



AID AND ACCOUNTABILITY: DAYTON IMPLEMENTATION

“Those accused of war crimes, crimes against humanity and genocide must be brought to justice. They must be tried and if found guilty, they must be held accountable. . . There must be peace for justice to prevail, but there must be justice when peace prevails”.

Bill Clinton, 15 October 1995

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Aid and Accountability: Dayton Implementation

EXECUTIVE SUMMARY

Arrest of Suspects Indicted by the International Criminal Tribunal

- The states most involved in the implementation of the Dayton Peace Agreement (DPA), the European Union and the states of the Contact Group (France, Germany, Russia, the United Kingdom and the United States) must do all in their power to pressure the Federal Republic of Yugoslavia, Republika Srpska, Croatia and the authorities of Croat-controlled Federation territory to arrest immediately all indictees in their jurisdiction and surrender them to the International Criminal Tribunal for the former Yugoslavia (Tribunal).
- If these authorities fail to comply, and if key indictees remain at liberty by the time of the London Peace Implementation Conference, the North Atlantic Council must issue a directive instructing the Implementation Force (IFOR) to make the arrests.
- All states must make additional resources available to the Tribunal, including funds, equipment and seconded staff with appropriate qualifications, to ensure that justice prevails.

Dayton Implementation Mechanisms

- The states committed to the DPA implementation must develop mechanisms by which Bosnian government authorities, police and members of the military can be held accountable, and, if they violate the DPA, removed from public service or subjected to other sanctions.
- The High Representative must appoint task forces, or ad hoc commissions of inquiry, to investigate actions or situations that seriously undermine the DPA, with a view to establishing responsibility therefor. The task forces should have credibility independent of the Office of the High Representative and should be able to complete their assignments quickly and without creating cumbersome procedures.
- A DPA Implementation Council must be created with the power to dismiss or otherwise penalise public officials who obstruct implementation of the DPA, orders of the Tribunal, or laws of Bosnia and Herzegovina or either of the entities. The DPA Implementation Council should be chaired by the High Representative and include representatives of the governments of Bosnia and Herzegovina and the entities, as well as additional representatives of the international community.
- IFOR's mandate must be clarified or, if necessary, expanded to enable it to monitor the entities' armed forces for violations of rights protected by the DPA. Where the responsible military command does not investigate allegations and sanction guilty soldiers, IFOR must be authorised to conduct its own investigation.
- The states committed to the DPA implementation must use their economic influence to insist that the Minister of the Interior of Republika Srpska agree to have the UN IPTF supervise the vetting,

restructuring and re-training of the Srpska police, in the same way that the Federation Minister has agreed to IPTF supervision of the Federation police.

Conditioning Economic Assistance on DPA Compliance

- The international community must withhold all aid from any municipality, entity or country harbouring persons indicted by the Tribunal and in particular Republika Srpska, until key indictees are handed over for trial. Once the most prominent indictees are surrendered and future co-operation with the Tribunal is guaranteed, a substantial and visible aid package should kick in immediately.
- The states committed to the DPA implementation and other donors must agree to co-ordinate their economic assistance programmes so as to promote compliance with the DPA. Bosnian authorities that obstruct the objectives of the DPA -- including the arrest of those indicted by the Tribunal as well as repatriation and reintegration of displaced persons -- must not receive economic aid; authorities that demonstrate a willingness to build a multi-ethnic society must be rewarded. Put simply: the more returnees, the more money; no returnees, no money.
- The High Representative must convene a steering group of donors and aid agencies, and must issue guidelines for donor contracts to state explicitly that compliance with the DPA will be one of the factors used to determine the financial viability of projects.

Repatriation, Reintegration and Human Rights

- The international community must focus on the repatriation of the estimated 300,000 Serb refugees from Croatia currently living in the Federal Republic of Yugoslavia and Republika Srpska. It is easier to get the process moving in Croatia than in Bosnia and Herzegovina since there is more vacant housing and the winter is milder. In addition, an initiative which concentrates on the plight of Serb refugees is likely to boost the Serb community's confidence in the international community and generate momentum for repatriation within Bosnia and Herzegovina.
- Municipalities in Bosnia and Herzegovina which permit and even encourage the return of minorities must be rewarded with economic assistance not only to accommodate the returnees but also to develop the local economic and social infrastructure, thus assisting those who remained during the war.
- The High Representative must make the installation of telephone connections between the entities a priority, reward compliance with economic aid and champion this as part of an aggressive public information campaign.
- The introduction of a neutral system of vehicle registration is imperative since, by concealing a car's municipality of origin, it would reduce the fear factor for Bosnians travelling outside areas in which they belong to the majority community, thus boost freedom of movement.
- The Commission for Real Property Claims of Displaced Persons and Refugees, which was established by the DPA to effectuate the right of displaced persons to have their property restored to them or else receive compensation, must be provided with adequate financial support.
- In order to support the repatriation and reintegration effort and forestall human rights abuses, the mandates of the UN International Police Task Force (IPTF) and IFOR must be sharpened. IPTF must be provided with executive authority to investigate crimes and police abuse, and with additional resources necessary to perform its functions effectively. IFOR must make it a high priority to safeguard areas where minorities or their houses are at risk.

Common Institutions and State Assets

- The unification of Bosnia and Herzegovina has little prospect for success unless there is more to hold it together than the “common” institutions, which receive minimal and only grudging support from Republika Srpska, a foreign policy which in any event may be diminished by the entities’ “parallel relations”, and state obligations inherited from the former Yugoslavia. One of the significant issues of the DPA implementation process yet to be addressed is whether the state of Bosnia and Herzegovina or the entities succeed to former Yugoslavia’s state assets, including socially-owned property. International law suggests that the state of Bosnia and Herzegovina is the successor.
- The international community must support the state of Bosnia and Herzegovina’s right to succeed to its share of the former Yugoslavia’s state assets. Such support is consistent with the international law of state succession and will provide substance to the common institutions, thus bolstering Bosnia and Herzegovina’s viability as a state.

Elections

- The international community must ensure that the OSCE’s mandate regarding the municipal elections remains identical to that stated in the DPA.
- The OSCE must do the job it was entrusted with in the DPA, namely to “supervise ... the preparation and conduct” of the elections and assist the local governments in creating the necessary conditions for free and fair elections. Requesting the OSCE merely “to provide assistance for the preparation and conduct” of the municipal elections as stated in the concluding document produced at the Paris conference is not sufficient.
- If something is blatantly wrong, the OSCE and the Provisional Election Commission (PEC) must address the issue, not cover it up. The first steps must be to carry out a thorough actuarial and demographic study, thus establishing the exact size of the electorate, and to produce an up-to-date electoral register in each municipality. Without this the potential for fraud remains too great.
- The final report of the Co-ordinator of International Monitoring for the 14 September elections, which was suppressed by the OSCE because of its critical evaluation of the organisation’s performance, must be published and the recommendations implemented.
- Recommendations made by the Election Appeals Sub-Commission (EASC) in its report to the Head of Mission must be enacted into the PEC Rules and Regulations, in particular the PEC must grant the EASC powers to annul results from specific polling stations and municipalities where fraud is found to affect the integrity of the vote, and provide for repeat polling.

Aid and Accountability: Dayton Implementation

I. INTRODUCTION

A year after the Dayton Peace Agreement (DPA) was signed marking the end of the war in Bosnia and Herzegovina, the implementation of its civilian provisions is in crisis. Those indicted by the International Criminal Tribunal for the former Yugoslavia (Tribunal) remain at liberty and continue to influence events behind the scenes; leaders responsible for the outbreak of war have been given a fresh mandate in clearly fraudulent elections which the international community certified nevertheless; the common institutions which were supposed to evolve out of those elections have failed to materialise in substance; and repatriation and reintegration, allegedly the cornerstone of the DPA, have been limited to a trickle of particularly resolute individuals, all to areas where the returnees form part of an ethnic majority.

While an end to the killing took events in Bosnia and Herzegovina off the television screens and the front pages of newspapers, the conflict has by no means been resolved and may spill over into bloodshed again. A window of opportunity remains half open, but unless the international community takes immediate and decisive action, the DPA may go down as the most expensive cease-fire in history, not the basis for a lasting peace.

In anticipation of the forthcoming DPA Peace Implementation Conference in London on 4th and 5th December, the International Crisis Group (ICG) presents a set of recommendations to get the peace process back on track.

II. WAR CRIMES AND CRIMES AGAINST HUMANITY

A. Arrest of Suspects Indicted by the Tribunal

1. Obligations of the International Community

One issue hangs like a sword of Damocles above the peace process, namely that of the continued freedom and impunity of persons indicted by the Tribunal. No matter how much some in the international community might wish it to disappear, this issue will not go away and must eventually be tackled head on. Moreover, the sooner it is addressed, the better. Indeed, as long as those indicted for war crimes and crimes against humanity including genocide, remain at liberty, there is no prospect of any justice in Bosnia and Herzegovina. And without justice it will be impossible even to begin the process of reconciliation which is so necessary if this country is to be pieced back together.

Now that the Implementation Force (IFOR) has stopped the open conflict, the most important contribution the international community can make towards promoting an enduring peace is to ensure the arrest and surrender to the Tribunal of individuals indicted for war crimes and crimes against humanity. This effort must begin with those who still exercise real power even if they no longer occupy their official posts (Radovan Karadzic and Ratko Mladic) and whose

whereabouts are known. The effect this could have to boost the reunification of the country cannot be underestimated.

President Bill Clinton clearly *recognises* this obligation: “Those accused of war crimes, crimes against humanity and genocide must be brought to justice. They must be tried and if found guilty, they must be held accountable.... There must be peace for justice to prevail, but there must be justice when peace prevails.”¹ Regrettably, he does not appear to have *accepted* the obligation, which lies in the first instance with the US government, as the driving force behind NATO and its political arm, the North Atlantic Council.

IFOR and NATO commanders have made repeated statements that their troops will not search for suspects indicted by the Tribunal, and will arrest suspects only if they encounter them in the course of their regular duties and if security permits. IFOR has not complied with even this limited interpretation of its mandate. There have been well-documented accounts of several encounters between IFOR troops and indicted individuals and, more ludicrously, contortions to avoid encounters. For instance, in mid-August, IFOR troops hastily left the headquarters of indicted war criminal General Mladic, which IFOR had planned to inspect for illegal weapons, after learning that Mladic was inside. Last winter IFOR avoided the ski slopes above Pale when Mladic appeared and even gave interviews to journalists.

Moreover, IFOR’s interpretation of its mandate seems foolish at best, intentionally misleading at worst. It is hard to imagine that security would ever permit the arrest of an indicted person, especially Karadzic or Mladic, upon a chance encounter. The requirements of military preparedness, not to mention force protection, should dictate considerable planning before any arrest is undertaken.

The NATO governments, and accordingly IFOR, are obliged (under the Genocide Convention, the Geneva Conventions of 12 August 1949, its Additional Protocol 1, and Security Council res. 827 of 25 May 1993) to search for and arrest individuals indicted by the Tribunal.² In addition, IFOR clearly has the authority under the DPA to do so if it so decides, or if so instructed.³

The IFOR command should not make statements that arrest of those indicted by the Tribunal lies beyond its mandate, but neither should it be held primarily responsible for the failure to make those arrests. The responsibility for ensuring that indictees are arrested and surrendered to the Tribunal lies first and foremost with the governments of the United States, France and United Kingdom, as parties to the Genocide and Geneva Conventions, and as the powers that lead the IFOR command and the North Atlantic Council. The DPA expressly states that

¹ Statement at the University of Connecticut, opening remarks at “50 Years After Nuremberg: Human Rights and the Rule of Law”, 15 October 1996.

² For more detailed arguments, see ICG Report, “Dayton: Make or Break,” 11 June 1996.

³ DPA, Annex 1-A, art. VI, para. 3 states that “the IFOR shall have the right to fulfil its supporting tasks ..., which include the following: (a) to help create secure conditions for the conduct by others of other tasks associated with the peace settlement.” Para. 5 provides that “the IFOR Commander shall have the authority ... to do all that the Commander judges necessary and proper, including the use of military force, ... to carry out the[se] responsibilities....”

the North Atlantic Council “may establish additional duties and responsibilities for the IFOR”.⁴

The performance of the UN International Police Task Force’s (IPTF) has been similarly disappointing. For instance, on 26 August, Radovan Stankovic, indicted by the Tribunal, stopped at a UN IPTF station to complain that Bosnian police had fired on his car while trying to arrest him. The IPTF officers did not recognise him. Yet more troubling was the reaction of the UN, whose spokesman said that even if the IPTF officers had recognised him, they were under no obligation to inform IFOR or take any other action.⁵

2. Obligations of the DPA Parties

The UN Security Council stated firmly (in resolution 1022 of November 22, 1995) that “compliance with the requests and orders of the International Criminal Tribunal for the Former Yugoslavia [to arrest and surrender to the Tribunal people indicted for war crimes] constitutes an essential aspect of implementing the Peace Agreement.” The governments of Croatia and the Federal Republic of Yugoslavia (FRY), as well as the authorities of Republika Srpska and of the Croat controlled territories of the Federation have taken a few measures (such as passing legislation to implement their obligations to arrest and surrender indictees and allowing investigators access to some evidence), but they have staunchly declined to comply with the essential obligation to arrest and surrender indictees. In contrast, the authorities of the Bosniac parts of the Federation have substantially complied with all of the Tribunal’s orders.

As of November, the Tribunal had indicted 74 people for war crimes and crimes against humanity, including genocide. Only seven are in custody in the Hague. Most are believed to be at large in Bosnia and Herzegovina, Croatia or the FRY. The authorities of the Bosniac parts of the Federation arrested both Bosniac indictees within their jurisdiction, and arrested two other indictees who mistakenly entered their territory (one of whom was subsequently released by the Tribunal). Two others were arrested and surrendered to the Tribunal by the Austrian and German police.

The Croatian government arrested a Bosnian Croat indictee, Zlatko Aleksovski, in June in Split, but has yet to surrender him to the Tribunal despite a decision of Croatia’s Supreme Court approving the transfer. Dario Kordic (a Bosnian Croat general), Ivica Rajic (a Bosnian Croat militia commander) and several others, charged with having committed and ordered atrocities against civilians on a massive scale, are living more or less openly in Croatia. As of April, Kordic was living in a government-owned flat in Zagreb, regularly attended the ruling party meetings with top government officials, and even appeared on Croatian-controlled television (HRTV). He is still seen from time to time on the streets of Zagreb. The High Representative estimated that, as of July, there were at least

⁴ DPA, Annex 1-A, art. VI, para. 4.

⁵ Statement by Alexander Ivanko, reported by the Associated Press, “Serb Nixes Capture at UN Post,” on 11 November 1996.

15 indictees living in Croat-controlled parts of the Federation, some of whom crossed regularly into Croatia.⁶

The party which is in most flagrant violation of the Tribunal's orders is, undoubtedly, Republika Srpska. Not only has it failed to arrest a single person under indictment, it has allowed Radovan Karadzic and Ratko Mladic, against whom the Tribunal has presented extensive evidence of genocide, crimes against humanity and war crimes, to exercise substantial political and military control. Karadzic formally resigned from the Presidency of the Republika Srpska and the *Srpska demokratska stranka* (SDS) in July, and he even stopped going to the government buildings in Pale on a regular basis, but he has continued to exercise real power and the SDS has continued to promote the view (through SDS-controlled media, campaign posters and speeches) that he is the great hero of the Bosnian Serbs, unfairly vilified by the West. Since the UN Security Council voted on 1 October to remove sanctions from the Republika Srpska,⁷ there is strong evidence that he has resumed use of his office in the government compound in Pale. The announcement on 9 November of Ratko Mladic's dismissal from his position as commander of the Republika Srpska military reflects long-standing political animosities and should not be assumed to indicate movement towards compliance with the Tribunal's orders.

Karadzic's active involvement in the Republika Srpska government, his open movements around Pale in sight of IFOR troops, and Mladic's continued grip (albeit weakened) on military power exacerbate the outrage to the rule of law raised by the Republika Srpska's failure to arrest them. The respect shown Karadzic by the people and leaders of Republika Srpska should by no means be used as an argument against arresting him because it is the tangible expression of their complete denial of responsibility for genocide, crimes against humanity and war crimes. So long as the facts of the atrocities are suppressed and the responsibility of the war criminals rejected there can be no genuine progress towards reintegration. Reconciliation demands acknowledgement and accountability. For the victims, there can be no forgetting. While the halting of the worst violence between the belligerent sides and the building of common institutions may obscure for a time the depth of the wounds, unless the Bosnian Serb leadership accepts full responsibility for the war crimes they have committed, those wounds will not heal and there can be little doubt that hostilities will flare up again once foreign troops pull out.

Adamant refusal to exclude Karadzic and Mladic from their positions of power may be the Bosnian Serb leadership's worst outrage, but it is by no means the only one. The High Representative estimated in July that 50 indictees were living in the Republika Srpska.⁸ The Republika Srpska police in Prijedor and neighbouring Omarska (where many of the war's worst atrocities were committed) continued, as of 12 November, to employ four men indicted by the Tribunal (Zeljko Mekajic, Miroslav Kvocka, Mladen Radic and Nedjeljko

⁶ "Report of the High Representative for Implementation of the Bosnian Peace Agreement to the Secretary-General of the United Nations," 10 July 1996, para. 78.

⁷ Subsequent to the signing of DPA, Resolution 1022 of the UN Security Council (22 November 1995) suspended sanctions on FRY and Republika Srpska with the provision that sanctions would be re-imposed automatically following the High Representative's report of substantial non-compliance.

⁸ "Report of the High Representative," *supra* note 8, at para. 78.

Timarac). Two others (Blagoje Simic and Stefan Todorovic) are occupying public posts in the northern Republika Srpska town of Bosanski Samac,⁹ and other indictees also clearly receive government support or protection.

