



# SPECIAL REPORT

## **ABOUT THE REPORT**

On July 10, 1997, the United States Institute of Peace hosted the fourth and final meeting of its Working Group on Dayton Implementation. The Institute organized these meetings to support peace implementation in the Federation and Republika Srpska (RS) and to fulfill its mandate from Congress to develop creative options for addressing international conflicts. Participants at the July 10 meeting discussed the issue of war crimes, focusing not only on arrests, but also on identifying ways to strengthen and reinforce the work of the International War Crimes Tribunal for Yugoslavia (ICTY) so that prosecutions are swift and judicious. Working group members also discussed the need to support and establish local systems of justice so that those responsible for genocidal acts are held accountable, thereby implicitly exonerating citizens who have refrained from acts of violence and terror. Participants agreed that war victims, regardless of ethnic affiliation, must have access to fair hearings and due process, if any measure of reconciliation is to occur for this country. Ambassador John Menzies, former Ambassador to Bosnia-Herzegovina and currently a Senior Fellow at the Institute, chaired this and other working group sessions. Participants include officials from the Department of State, the Department of Defense and other federal agencies, as well as nongovernmental organization (NGO) representatives and scholars. The opinions and recommendations of the working group on war crimes are summarized below by program officer Lauren Van Metre. Special reports on earlier working group meetings on the return of refugees, Brcko, and the Train and Equip program are also available from the Institute by calling (202) 429-3828.

The views expressed in this report do not necessarily reflect the views of the United States Institute of Peace, which does not advocate particular policies.

*September 1997*

## **Dayton Implementation: The Apprehension and Prosecution of Indicted War Criminals**

### **Key Points**

- There was clear consensus by the group that war criminals in the former Yugoslavia must be brought to justice if the Dayton Accords are to succeed. However, participants cautioned that the apprehension of war criminals is only the first phase of a judicial process that must be fair and effective if social reconciliation is to occur for Bosnia-Herzegovina.
- The recent move to arrest indictees in Prijedor is a good beginning, but indicted political leaders must also be targets of such actions. Arrests also must not be limited to indictees from any one ethnic group.
- Assessments of the ICTY indicate that it suffers from start-up problems and a lack of international support. As the Tribunal is important not only for Dayton implementation, but for upholding the body of international law governing genocide, it must be supported and made more robust.
- The working group did not consider the military at fault for the North Atlantic Treaty Organization's (NATO's) failure to arrest indicted war criminals. Participants felt that political leaders of NATO member states have:
  - failed to build understanding and support among constituents for a long-term commitment to peace implementation and social and economic reconstruction;
  - miscalculated the strength and unity of nationalist leaders;
  - not made the case to the public that Bosnia differs fundamentally from other recent crises such as Somalia in that the mission is clearer and the outcome more critical to U.S. and Allied security interests.
  - underestimated the degree to which not apprehending those indicted obstructs implementation of all other aspects of the peace process.
- In order to ensure that the citizens of Bosnia-Herzegovina understand that the arrest and prosecution of war criminals is a matter of justice and not retribution,

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the international community must, among other things, encourage greater participation by citizens in the judicial process, acknowledge victims on all sides of the war, support and strengthen impartial indigenous judicial institutions, and work to create one national truth regarding the war.

- Participants felt that the war crimes issue not only was important to the success of Dayton, but had larger implications for the standing of international law and U.S. leadership in the world.

## Introduction

The broadcast news on July 10 provided an auspicious start for a meeting on war crimes: Reports from the region that morning described British actions in Prijedor to apprehend indicted war crime suspects Simo Drljaca and Milan Kovacevic. Participants at the meeting fully supported the Stabilization Force (SFOR) operation, indicating a clear consensus that war criminals in the former Yugoslavia must be apprehended and brought to justice. Previous working group sessions saw considerable debate on various aspects of Dayton implementation. On the issue of war criminals, however, there was broad agreement by administration, congressional, nongovernmental organization and policy institute participants that their apprehension is critical to the success of international efforts in Bosnia. Promoting refugee returns and encouraging multiethnic communities in areas like Brcko are the heart of Dayton and must be supported. Success in these areas, however, will be difficult unless indicted persons are removed from current positions of (real and *de facto*) authority, allowing more moderate and cooperative leaders to emerge. Yet, more is at stake than the ability to administer the peace. The working group believed that, if indicted persons currently at large in the former Yugoslavia are not brought to justice, at risk are the authority of the body of international law governing the actions of nation-states, the moral and political leadership of the United States in the world, and the inviolability of fundamental principles of human dignity and rights that are the cornerstone of our own national identity.

