

# BOSNIA-HERZEGOVINA

## From Promise to Reality

### *agenda for the international community and new High Representative*

*On 30 May 1997, the Peace Implementation Council appointed Carlos Westendorp to succeed Carl Bildt as the High Representative of the international community in Bosnia-Herzegovina. In addition the international community has reiterated its support for the peace process. But at what point does an agreement guaranteeing peace, justice, and human rights become a cruel fiction? When does a document enshrining basic rights and freedoms become merely a paper promise? The General Framework Agreement for Peace in Bosnia and Herzegovina (Peace Agreement) was initialled in Dayton, USA on 21 November 1996 -- 18 months ago.<sup>1</sup> The gap between the principles supposedly upheld in that text and the reality of continuing human rights violations on the ground has grown dangerously wide. Whatever credibility the international community had managed to recover for itself with the negotiation, signing, and proposed implementation of the peace agreement now risks being lost irretrievably in a fog of inaction, internal disorder and dissention.*

It was outrage at the widespread human rights violations committed in Bosnia-Herzegovina which brought forth international support for the peace efforts. The people of Bosnia-Herzegovina and members of the international community who were appalled by the human rights violations committed against its citizens applauded provisions which would attempt to put right the grievous wrongs: those responsible for grave breaches of humanitarian law and crimes against humanity would be brought to justice, the rule of law would be re-established, and, perhaps most importantly, those expelled from their homes by those attempting to create areas of one nationality would have the right to return to their homes. However, the Peace Agreement owes more to international pressure than to the will of the signatories to achieve peace. Although the situation has improved dramatically in the past 18 months -- the former front lines have been quiet, formerly empty shelves are filling with goods, houses are being renovated, and the country's infrastructure is under repair -- the authorities in former Yugoslavia have failed to realize all but a few of the most important of the Peace Agreement's grand goals. The rhetoric of nationalist triumph continues to win more popular favour than the hard issues of reconciliation or human rights for all citizens of Bosnia-Herzegovina. Human rights violations continue to be reported on almost a daily basis, more than two million people remain displaced from their homes, relatives wait for news of more than 20,000 people who are still unaccounted for (many of whom are

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<sup>1</sup>For a comprehensive description of the mandates and powers of the intergovernmental organizations and bodies charged with implementing the provisions of the Peace Agreement, see *Bosnia-Herzegovina: the international community's responsibility to ensure human rights*, June 1996, (AI Index EUR 63/14/96). Although a year old, with a few exceptions the descriptions of the organizations remain unchanged and, unfortunately, many of the criticisms and recommendations in the paper remain valid.

"missing" or who "disappeared"), and almost all those responsible for designing and carrying out the appalling human rights atrocities which shocked the world remain at liberty.

While protecting the human rights of its citizens should be as much of a priority for the authorities in Bosnia-Herzegovina as it is for the international community, the Parties have shown little willingness to implement those aspects of the Peace Agreement which would grant former adversaries the basic human rights denied them during the war. Intervention to correct these wrongs is dependent on diplomatic pressure, yet the authorities consistently refuse outright to comply with, or even ignore, requests for rectification of wrongs, dismissal of offending authorities, and occasionally even merely to provide information. Without clear consequences for the parties concerned, diplomatic approaches have proven to be an extremely weak and short-sighted tool; after four years of international peacekeeping, the parties are well used to calling the international community's bluff.

### *Link lasting peace to human rights*

In order for peace to be durable, the human rights of Bosnia-Herzegovina's citizens must be respected. In the time remaining for the international community to make a change in Bosnia-Herzegovina, it must direct its resources towards ensuring that the human rights guarantees of the Peace Agreement are implemented, and the new High Representative must take the lead in placing human rights at the top of his agenda. The obstacles facing the new High Representative demand that his strategy to protect human rights must take into account the impact of other regional developments on the implementation of the Peace Agreement, in particular the use of provisions by regional authorities in other agreements, such as the Erdut Agreement for Croatia. In collaboration with the United Nations (UN) Transitional Administrator for Eastern Slavonia (Croatia) and heads of other international organizations, the High Representative must press the Croatian and Federal Republic of Yugoslavia (FRY) authorities to ensure that a regional strategy is developed and implemented to solve the key problems such as the return of refugees and displaced persons to both Bosnia-Herzegovina and Croatia.

### *End impunity for war crimes*

As a matter of utmost priority, the international community must use its resources to secure the arrest of those indicted by the Tribunal. Of the 75 people indicted by the International Criminal Tribunal for the former Yugoslavia (the Tribunal), only nine have been taken into custody.<sup>2</sup> The majority of those indicted (51) are believed to reside in the Republika Srpska. The international community has responded to the need for those indicted to be brought to trial by encouraging the national authorities to make the appropriate arrests. However, Republika Srpska has failed to make a single arrest and has openly questioned the authority of the Tribunal. At least 10 people indicted by the Tribunal are reportedly serving with Republika Srpska police forces, although four of them who were serving in Prijedor were reportedly "temporarily suspended" after the *Boston Globe* exposed the story.<sup>3</sup> Amnesty International has repeatedly called upon states

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<sup>2</sup>Of these nine men, two, Dražen Erdemović, and Duško Tadić have been tried and remain in custody; one other, Djordje Djukić, was released from custody on humanitarian grounds and has since died. The other six who remain in custody in The Hague and await trial are Zlatko Aleksovski, Tihomir Blaskić, Zejnil Delalić, