cycle of ethnic slaughter and violent revenge.

Human Rights Watch/Helsinki

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. The staff includes Kenneth Roth, executive director; Cynthia Brown, program director; Holly J. Burkhalter, advocacy director; Robert Kimzey, publications director; Jeri Laber, special advisor; Gara LaMarche, associate director; Lotte Leicht, Brussels office director; Juan Méndez, general counsel; Susan Osnos, communications director; Jemera Rone, counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Helsinki division was established in 1978 to monitor and promote domestic and international compliance with the human rights provisions of the 1975 Helsinki Accords. It is affiliated with the International Helsinki Federation for Human Rights, which is based in Vienna, Austria. Holly Cartner is the executive director; Erika Dailey, Rachel Denber, Christopher Panico and Diane Paul are research associates; Ivan Lupis is the research assistant; Anne Kuper, Alexander Petrov, and Shira Robinson are associates. Jonathan Fanton is the chair of the advisory committee and Alice Henkin is vice chair.