## The International Community and Its Performance in Bosnia

### *The International War Crimes Tribunal for Yugoslavia*

Assessments of the ICTY in the Hague indicate that ICTY suffers from start-up problems: Resources are limited, staffs are small, available resources are used inefficiently, and heavy workloads prohibit long-term thinking about the Tribunal's ultimate goals, strategy, and purpose. There is considerable concern that, while arrests are imperative for keeping Dayton on track, too many in a short period of time would damage the credibility of the Tribunal, which does not have the ability to conduct effective investigations and trials quickly. Thought must be given to mechanisms to accelerate and expand investigative and judicial capacity, while maintaining uniform standards of justice in all cases. The international community should increase its support to the Tribunal by dedicating more staff and providing additional resources.

The group discussed recent Tribunal rulings in important, precedent-setting cases. Some participants were disappointed by the court's failure to establish in its ruling on the Tadic case the precedent that Bosnia was an international armed conflict. Discussants expressed hope that a constructive decision will be achieved in the ongoing Blaskic case, establishing a precedent on command responsibility. Prosecutors hope to show either that General Blaskic had reason to know that subordinates planned acts of genocide and did not take preventive action, or that he knew after the fact and failed to punish perpetrators.

Concerns were also raised during the meeting that so much of the international community's credibility rests on this poorly funded, under-staffed institution. The work of the Tribunal is important not only for Dayton implementation, but for upholding the system of international law governing genocide. Failure to support this

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process will allow a reinterpretation of international law, casting Nuremburg as a victor's tribunal rather than a precedent for universal application. Also at risk are important decisions in the areas of conflict resolution and the use of force. With much riding on the Tribunal's success, discussions about it must move beyond the issue of whether an organization for dealing with war crimes in the former Yugoslavia should have been created, and instead focus on how it can be strengthened.

### *The Role of NATO*

The working group did not consider the military at fault for NATO's failure to arrest indicted war criminals. Instead they noted a clear abdication of decision-making responsibility on the part of NATO's political leadership. Participants felt that politicians have been too focused on when and how the military mission will end in order to avoid flagging Bosnia as a potential perpetual peacekeeping mission akin to Cyprus. In order to limit the likelihood of political failure that often occurs when military lives are lost, politicians have seemingly left it to the generals to define the Bosnia mission. Based on the Somalia experience, the NATO mission has adopted a minimalist approach in order to avoid conflict and casualties—an approach best seen in the area of arrests. Troops have been given the go-ahead by Dayton to make arrests if operational conditions are favorable, yet have largely negated the possibility of such operations by avoiding areas where indictees might be found.

There is evidence, however, that some NATO countries are becoming more serious about pursuing indicted persons, demonstrated recently by the British operation in Prijedor and statements by Dutch officials. The Netherlands' increasing resolve, it was suggested, springs from a nationwide soul-searching about the involvement of Dutch troops in the fall of Srebrenica. In addition, both the Dutch and Germans have begun to conclude that military casualties are less catastrophic politically for their respective governments than a second, larger influx of refugees should war resume. Discussants cautioned, however, that SFOR must coordinate with the International Police Task Force and NGOs before pursuing war criminals in a more vigorous fashion, as these groups will be the likely targets should retaliation occur.