- *ICG calls on the European Union and the governments of the Contact Group (France, Germany, Russia, United States and United Kingdom) to do all in their power to pressure the FRY, Republika Srpska, Croatia and the authorities of the Croat parts of the Federation to arrest immediately all indicted individuals within their jurisdictions and turn them over to the Tribunal. No economic aid or assistance of any sort should be given to these authorities until they have made some arrests and demonstrated a commitment to pursue all of the indicted individuals.*¹⁰
- *If these authorities fail to comply, and, in particular, if Republika Srpska fails to arrest Radovan Karadzic and Ratko Mladic by the time of the London conference, then the North Atlantic Council should issue a directive unequivocally instructing IFOR to make the arrests as soon as possible.*
- *The IFOR command should train its troops to recognise all people indicted for war crimes, emphasise their duty to make arrests and drill them on the procedures to follow in preparing for and making arrests in all foreseeable eventualities.*
- *IPTF should train its monitors to recognise all people indicted for war crimes. Monitors should be instructed that they have a duty to report any information they come across about the whereabouts of such people to IFOR and the Tribunal, and should be encouraged to search out such information.*

B. Support for the International Criminal Tribunal

Since its inception in 1993, the Tribunal has made considerable progress in establishing its credibility, developing its jurisprudence and securing resources and qualified staff. However, the Tribunal's credibility is coming under increasing threat owing to the failure to arrest leading figures under indictment and its inability, due to scant resources, to adequately investigate and prosecute even the seven individuals in its custody.

For the investigation and prosecution of crimes in the Former Yugoslavia, the Tribunal has only 120 investigators, lawyers and researchers (less than half the number employed by the Los Angeles District Attorney's Office), and two dozen translators. The amount of evidence that must be collected is enormous; the need for translators and interpreters compounds the difficulties. For one case involving crimes committed in Mostar it already has collected 30,000 pages of documents in local languages. It has received more than 400 kilos of documents (in local languages) supporting the arrest by local

⁹ The Boston Globe published a series of reports on war criminals in the Republika Srpska in November.

¹⁰ John Shattuck, US Assistant Secretary of State for Human Rights, stated on 3 November that if the authorities of Republika Srpska failed to arrest the persons indicted for war crimes, "large-scale economic and political assistance will be withheld; [that] will be the consequences for non-compliance. We are looking for concrete progress in the near future and beyond. We know that progress never comes all at once, but it is urgent that progress occur." Chris Simon, UPI, "Serbs Promise to Fire Indicted Police," 4 November 1996. ICG welcomes this statement and calls on the US Government to back-up Mr. Shattuck's firm words with action.

authorities of more than one hundred people (many of whom have already been detained) which the Tribunal must review in order to determine whether those people may lawfully be arrested and prosecuted. The Tribunal has only one trial courtroom and two trial chambers, and the trial of each indictee is expected to last at least three to four months. It is obvious that the Tribunal is in urgent need of additional resources.

- *ICG calls on states, especially those which have assumed primary responsibility for the Dayton process, to make additional resources available to the Tribunal, including funds, equipment and seconded staff with the qualifications most needed by the Tribunal.*

C. Sharing of Intelligence Data

It is highly likely that IFOR, and the UN Protection Force (UNPROFOR) before it, gathered intelligence in the course of regular operations that would be useful to the Tribunal. In the interest of protecting their forces, different contingents are likely to have conducted surveillance and intercepted communications involving the local military commanders in the region.

- *Although the amount of intelligence is undoubtedly extensive, IFOR should cull through the documents for information that might be useful to the Tribunal's investigations, including conversations involving suspects and information about the whereabouts of witnesses and suspects.*

III. DAYTON IMPLEMENTATION MECHANISMS

A major weakness of the implementation of the DPA has been the international community's lack of political will to use the implementation and enforcement mechanisms available to it.

The powers available to the implementing organisations could of course be strengthened, and ICG would welcome any initiatives in this direction. Yet, while one may always hope for stronger enforcement mechanisms, the reality is that the mechanisms available to promote compliance with the DPA have been more forceful than those available to most international peace-keeping operations.

The High Representative, Carl Bildt, had the power until 1 October to trigger the re-imposition of UN sanctions against Republika Srpska and the Federal Republic of Yugoslavia (FRY), yet never did so. In the event, the UN Security Council, at the same time as it lifted the existing sanctions, put the parties on notice that it would "consider the imposition of measures if any party fails significantly to meet its obligations under the Peace Agreement."¹¹ The High Representative remains able to call on international donors, including the World Bank and the European Union, to withhold aid from parties which flout their Dayton commitments; the potential impact of aid conditionality is considerable given the large sums donors have committed and their willingness to be guided by the High Representative's requests. Yet the High Representative has rarely used this source of influence.¹²

¹¹ UN Security Council resolution 1074, adopted 1 October 1996, para. 5.

¹² Pursuant to a request of the High Representative in April 1996, donors cut all non-humanitarian aid to the Croat-controlled municipalities of Capljina, Stolac and Vares, and the Bosniac-controlled municipality of Bugojno. The conditioning of aid on compliance with the Dayton Agreement is discussed below in section III(B).

A. Accountability of Bosnian Authorities

The international community has been able to mask its lack of political will to use the implementation mechanisms available to it by avoiding the diplomatically controversial task of determining accountability. Determining accountability is necessary to set the record straight and constitutes a critical step towards reconciliation.

Just as it is critical to set the historical record straight about crimes against humanity and war crimes committed in Bosnia and Herzegovina, it is equally critical to maintain a record of current violations of the DPA and to identify the responsible officials or parties. Once a rigorous investigation establishes responsibility, the High Representative, who has primary responsibility for promoting “full compliance with all civilian aspects of the peace settlement”,¹³ can call on the offending party or government body to provide an effective remedy for the violation, including, for instance, dismissal from public service of the officials most directly responsible. Failure to comply should result in the withholding of economic assistance. The conditioning of aid should be tailored and proportionate to the Dayton violation, and should be addressed to the party, government ministry or local government that is best situated to provide an effective remedy.¹⁴

Establishing the facts as to responsibility will make the High Representative’s decision-making more transparent, and will provide an agreed factual basis for decision-making by other actors (including donors), should he decide not to take any firm remedial or punitive action himself.

1. Fact-finding Task Forces

What is needed is an imaginative approach to marshalling the fact-finding initiatives already undertaken by various international agencies so as to enhance their capacity to establish facts and determine culpability. It is not necessary that guilt be established beyond a reasonable doubt but only to a level of certainty sufficient to justify aid cut-offs, demands for dismissal of public officials, and policy changes.

- *Accordingly, ICG proposes that the High Representative should appoint task forces, or ad hoc commissions of inquiry, to investigate actions or situations that pose serious threats to the attainment of the DPA’s goals, with a view to establishing responsibility therefor. The task forces should have credibility independent of the Office of the High Representative and should be able to complete their assignments quickly and without becoming mired in cumbersome procedures. When possible, they should involve the Federation Ombudspersons or other appropriate Bosnian experts, in order to enhance relevant expertise and build domestic capacity.*

¹³ The DPA, Annex 10, Article II, para. 1 directs the High Representative to “(a) monitor the implementation of the peace settlement; [and] (b) maintain close contact with the Parties to promote their full compliance with all civilian aspects of the peace settlement and a high level of cooperation between them and the organisations and agencies participating in those aspects.”

¹⁴ President Izetbegovic’s dismissal of the Federation Minister and Deputy Minister of Defence upon the demand of the US Government to do so or else lose \$100 million worth of weapons illustrates the potential effectiveness of aid conditionality as well as the willingness of donors to condition aid when their perceived national interests are at stake. Donors should also be willing to place conditions on aid when Dayton’s success is threatened.

One approach would be to name a different task force for each investigation, to be comprised of people with relevant expertise seconded from organisations already working in Bosnia. It may be expected that, over time, a small pool of people would be identified who could be drawn on repeatedly.

For instance, to investigate the destruction of houses in areas in and near the zones of separation, the High Representative might ask IPTF to identify a monitor to lead the investigation (since the responsibility of the local police could be involved); he might also ask an international organisation (governmental or non-governmental) to contribute someone who knows the local language and situation; and someone, perhaps from IFOR, who has experience with investigating explosions and arson.

Similarly, to investigate problems with the reconnection of telephone lines between Republika Srpska and the Federation, the High Representative might form a task force comprised of people familiar with telecommunications, corruption and the ways the relevant Ministries work.

Some task forces could investigate a number of problems in a given municipality, on the assumption that a few officials may be responsible for multiple DPA violations. For instance, a task force could examine a number of alleged violations in Prijedor, including the year-long, arbitrary and for a long time unacknowledged detention of a Croat priest and his parents, the continued employment of police who have been indicted by the Tribunal, the destruction of houses slated to be occupied by returning displaced Bosniacs, incidents of blatant non-cooperation with IPTF, police involvement in stopping UNHCR buses from entering the area, and statements on the radio by the Mayor urging hostility towards non-Serb residents and returnees.

Some issues, of course, may not be well-suited to a task-force approach to fact-finding, particularly where facts are not seriously in dispute. However, even issues that seem heavily political could possibly be clarified and de-politicised by the introduction of an expert, neutral fact finding body.

ICG does not propose the creation of a new institution. Far from it. Rather, ICG calls on the High Representative to undertake more focused co-ordination of what the international agencies are already doing. The kinds of incidents that would benefit from a task force approach have been the subject of monitoring and reporting by several agencies. The hope is that, by co-ordinating their work on certain situations identified by the High Representative as posing particularly serious challenges to the DPA's goals, the agencies will be able to determine facts, and responsibility, to a greater degree of precision and credibility than they are able to do on their own.

These ad hoc task forces would not duplicate the work of any other agency. The Human Rights Ombudsperson (established under Annex 6 of the DPA) is authorised to investigate "alleged or apparent violations of human rights"¹⁵. The Ombudsperson, however, can take cases only when an individual complainant is prepared to step forward, has no authority to investigate violations on behalf of a class of complainants, has only a small staff and is, understandably, bound by strict rules of confidentiality.

¹⁵ DPA, Annex 6, art. V, para. 2.

The Election Appeals Sub-Commission (EASC), established by the Organisation for Security and Co-operation in Europe (OSCE), serves as an interesting model, and could be called on to undertake certain fact-finding inquiries. But its mandate for the municipal elections has not yet been secured and, at most, it will operate until the municipal elections. Comprised of one international and three Bosnian judges (a Croat, Bosniac and Serb), and staffed by one IPTF monitor and between one to five lawyers at various times, it was able to investigate more than 100 complaints in a 4-week period surrounding the September elections, and determine individual or party responsibility in more than two dozen cases. Its mandate, if extended, is sufficiently flexible to enable it to enquire into a broad range of issues, including politically-motivated violence, intimidation and job dismissals, freedom of movement, and statements by candidates that call for rejection of fundamental aspects of the DPA.¹⁶

2. DPA Implementation Council: Accountability of Public Officials

In May, the Federation Mediator, Dr. Christian Schwarz-Schilling, submitted a proposal to the Federation Assembly to establish a Federation Implementation Council that would examine complaints against persons holding public office (other than judges) for violations of internationally recognised human rights, the DPA, Federation law, cantonal or local law, or for serious obstruction of co-operation with the Tribunal. It was proposed that the Council should be chaired by the Principal Deputy High Representative, and should include two additional representatives of the international community plus the Federation Prime Minister and his Deputy. The proposal was motivated by the recognition that efforts to implement the DPA and Federation and local law would be considerably strengthened by the existence of an effective mechanism for removing public officials who actively obstructed those agreements and laws. The Federation Assembly has not taken any action on the proposal.

ICG believes that such a Council could be a powerful mechanism for addressing some of the problems currently encountered in trying to implement the DPA, as well as Federation and local law, and urges that such a Council should be established and should extend to both the Federation and the Republika Srpska.

- *ICG proposes the creation of a DPA Implementation Council with the power to dismiss or otherwise penalise public officials who violate or obstruct the implementation of the DPA, the orders of Tribunal, or the laws of the state or either entity. The Council should be chaired by the High Representative or his Principle Deputy, and should include representatives of the governments of the state and both entities, as well as additional representatives of the international community. The parliament of Bosnia and Herzegovina could establish such a Council with country-wide jurisdiction, or the assemblies of each entity could establish parallel councils.*

¹⁶ See Judgements of the EASC, published by the OSCE in 3 volumes of the *Bilten* (July, August and September 1996).

3. Expanding IFOR's Role: Accountability of the Armed Forces

One of the significant gaps in the implementation of the DPA is the failure of any organisation to monitor the responsibility of the parties' armed forces to ensure that their troops do not commit human rights violations, and that soldiers who committed war crimes are identified and turned over to the proper authorities.

There is a general suspicion that soldiers, demobilised or on active duty, are responsible for many of the worst unsolved crimes: house destructions, forcible evictions, rapes and murders. When IPTF monitors investigate, they hit a brick wall. The local police tell them that the suspects are soldiers, and that they thus have no jurisdiction. IPTF also has no jurisdiction. IFOR has not filled the gap. Clearly it should, especially now that its stay in Bosnia and Herzegovina has been extended.

- *IFOR's mandate should be clarified (or, if necessary, expanded) to enable it to monitor the entities' armed forces to ensure that, (a) their troops do not violate the DPA and are punished if they do, and (b) soldiers who committed war crimes are identified and turned over to the proper authorities. Where the parties' military command does not investigate allegations against their soldiers, IFOR should be authorised to conduct its own investigation. IPTF has these powers in relation to the local police; IFOR should have these powers in relation to the military.*
- *IFOR should conclude agreements with the military forces of the Federation and Republika Srpska to supervise their vetting, restructuring and training, similar to the agreement IPTF has concluded with the Federation Minister of the Interior regarding the Federation police.*

4. UN IPTF's Role: Accountability of the Police

Given the large number of police who are demobilised soldiers, there is likely to be a higher percentage of war criminals on the police forces than in the general population. IPTF should do much more to identify police who are not fit to serve on the forces, both in the Federation and Republika Srpska, and to press for their removal.

- *IPTF should collect information about the possible war crimes culpability of police who have not yet been indicted. While IPTF clearly strives for co-operation with the local police, the desire for co-operation should not take precedence over the imperative to document the war crimes and hold war criminals accountable.*
- *IPTF monitors should identify all police who are planning to stand for office in the municipal elections, so that, if their actions (or non-action) compromise the environment necessary for free and fair elections, complaints can be filed against them with the Election Appeals Sub-Commission, which could then terminate their candidacies for office.*
- *Each of the more than 40 IPTF Field Offices should be instructed to keep files on the police chiefs and deputy chiefs in their areas of responsibility, as well as any police against whom there have been complaints of human rights*

violations, serious non-cooperation with IPTF, or refusal to implement court orders.

- *The IPTF Commissioner and Deputy Commissioner should continue to use their leverage to pressure the Ministers of Interior to dismiss police chiefs against whom there is clear evidence of war crimes, human rights violations or other substantial non-compliance with their responsibilities,¹⁷ and these dismissals should be publicised in order to build confidence among the local population in the rule of law.*

The standard of proof to justify dismissals should not be proof beyond a reasonable doubt, but rather the civil standard of preponderance of the evidence. Police employment is not a right. Police should be held to a high standard of lawfulness; the fact that the evidence may not be sufficient to convict a police officer of a war crime does not mean that he therefore is entitled to continued employment.

B. The Bottom Line: Conditioning Economic Assistance on DPA Compliance

The international community's main source of leverage over the parties to Dayton is economic conditionality. The High Representative has, however, used this power only once, when he called for the suspension of aid to the municipalities of Bugojno, Capljina, Stolac and Vares owing to their adamant refusal to provide security for the minorities in their areas.

In the past year, under the auspices of the World Bank, a framework for investment has been put in place which is already jump-starting the economy in the Federation and could do the same in Republika Srpska. The sums of money involved are massive. A total of \$1.8 billion was pledged for Bosnia and Herzegovina at two donors' conferences early in the year, of which \$1.5 billion is fully committed. Reconstruction contracts worth \$1.02 billion have already been signed, \$700 million had been spent by the end of October and if spending continues at the current rate, \$950 million will have been disbursed by the end of the year.

Since the bulk of the money to reconstruct Bosnia and Herzegovina comes in the form of grants, the international community is both entitled to and should use economic assistance as a tool to achieve political ends. The western tax-payers who are effectively financing the reconstruction programme deserve assurances that their money is spent wisely. As a result, it is only worth putting money into the country, if and when visible and concrete political progress is made. Rebuilding Republika Srpska without first resolving key political issues, in particular the arrest and surrender of persons indicted by the Tribunal, amounts to throwing money at a problem, not dealing with it. Given the European Union's experience of the divided Croat-Bosniac city of Mostar, where more than 260 million DM - close to 5,000 DM per inhabitant - was invested to no avail between 1994 and 1996, such a policy would surely be both costly and doomed to end in failure.

- *Economic assistance should be used to promote compliance with the DPA. It can and should be used to reward entities and municipalities which comply with the DPA and welcome displaced persons back. If entities or municipalities are obstructionist, all aid to their authorities must be stopped. This recommendation does not apply to*

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Police chiefs have been dismissed from Ilidza, West Mostar, Cazin, Bugojno, Prozor and Drvar.

humanitarian assistance (including for housing reconstruction) channelled through non-governmental organisations.