### *The Leadership of the United States*

The lack of political leadership is not only a NATO problem; U.S. commitment has often seemed to falter. Foreign policy leaders have failed to press parties consistently and effectively to uphold their Dayton commitments. For example, when the United States insisted that Radovan Karadzic be excluded from participating in the 1996 national elections, but did not persist in removing him completely from the RS political scene, he remained a political force and a threat to peace. Some participants suggested that the current strategy—to sideline Karadzic by exposing his corrupt, wealthy life style to impoverished constituents—does not correspond to recent strong statements that Karadzic “must go,” or he will continue to obstruct the peace process. In fact, many in the working group expressed their doubts that the Prijedor arrests indicate a new U.S. resolve. Prijedor was useful for relieving public pressure to deal effectively with war criminals, but most hoped that the administration would not back away from further action until such pressure mounts again. Many were also encouraged by the administration's recent “re-dedication” to the Bosnia peace process, most notably the appointment of key officials and a broad based review of the current policy.

Working group participants noted that overblown perceptions of Serb "super warrior" capabilities pervade thinking and prevent decisive action. Policy makers often predict bold, exacting responses by the Serbs to international activities. Yet, in reality, Serbian leadership has acted with little resolve and strategic thinking. The current power struggle between Plavsic and Karadzic is very important for demythologizing the Serbs and their much exaggerated strength and unity. Others felt that Bosnia policy has been affected by the United States' experience in Somalia; there is considerable fear within branches of the government of "mission creep." Officials do not want troops in Bosnia involved in local interventions where the political climate is uncertain and often hostile, as was the case in Mogadishu.

There are those in the government, however, who do advocate a more robust Bosnia policy and have asked the top leadership to consider stronger action, such as the arrest of war criminals. They feel that, despite their efforts, top leaders have been unwilling to conduct a comprehensive appraisal of the risks associated with all Bosnia options. Yet most believed that, if the results were presented well, U.S. leaders would likely see favorable coverage and considerable public support for greater U.S. action in the region. Many Americans would understand sacrifices made to bring to justice some of the worst perpetrators of genocide since World War II. NGO representatives at the meeting offered to mobilize their constituencies at the grassroots level in support of U.S. efforts in Bosnia. Participants also thought that such strength of purpose might also be viewed positively on Capitol Hill, where recent legislation restricting Bosnia funding does not indicate so much a lack of commitment for administration policy, as an unwillingness to support a policy that is uncertain.

## **The Situation in the Federation and the Republika Srpska**

### *Citizens and Leaders*

As working group discussion moved from the role of the West in peace implementation to the situation in the former Yugoslavia, participants addressed primarily the impact of arrests on domestic politics in the RS and the Federation and on Dayton implementation. Would arresting indicted war criminals build support for the transition from war to peace and from centralized political control to democracy? A majority of the group thought that virulent nationalists were limited primarily to the top strata of political leadership. But, in terms of implementation, it is the nationalists at this level who matter most. Administration officials and NGO representatives who have spent time on the ground found more moderate and cooperative leaders at the local level, although Pale has maintained a fierce stranglehold on any independent political initiative by city leaders in the RS. There was also consensus that many citizens were willing to eschew nationalism if it meant a return to normalcy and an opportunity to rebuild their lives.

Participants noted, however, that arresting war criminals would not bring social reconciliation to the former Yugoslavia unless it was perceived by all parties as the means to a just end, and not simply a way to expedite Dayton implementation. It is important to underscore for citizens that apprehensions and prosecutions are a matter of justice (and not retribution); the working group suggested the following approaches:

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- consistently acknowledging victims on all sides of the conflict;
- arresting "small-fry" to undermine claims that the purpose of apprehensions is to depose popular leaders inimical to the West; however, arrests of senior officials must also occur;
- determining ways that citizens can contribute to the judicial process and not fear retribution; and
- using apprehensions and prosecutions as a means to implicitly exonerate those citizens who refrained from ethnic violence and terror—to remove collective guilt by assigning individual responsibility.