- *The Office of the High Representative should convene a steering committee of all donors to promote better co-ordination among funding programmes. It should also ensure that aid contracts are drafted in such a way that assistance can be stopped if the authorities fail to comply with the DPA.*
- *The High Representative should set out guidelines as to when he intends to recommend withholding of aid, and then apply those guidelines consistently and vigorously.*
- *The High Representative should use his influence to condition economic assistance to the parties on compliance with certain fundamental aspects of the DPA, including those enumerated below.*
- *All aid should be withheld from the Republika Srpska authorities until they arrest Karadzic and Mladic, and they agree to a full extension of the OSCE's mandate, as set forth in Annex 3 to the DPA, to supervise and direct the municipal elections (see the section on Elections for more detail).*
- *Until above conditions are met, humanitarian assistance to people in Republika Srpska should be channelled, to the full extent feasible, through international or non-governmental organisations, rather than through the Republika Srpska authorities.*
- *All aid should be withheld from the Republika Srpska Ministry of the Interior until it makes a firm commitment to vet and restructure the police force in co-operation with IPTF, along lines similar to those agreed by the Federation Ministry of the Interior. Aid should then only be disbursed as the Ministry takes concrete steps to comply.*
- *All aid should be withheld from the authorities in Croat-controlled parts of the Federation until they start to arrest people indicted by the Tribunal.*
- *All economic assistance to Croatia should be suspended until the government of Croatia arrests Dario Kordic. The resumption of aid should be made conditional on progress towards arresting the other indictees within its area of control.*
- *Aid conditionality should be applied to the authorities of the Federation and the Republika Srpska until they agree to re-connect the telecommunications systems of both entities.*

C. Accountability of International Institutions

For many of the reasons that Bosnian authorities, police and soldiers must be held accountable for actions or non-action that undermine the DPA's implementation, so too must the international organisations be accountable to the people of Bosnia and Herzegovina. Respect for Bosnian authorities and basic notions of reciprocity argue for at least the degree of transparency necessary for the Bosnian authorities and people to understand the basis for decisions, and the decision-making processes, that so affect them. If the point of the international encampment in Bosnia is to "teach" democracy, tolerance and good governance to the Bosnians then there is no better way to start than by example.

1. **Transparency and Accountability to the People of Bosnia and Herzegovina**

- *The international organisations should take the opportunity of the London Implementation Conference to announce their intention to publicise their plans of action for the next year through the Bosnian media to the Bosnian people. They should set for themselves discrete undertakings, “achievable goals”, by which their performances may be measured. In particular, and illustratively, the following organisations should publicise the following information.*
- *The World Bank, the International Monetary Fund, the European Commission and other donors should publish information on a regular (perhaps quarterly) basis about their economic assistance packages, including their criteria for going ahead with, or stopping, projects. They should also publish, through the Bosnian media, information about the impact of investments, and a range of economic indicators, such as the economy’s growth rate and unemployment figures.*
- *The OSCE should publish the final report of the Co-ordinator of International Monitoring for the 14 September elections (which it suppressed)¹⁸. It should make clear its reasoning for altering the formula by which seats for the assemblies of Bosnia and Herzegovina, the Federation, the cantons, and Republika Srpska were allocated, which resulted in the loss by opposition parties of 10 seats that they would have won had seats been allocated according to the original, published formula. As early as possible, the OSCE should publish information about how voters can check whether their names are on the voting list for the municipal elections.*
- *UN IPTF should publish information about its process of supervising the vetting and restructuring of the Federation police, and should invite people to submit information about police chiefs and officers that might render them unfit for their positions, including any information about their possible involvement in war crimes.*
- *The Office of the High Representative (OHR), as the organisation with chief responsibility for supervising the implementation of the civilian aspects of the DPA, should prepare information notices in all three local languages, targeted for the local and national media. These should explain what the OHR is doing, its strategies for promoting repatriation and reintegration, its plans for promoting greater accountability of public officials, and Dayton “success” stories, that is, hard evidence showing the benefits for municipalities of complying with the DPA.*

2. **Human Rights: Promoting Greater Effectiveness and Local Capacity**

Since the mid-term DPA review conference in Florence in June, the human rights situation has deteriorated. Harassment of members of ethnic minorities and political opposition increased in the run up to the elections and continued thereafter. Attempts of ethnic minorities to return to their homes have been met with increasing violence and intimidation. Hundreds of minority owned homes have been destroyed since October. Violations committed by, or with the

¹⁸ See section on Elections, below, 2d recommendation.

connivance of, the police and other local authorities are more frequent and more serious.

At least nine international organisations operating in Bosnia and Herzegovina -- some created by Dayton, some with long track records -- devote all or some of their resources to addressing human rights concerns. These include the Human Rights Commission established under Dayton, the Office of the High Representative (OHR); the Organisation for Security and Co-operation in Europe (OSCE); the UN International Police Task Force (IPTF); UN Civil Affairs; the UN High Commissioner for Human Rights (UNHCHR); the UN High Commissioner for Refugees (UNHCR); the European Community Monitoring Mission (ECMM); and the International Committee of the Red Cross (ICRC). As of 1 November, these organisations employed more than 2,000 international staff in Bosnia and Herzegovina who devoted at least some of their time to human rights. In addition, the 43,000 IFOR troops still deployed throughout the country (reduced from an initial force of 58,000) contribute to human rights protection by facilitating freedom of movement and providing security for the international personnel (which enables them to move freely about the country and better pursue their human rights work).

The OHR created a Human Rights Co-ordination Centre (HRCC) and a Human Rights Task Force (HRTF) to help co-ordinate the human rights work of the various organisations. The HRCC has done an increasingly good job of collating human rights information from, and making it available to, the various organisations. Its daily human rights reports are now faxed and sent by e-mail to dozens of recipients. Regrettably, it has not been able to produce translations, or even summaries, in the local languages. Its efforts to ensure that major human rights problems are addressed adequately and to provide greater support for building the capacity of local and national institutions are to be welcomed. However, the HRCC can still take steps to minimise duplication and, more importantly, to increase the effectiveness of efforts to stop violations.

- *The organisations with a significant field presence (IPTF, UN Civil Affairs, UNHCR, OSCE, ECMM) should agree on their respective areas of primary responsibility. This is to reduce duplication, ensure that significant problems receive attention from at least one organisation, and establish accountability of the international organisations for those areas. Creating new working groups and steering boards is no substitute for establishing primary responsibility and, thereby, accountability.*

For instance, IPTF should be primarily responsible for violations by the police (including non-action when they are obliged to act). The OSCE should be primarily responsible for violations of political rights, including freedom of expression, association and assembly; and employment discrimination. UN Civil Affairs, working together with IPTF, should be primarily responsible for unlawful evictions (without court order or fair notice, or accomplished by force or intimidation). UNHCR should be primarily responsible for freedom of movement, backed up, as necessary by IPTF and IFOR. Property issues are so pervasive and complex that they should continue to be handled by the OSCE, the OHR and UNHCR, working together with the local and international Ombudspersons and the Commission on Real Property Claims established under Annex 7 of DPA.

A major area that to date has received inadequate attention is the monitoring of violations of due process and fair trial rights, including access to counsel during the investigation stage, and arrest of ethnic minorities on trumped up charges. UN Civil Affairs and HRCC should address these violations as a matter of priority.

- *In order to build the capacity of Bosnian institutions, the HRCC should translate more of its materials, including its weekly summaries, and should involve the Federation Ombudsmen and representatives of Bosnian non-governmental organisations as active participants in the steering boards and work units that it establishes.*

Currently, the OSCE, ECMM and UNHCR issue reports on the human rights situations they are monitoring. The reports are generally good on recording the initial information discovered by field personnel. However, the reports too often lack information about follow-up.

- *Reports should indicate efforts to investigate the initial story; identify responsible authorities; negotiate a remedy; work with other agencies to achieve a remedy; and, where necessary, transmit the matter for intervention at higher levels. On a periodic basis (monthly or bimonthly), the various organisations, or the HRCC, should analyse the information, call attention to trends, and assess progress or lack thereof. Improved reporting will enhance efforts to remedy problems, as well as the transparency and accountability of the reporting organisations.*
- *It is particularly important that IPTF, in light of the number of its monitors and close work with local police, should publish reports on a regular basis (at least twice a month) on the human rights violations it monitors.*

IV. REPATRIATION AND REINTEGRATION

A. The Cornerstone of DPA

Repatriation and reintegration were ostensibly cornerstones of the DPA. Guaranteed in the constitution of Bosnia and Herzegovina¹⁹ as well as Annex 7 of the DPA, the return of refugees to their homes was already supposed to be under way by the 14 September elections. In the event, however, it was not. To date, out of more than 2.5 million displaced, less than 250,000 Bosnians have returned to their homes, almost all to municipalities in which they belong to the majority nationality. Yet at the same time, a further 90,000 belonging to minority groups have been displaced either under threat or due to territories changing hands from one entity to another, as was the case with the Sarajevo suburbs. The Parties to the DPA are refusing to comply with their commitments and consequently the UNHCR has been unable to start organising repatriation.

UNHCR's repatriation plan is a phased approach: first, the return of internally displaced persons (IDP) to their homes; and second, the return of refugees currently living outside Bosnia.²⁰ UNHCR began by identifying 22 "target return areas" where resettlement

¹⁹ DPA, Annex 4.

²⁰ *Ibid*, p. 8-9.

could begin with the least difficulty because of minimal damage to housing and other basic infrastructure.²¹ As a first step, only returns by members of the local ethnic majority were under consideration.

Specific UNHCR initiatives designed to promote or facilitate minority return have met with negligible success. These include buses which travel routes between major cities in the Federation, Republika Srpska, and Bosniac-Croat communities, organised visits facilitated by UNHCR which allow groups of displaced persons to arrange with local authorities to visit graveyards or property, and, most recently, a resettlement program specifically targeted to towns that are now located in the Zone of Separation, that was unfortunately suspended in November because of security concerns (see below).