It must also be understood that the Karadzic arrest is not the final phase of this process. For most RS citizens the campaign against Karadzic represents the West's efforts to enforce a peace program that their leaders have never endorsed. Until citizens accept and actively participate in the justice process, a groundswell of domestic support for social justice and reconciliation will not occur. It is also necessary to undertake, therefore, the arrests of less powerful leaders, who are also recognized in local communities as economic criminals and mafia types. The current leadership struggle between Biljana Plavsic and Radovan Karadzic shows a considerable level of support for Plavsic's anti-corruption campaign. It is important to note that Mrs. Plavsic has never spoken out against ethnic cleansing and genocide and has limited her statements to charges of corruption. Despite her limitations as a nationalist, it is important to support her efforts in order to demythologize the leadership in Pale.

### **Judicial Systems**

On July 2–4, the United States Institute of Peace convened in Strasbourg a roundtable of some two dozen Bosnian officials, from each of the three ethnic communities, who deal with the issue of war crimes (including a minister of justice, judges, prosecutors, and police officials) and relevant international experts. The roundtable participants reached consensus on twelve points for substantive action to improve the process of justice. Neil Kritz, the Institute's Senior Scholar on the Rule of Law, and the principal organizer of the Strasbourg meeting, discussed with working group members a number of recommendations, a few of which follow. (A separate Institute special report on the Strasbourg roundtable is forthcoming.)

One of the current impediments to the administration of justice in Bosnia-Herzegovina is the lack of communication between the Hague and local prosecutors. The ICTY often deals directly with national leaders, and, as a result, local institutions are uninformed and often ill-prepared to carry out their mandate. Regular contact with, and periodic training of, local prosecutors is a must not only for improving the work of the Hague, but for strengthening judicial processes in Bosnia-Herzegovina.

To ensure the transparency, credibility, and fairness of the criminal justice process, it is also imperative to put in place mechanisms to facilitate citizens' participation, particularly across the Inter-Entity Boundary Line. Defense counsel from one entity must be permitted to represent war crimes defendants in the other. In addition, a general feeling of insecurity currently has precluded the participation of witnesses and victims in trials undertaken by other entities. Options to consider are the provision of security escorts for witnesses, travel of judges from one entity to the

other to hear testimony, and if necessary the provision of testimony via video conference (as has been done by ICTY). Participants noted that if citizens can participate successfully in the judicial process, even more will come forward to give testimony, thereby reinforcing and building support in general for judicial institutions in Bosnia-Herzegovina.

The Bosnian media currently constitute an obstacle to the process of justice as a means to reconciliation. Rather than reporting objectively, the media dominated by each ethnic group quickly lionize any member of their group accused of war crimes by ICTY or by local authorities, declaring the individual a hero and martyr. A program of media training should be undertaken so that the media can serve a positive function in the process of justice and reconciliation.

Furthermore, the establishment of a historical accounting of abuses suffered during the war can contribute to the process of healing and reconciliation, as seen recently in other countries. However, the current work of three separate war crimes commissions risks producing three conflicting versions of truth and history. One joint truth commission should be established for Bosnia-Herzegovina to provide a collective forum for victims on all sides of the conflict and to establish a consensus on one history of these painful matters.

## Conclusions

Participants in the end agreed that U.S. equities regarding the war crimes issue are considerable. The apprehension and prosecution of war criminals in the former Yugoslavia are imperative if the peace process begun at Dayton is to succeed. It is only through the administration of justice that the citizens of Bosnia-Herzegovina can recognize the suffering of all of the war's victims, exonerate those who refused to participate in acts of violence and terror, and hold accountable those who are guilty of criminal acts. In the meantime, refugees may continue to return home, but community development and reconciliation cannot begin until this justice has occurred. It is primarily for this reason that the working group agreed that the apprehension of war criminals cannot be a last step in the U.S. Bosnia policy, but must be the first phase of a judicial process that includes all parties to the conflict. More support is necessary for the work of the Tribunal. In addition, indigenous judicial institutions in Bosnia-Herzegovina must be strengthened and made more credible, and a joint truth commission should be established.

Participants agreed that the U.S. stake in these issues extends far beyond the implementation of the Dayton Accords and building a just peace in Bosnia. Failure to support the apprehension and prosecution of war criminals places not only the peace process, but other, core interests of the United States such as the effectiveness of NATO, American moral and political leadership in the world, and global support for the norms and principles of international law.

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