UNHCR has put significant effort into the success of its bus lines. Despite rough beginnings many of these lines are now functioning well and, judging by their popularity, providing an important service. Difficulties do exist, however. Certain lines have been forced to shut down for periods of time because of harassment or threat of violence. Due to the risky nature of the project UNHCR depends on the co-operation of IPTF and IFOR. Yet the nature of this co-operation has not been clearly defined. This is a major security concern, important to those who risk travel into regions controlled by another ethnic group.

UNHCR's facilitation of assessment visits to areas controlled by one ethnic group by members of another has had diminishing success. It has been a slow and painful process involving countless hours of negotiations with local authorities by UNHCR staff.. The vast majority of these have so far failed and they have been discontinued in some areas for lack of progress.²²

Even more troublesome is the ailing program to encourage return to the Zone of Separation (ZoS). It was initiated because houses in the area are unoccupied (albeit in great need of repair) and the area itself is heavily patrolled by IFOR. Originally envisioned as a first step in implementing minority return, it has instead become the target of an organised campaign in which vacant houses owned by displaced minorities are systematically destroyed. More than 200 such houses have been destroyed recently - principally by Bosnian Serbs. Currently, resettlement in the ZoS has been suspended as a result of the most severe armed exchanges since the signing of the DPA.

The return of refugees has also become a problematic issue. With refugee host countries overwhelmed by the burden of large numbers of Bosnians (320,000 in Germany), refugee return is beginning to take priority over resettlement of IDPs. Meanwhile, families who remained in Bosnia have occupied homes of potential returnees, are struggling in shared living arrangements, or have been forced into the harsh conditions of collective centres. Local economies and social services are already overburdened. The more refugees return from abroad, the fewer resources will be available to the families of internally displaced. In addition, reconstruction funds are earmarked for refugee assistance at the expense of IDPs which can provoke resentment and tensions.

- *ICG urges the international community to withhold all aid from any municipality, entity or country which obstructs the returns of displaced persons from ethnic*

²¹ UNHCR, "Bosnia and Herzegovina Repatriation Information Reports", September/October 1996, p. 5.

²² UNHCR, Information Notes No. 8-9/96 - August/September 1996, p. iii; UNHCR, "Bosnia and Herzegovina Repatriation Information Reports", September/October 1996, p. 20.

minorities. Even after an aid package has begun to be implemented, the international community should continue to use economic assistance as a political tool and link any investment to the reintegration of all displaced persons. Put simply: the more returnees, the more money, no returnees, no money. Such a policy should also be explained in the local media so that the link is made perfectly obvious. This may in time change the public image of returnees from that of an unwelcome threat to an economic asset.

- *Every effort should be made to ensure that bus services provided by UNHCR crossing the IEBL continue to operate as they are the only means of interaction between residents of the two entities.*
- *The assessment visits should be considered as integral to the resettlement process and non-cooperation should be a factor in economic assistance.*

B. Breaking the Logjam

The international community should consider creative ways to start the repatriation of the estimated 300,000 Serb refugees from Croatia currently living in the Federal Republic of Yugoslavia and Republika Srpska. These refugees are mostly from the Krajina region of Croatia who fled the August 1995 operation Storm of the Croat army. It is likely to be easier to break the repatriation logjam in Croatia than in Bosnia and Herzegovina. Housing to which Serbs can return in the Krajina region of Croatia is less of a problem than in war-ravaged Bosnia and since winter is generally milder in Croatia than in Bosnia and Herzegovina, it is not necessary to wait until spring to begin the repatriation. In addition, Croatia is more susceptible to international pressure: it is the newest member of the Council of Europe and, according to President Franjo Tudjman, fully committed to democratic principles. Moreover, an initiative which concentrates on the plight of Serb refugees should boost the Serb community's confidence in the international community and generate momentum for repatriation within Bosnia and Herzegovina.

The major impediment to the return of the displaced to areas of ethnic majority in Bosnia and Herzegovina has been the lack of resources to rebuild the economic and social infrastructures of communities destroyed by the war.

In addition, the political ground must be prepared before any repatriation of minorities can realistically be expected to produce results. This preparation includes the apprehension of suspects indicted by the Tribunal and the full implementation of all aspects of the civilian provisions of the DPA. These are the inextricable links of a chain to support the repatriation and reintegration of displaced persons. Ignoring a link in this chain will unavoidably lead to the cornerstone of DPA remaining an unattainable goal.

- *ICG recommends that the international community focus on the repatriation of the estimated 300,000 Serb refugees from Croatia currently living in the Federal Republic of Yugoslavia and Republika Srpska.*
- *A concerted and better co-ordinated effort is necessary between, on the one hand, the international agencies and governments providing economic assistance, and on the other hand, the lead agency for repatriation - UNHCR, and additional resources must be made available in order to promote return to majority communities in Bosnia and Herzegovina.*

- *Municipalities which permit and even encourage the return of minorities must be rewarded with economic assistance not only to accommodate the returnees but also to develop the local economic and social infrastructure, thus assisting those who remained during the war. The UNHCR program for “target return areas” must be expanded and reinforced.*

C. Property Claims

During the war, the local authorities in the Federation and Republika Srpska housed people temporarily in homes abandoned by displaced persons. Following the end of the war, the entities confirmed these arrangements in law, in flagrant violation of the human rights protections set forth in the DPA. In addition, by giving property to members of their own ethnic groups, the authorities reinforced the results of ethnic cleansing.

Protection of property rights is central to the return of refugees and internally displaced persons to their homes.²³ Both the international Ombudsperson and the Office of the Federation Ombudspersons have reported that some 70% of all claims received concern property issues. It is estimated that more than 600,000 people may be affected by this problem.

Restoring people to their pre-war homes or settling them in adequate accommodations where they now reside is one of the most difficult challenges faced by the Dayton implementation process. Adequate housing must be found for people whose homes have been destroyed or who cannot, owing to security concerns, return to their homes in areas now controlled by a different ethnic group. The right to adequate shelter in a safe environment for displaced persons may conflict with property rights of owners.

The Commission for Real Property Claims of Displaced Persons and Refugees was established by the DPA (Annex 7) to effectuate the right of displaced persons to have their houses and apartments restored to them or else to receive compensation. The Commission has been slow to start functioning, primarily owing to a shortage of funds.

- *The High Representative should continue to put pressure on the authorities of the Federation and Republika Srpska to implement their commitment to repeal the provisions of the property laws, especially the Law on Abandoned Apartments, that are inconsistent with the human rights protections set forth in the DPA.*
- *The international community must provide adequate financial support to the Real Property Commission if the promises of the DPA are to be more than illusory.*

D. Reconnecting the Telephone Lines

One of the greatest obstacles to reintegration is the lack of telephone communications between the Federation and Republika Srpska. While international organisations and the richer NGOs use satellite phones and call-back companies which route calls via the United States to communicate between the entities, ordinary Bosnians are unable to

²³ DPA, Annex 4: the Constitution of Bosnia and Herzegovina, art. II, para. 5 reads, in relevant part: “All refugees and displaced persons have the right freely to return to their homes of origin. They have the right, in accordance with Annex 7 ... to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any such property that cannot be restored to them.”

phone former friends and neighbours now living in the other entity. The obstacle is not technical but political.

- *ICG calls on the High Representative to make this issue a priority, link its swift resolution to economic aid and champion it as part of an aggressive public information campaign.*

E. Uniform Vehicle Licence Plates

A major impediment to freedom of movement throughout the country is the use in the three ethnic areas of different motor vehicle licence plates that indicate the entity, region and municipality of registration. Police frequently stop cars with plates from the “wrong” region when they cross an inter-entity or inter-ethnic line, on the pretext of checking for insurance or some other possible technical violation. In several municipalities, men driving vehicles with the “other license plates” are regularly detained on suspicion of war crimes, and on occasion are beaten or subjected to unlawful interrogation. Sometimes the police remove the licence plates, thus requiring the car to leave the region immediately and purchase a new plate. There is no law enforcement imperative for distinguishing plates by region; there are fewer than a million cars in the country.

- *Agreement by the parties on a uniform motor vehicle licence plate that does not indicate in any way the entity, region or municipality of the car’s registration would go a long way towards reducing the fear felt by most Bosnians of travelling around the country. The Office of the High Representative has been trying to get the parties to agree on a uniform licence plate; he should pursue the issue as a matter of priority that could be achieved in the short-term and would make a substantial difference.*

F. Security: IPTF and IFOR

1. UN IPTF: More Resources Needed

UN International Police Task Force (IPTF) has deployed more than 1,600 policeman from 34 countries in more than 40 stations throughout the country whose primary mission is to advise and monitor the local police. They are authorised, under the DPA, to have access to all places and records of law enforcement and criminal justice. The IPTF Commissioner has considerable leverage over the Ministries of Interior of both entities owing to his influence with donors regarding aid to the Bosnian police forces. IPTF is to be commended for the way it has developed credibility with local populations in many areas of the country (less so in Republika Srpska owing to a greater lack of police co-operation); for its role in getting several police chiefs dismissed; for negotiating an agreement with the Federation police to supervise their restructuring and vetting; and for trying to reach a similar agreement with the Republika Srpska police.

One way to increase IPTF’s effectiveness in protecting minority communities and property is to increase the resources at its disposal. IPTF was forced to close several offices, including in Ilidza, a Sarajevo suburb where Serbs, frequently the targets of intimidation, said they felt that IPTF’s presence had

been a stabilising factor. Other stations have been so severely under-resourced that monitors have been unable to function at even minimal levels of effectiveness and their safety has been put at risk.²⁴ It makes no sense to go to the expense of fielding 1,600 international police and then not provide them with the necessary vehicles, interpreters and communication equipment for them to be able to do their jobs.

- *IPTF should survey the resource needs of all stations, and should produce a plan justifying current stations and any additional stations it considers necessary to perform its work effectively. The UN Mission in Bosnia and Herzegovina (UNMIBH) should ensure that IPTF has adequate resources, shifting resources from Civil Affairs and Administration, if necessary. In the short term, the European Community Monitoring Mission should coordinate with UN IPTF to ensure better coverage of hot spots. If the UN cannot find the resources, states and international and non-governmental organisations should provide resources and second qualified staff.*²⁵

2. Executive Authority to Investigate Crimes

Currently, IPTF does not have executive authority. Its monitors may “monitor,” “advise,” “train,” and “assist” the local police in the performance of their duties, and they may “investigate” police action or non-action, to ascertain whether the police are properly performing their jobs, but it is unclear whether IPTF monitors may investigate crimes directly and without the consent of the local police.

Several observers of the security situation have suggested that IPTF should be allowed to carry weapons. ICG opposes this option for two reasons: (1) monitors will be at greater risk if the local police and criminals know (or think) they are armed because, when confronted, they are more likely to shoot to avoid apprehension; (2) their capacity to perform their jobs will not be substantially enhanced, since most of their functions depend on a measure of co-operation from the local police. While displaying weapons may, on a first time basis, gain access to police detention cells or records, the local police are likely to devise better ways to hide their prisoners or records in the future.

- *IPTF’s mandate must be sharpened (or if necessary expanded) to make clear that it has independent authority to investigate crimes and police abuse, as well as police failure to take action when obliged to do so. IPTF should set up special investigation units for crimes that the local police have difficulty in solving, e.g., arson, explosions, intimidation of minorities and rape.*

²⁴ For instance, as of August, the Sanski Most station in the Federation (a flash point between Serbs and Bosniacs) did not have a telephone line and the station commander had been paying the station’s rent for four months. Of two working vehicles (for 18 monitors), one had no seat belts or spare tire, the other, no radio.

²⁵ “The IPTF Commissioner may request and accept personnel, resources and assistance from states and international and nongovernmental organizations.” Annex 11, Art. II, para. 2.

3. **Republika Srpska Police: Ways to Enhance Co-operation**

Police chiefs throughout Republika Srpska have failed to co-operate with the IPTF in significant ways and certainly to a much greater extent than the Federation police. The Republika Srpska Minister of the Interior has been promising since at least May that he would enter an agreement with the IPTF Commissioner recognising the latter's authority to supervise a process of vetting, restructuring and re-training the local police. The Minister has yet to conclude such an agreement. A similar agreement was signed by the Federation Minister in April. Unless and until that agreement is signed, IPTF has little leverage over the Republika Srpska police, as evidenced by the numerous occasions when the Republika Srpska police have barred IPTF monitors from places and access to records to which they are entitled, have refused co-operation or even have physically threatened them.

- *Until the Republika Srpska Minister of the Interior concludes an agreement with the Commissioner on vetting and restructuring the police, no aid of any kind should go to the Republika Srpska police.*

4. **IFOR Support**

Currently, IPTF on its own is unable to provide security to minorities who are subjected to violence, intimidation or property destruction. To some extent, however, they have been able to reduce such violence by going on joint patrols through minority areas with the local police or IFOR. In order to provide adequate security to people at risk in these areas, what is needed are more armed patrols or even around-the-clock security. IPTF monitors do not have the capacity to provide security in areas where minorities are present even if they were armed.

- *IFOR should patrol minority areas that have experienced violence, intimidation or house destructions, where possible in co-operation with IPTF but, to the extent that IPTF lacks manpower, then on its own.*
- *IFOR troops should be made available to support IPTF investigations when the IPTF Commissioner so requests.*
- *If UNHCR, IPTF and the OHR believe that abandoned houses are likely to be at risk, IFOR should be prepared to provide them with around-the-clock security. IFOR's Operation COMET, which involved some 4,000 troops over a two-week period in November, succeeded in preventing house destructions in the Zone of Separation. IFOR should study how to make an operation such as COMET more manpower-efficient, and replicate it in other at-risk areas.*
- *Where IPTF does not enjoy the co-operation of the police and feels that monitors may be at risk if they pursue an investigation, IFOR should be instructed to provide them with whatever protection they need.*

V. COMMON INSTITUTIONS

Despite advance planning for the post-election period by the Office of the High Representative and massive international pressure, the common institutions - the tripartite Presidency, the Council of Ministers, the House of Representatives, the House of the Peoples, Constitutional Court and Central Bank - have failed to come together in substance. As a result, the quick-start programme of legislation aimed at piecing Bosnia and Herzegovina back together and drafted by the Office of the High Representative is yet to be considered let alone implemented.²⁶ Two and a half months after polling day the only common institution to have met is the Presidency which came together formally for the first time on 22 October after a 17-day Serb boycott. To date it has held eight meetings, though it has failed to agree even the number of ministers in the Council of Ministers, let alone the allocation of portfolios.

That common institutions have failed to materialise for all practical purposes should come as no surprise to anybody who witnessed the electoral campaign. Particularly in Republika Srpska, the 14 September elections were fought on platforms which were clearly and deliberately inimical to the concept of a Bosnian state. Moreover, many of those who have now been entrenched by the fraudulent elections have staked their careers on, and have a vested interest in, the destruction of Bosnia and Herzegovina. As a result, even when common institutions do come together, they should not be viewed as a panacea. Here the experience of building the Bosniac-Croat Federation and also the European Union's attempts to reconstruct the divided Bosniac-Croat city of Mostar offer some pointers.

Formally, the Federation exists as one entity. The reality on the ground, however, is very different. The two houses of parliament met for the first time on 7 November and finally agreed a common flag and coat of arms - more than two and a half years after the Federation was officially created. Joint Bosniac-Croat institutions pre-dated the elections, yet progress at welding together territory under the control of the Bosnian Army with that under the control of the Croat Defence Council (HVO) has been painfully slow. Displaced persons have this year begun crossing former front lines to return to their homes, but at the same time, in areas run by hard-line authorities, members of minority communities are still being expelled from their homes every week.

Mostar, where municipal elections took place at the end of June, makes for an especially troubling precedent. Just as at the national level, Mostar's elections were supposed to bring two divided entities together and establish common city institutions. In practice, however, it took the personal intervention of US President Bill Clinton even to persuade the Croats to meet with the Bosniacs. And now, five months after polling day, the common institutions which have supposedly been created exist on paper alone.

The importance of forming Bosnia and Herzegovina's common institutions is often exaggerated. If they function in the same way as those of the Federation and Mostar, they will effectively be useless. Moreover, according to the constitution, their responsibility is limited to the following matters: (a) foreign policy; (b) foreign trade policy; (c) customs policy; (d) monetary policy; (e) finances of the institutions and for the international obligations of Bosnia and Herzegovina; (f) immigration, refugee and asylum policy and regulation; (g) international and inter-Entity criminal law enforcement, including relations with Interpol; (h) establishment and operation of

²⁶ Report of the High Representative to the Secretary-General, S-1996/814, par. 86, 1 October 1996. The quick start programme includes provisional laws on international economic relations, citizenship and passport provisions, a provisional central banking, the duration of the parliamentary mandate, immunity, presidency succession, air traffic regulations and also the 1997 state budget.

common and international communications facilities; (i) regulation of inter-Entity transportation; and (j) air traffic control.²⁷

The common institutions do not have the assets or authority which would enable them to rebuild a meaningful Bosnian state, especially taking into consideration the minimal and only grudging support for these institutions from Republika Srpska. This need not be the case, however, if the common institutions, and not the entities, were to succeed to Bosnia and Herzegovina's share of the state-owned assets of the former Yugoslavia. International law suggests that the state of Bosnia and Herzegovina should succeed to these assets. Of course, the state can then decide to devolve these assets to the entities. However, despite the significant ramifications for Bosnia and Herzegovina of the succession to the former Yugoslavia's state owned assets, the international community has avoided grappling with the issue. Based on the unexamined assumption that the entities are the direct successors to Bosnia's share of the former Yugoslavia's assets, the international community has proceeded with the drafting of privatisation laws.

²⁷

DPA, Annex 4, Article 3 (1).

- *The international community must support the state of Bosnia and Herzegovina's right to succeed to its share of former Yugoslavia's state assets. Such support is consistent with the international law of state succession and will provide substance to the common institutions of Bosnia and Herzegovina, thus bolstering the country's viability as a unitary state.*

VI. ELECTIONS

The 14 September elections in Bosnia and Herzegovina were deeply flawed. The Parties to the DPA failed to create the minimum conditions for free, fair and democratic elections. The international community floundered at every step during the months preceding the elections. In the interest of ramming through elections according to the strict timetable set at Dayton, the Organisation for Security and Co-operation in Europe (OSCE) chose to pander to the nationalists, instead of challenging them. As a result, those nationalists were effectively able to dictate the terms on which the elections were waged - leaders indicted by the Tribunal were left free to influence the outcome, opposition and minority candidates had to campaign in an atmosphere of fear and intimidation, and the main media outlets catered to the ruling parties. Under such handicaps the elections were bound to confirm the effective division of the country on ethnic lines, which indeed is what happened.²⁸

When back in June, the OSCE Chairman-in-Office Flavio Cotti certified that elections in Bosnia and Herzegovina could go ahead, he admitted that minimum conditions for holding a free, fair and democratic poll did not exist.²⁹ Those conditions deteriorated further in the months between Cotti's certification and 14 September polling day. Although that day passed with minimal violence, the event cannot be considered a triumph of democracy as the relative success or failure of the elections should not be viewed exclusively in terms of the level of violence on the day. Instead, it must be measured by the degree of genuine choice open to the electorate, that is the level of freedom and fairness involved in all aspects of the electoral process which influence voters' decisions on polling day. Moreover, it must be measured by the transparency of the vote counting process and the effective installation of the common institutions.

Once the date for the poll had been fixed under considerable outside pressure, the OSCE had an enormous task to accomplish in a very short time. The OSCE did not have the institutional experience to meet this challenge; this deficit was exacerbated by the priority given to political considerations over merit in the selection of the mission's top ranking officers, few of whom had experience with managing elections, let alone familiarity with the country's politics. While many of the mission's leaders were competent and had experience with aspects of election monitoring, public relations or politics, the mission was characterised by a decided lack of leadership, vision or talent. Good intentions, resources and even political will are no substitute for leaders who are willing and able to establish a climate of sound management, frank discussion, awareness of the national context, and accountability at all levels.

Serious problems encountered by the organisation during the voter registration process, onerous security measures on polling day, and the absence of freedom of movement disenfranchised up to one quarter of the electorate. In addition, there was absolutely no check to discourage voters outside the country from voting twice: once by absentee ballot and again in person on voting day. The least the OSCE could have done would have been to flag the problem for international monitors. Instead, it kept quiet, hoping, perhaps, that no one would notice.

²⁸ ICG has published three reports on the elections on 13 August, 22 September, and 30 October 1996.

²⁹ Certification of the Elections in Bosnia and Herzegovina, Declaration of the Chairman-in-Office, Federal Councillor Flavio Cotti, at the Permanent Council of the OSCE, 25 June 1996. He acted pursuant to authority set forth in the DPA, Annex 3, Art. I(2).

Furthermore, the OSCE declined to impose any balance requirements on the memberships of the Local Elections Commissions and the Polling Station Committees (PSCs). As a result, in most areas of the Republika Srpska and Croat-controlled parts of the Federation, the PSCs were comprised entirely of ruling party members. They were able to exclude opposition party representatives for portions of the day and, owing to spotty coverage by international monitors, thus had the opportunity to commit all sorts of fraud (including allowing unauthorised voters to vote, excluding authorised voters, and filling out ballots). International monitoring of the vote counting process during the subsequent days was similarly inadequate.

The result of such shortcomings was a suspiciously high voter turn-out figure suggesting widespread fraud, which the OSCE and the Provisional Election Commission (PEC) refused to investigate. While everyone expected a measure of fraud, the incompetence and know-nothing-do-nothing attitude of the OSCE was a crushing disappointment, permitting a far more fraudulent election than the people of Bosnia and Herzegovina had a right to expect. To add insult to injury, following election day and without notice to the parties, the PEC changed the formula for allocating seats for the assemblies of Bosnia and Herzegovina, the Federation, Republika Srpska, and the cantons, thereby cutting by at least ten the number of seats the opposition parties would have won under the original formula.

Despite these serious shortfalls, the PEC certified the election results on 29 September and the UN Security Council terminated sanctions against Republika Srpska and the Federal Republic of Yugoslavia on 1 October. Rather than challenge the cover-up, the international community chose to keep its collective head in the sand. Had the elections not been certified and the sanctions lifted, the international community would now have been in a far stronger position to insist on full international supervision of the municipal elections.

The consequences of this misguided approach are already apparent. Although elections were supposed to lead to the creation of common institutions in Bosnia and Herzegovina and thus help reconstruct a unitary State, those institutions still do not exist in substance more than ten weeks after polling day. Instead, emboldened by a mandate which derives from elections that catered to the nationalists and war criminals, the newly-elected authorities are systematically undermining the Bosnian State.

Notwithstanding, the international community has another window of opportunity to improve conditions in the country, that is the twice postponed municipal elections now scheduled to take place next spring. Getting the municipal elections right will be difficult because of the mandates awarded to nationalists in the 14 September poll. It is critical that the international community retain charge of the municipal elections, i.e. that the mandate of the OSCE be extended. If municipal elections are left entirely up to the entities, the standards by which they are organised will be even lower than those at the national level.

Such an outcome will surely spell the end of Bosnia and Herzegovina as a unitary State and may even plunge the country into a further round of war. To avoid this, the interval until next spring must be used to improve not only the technical preparation for the elections but also the political conditions:

- *Above all, the OSCE must do the job with which it was entrusted in the DPA, namely to “supervise ... the preparation and conduct” of the elections and assist the local governments in creating the necessary conditions for free and fair elections.³⁰ Requesting the OSCE merely to “provide assistance for the preparation and conduct” of the municipal elections as stated in the concluding document produced at the Paris conference is not sufficient.³¹*
- *If something is blatantly wrong, the OSCE and the PEC must address the issue, not cover it up. The first steps must be to carry out a thorough actuarial and demographic study, thus establishing the exact size of the electorate, and to produce an up-to-date electoral register in each municipality. Without this, the potential for fraud remains too great.*
- *The final report of the Co-ordinator of International Monitoring (CIM) for the 14 September elections, suppressed by the OSCE owing to its critical evaluation of the organisation’s performance, must be published and the recommendations implemented.*
- *In order to dilute the overwhelming influence of the nationalists, the PEC must be opened up to alternative voices from both the Federation and Republika Srpska.*
- *Electoral engineering which occurred during the voter registration period for the 14 September poll must be reversed and any further abuse must be forestalled. Displaced persons should not be allowed to cast their ballots in a “municipality in which they intend to live in the future”.³²*
- *Well-trained international observers and opposition representatives must be present at every polling station at all times during the poll; the separate “supervisory” and “monitoring” functions of international teams must be combined under one independent co-ordinator to eliminate duplication as well as gaps, and make the observation far more effective.*
- *The chain of custody of ballots in transit to counting centres must be secured and documented properly; the monitoring and supervision of the counting process must be improved.*
- *Recommendations made by the Election Appeals Sub-Commission (EASC) in its report to the Head of Mission must be enacted into the PEC Rules and Regulations, in particular the PEC must grant the EASC powers to annul results from specific polling stations and municipalities where fraud is found to affect the integrity of the vote, and provide for repeat polling.³³*
- *The Media Experts Commission’s mandate must be strengthened and its composition improved to ensure that the major broadcast media provide fair access to and coverage of opposition parties and independent candidates. The media must not be allowed to broadcast statements by candidates which are contrary to the provisions of DPA, especially discourse challenging the territorial integrity of Bosnia and Herzegovina.*

³⁰ DPA, Annex 3, Articles I and II, emphasis added.

³¹ Conclusions of the Ministerial Steering Board and of the Presidency of Bosnia-Herzegovina, Guiding Principles of the Civilian Consolidation Plan, Paris, 14 November 1996, Article 4, emphasis added.

³² PEC Rules and Regulations, Article 10-c.

³³ EASC, Report to Head of Mission, 4 October 1996, Part 4, Recommendations, PEC *Bilten*, October 1996, Sarajevo.

Without these measures, municipal elections next spring are bound to confirm the power of the very same local officials who in many cases were responsible for ethnic cleansing and other war crimes in their respective municipalities, and the return and repatriation of displaced persons will remain an unobtainable goal.

24 November 1996
Sarajevo

ABOUT THE INTERNATIONAL CRISIS GROUP

“We want to head off crises before they develop,
rather than react to crises after they happen.”

Senator George Mitchell, ICG Board Chair

The International Crisis Group (ICG) is a multinational non-governmental organisation founded in 1995 to reinforce the capacity and resolve of the international community to head off crises before they develop into full-blown disasters. ICG board members - many of them high profile leaders in the fields of politics, business and the media - are committed to using their considerable influence to help focus the attention of governments, international organisations and the private sector on impending crises and to build support for early preventive action.

Since February 1996 ICG has been engaged in Bosnia and Herzegovina in support of the international effort to implement the Dayton Peace Agreement. Based in Bosnia, the ICG staff have monitored progress towards implementation of the peace accord, identifying potential obstacles, alerting the international community to the existence of such obstacles and advocating strategies for overcoming them. At all times ICG's priority has been to assist the international community, including all those organisations involved in implementing the peace agreement, and to identify and pre-empt any threats to the peace process before they have a chance to re-ignite the conflict that has ravaged the region since 1991.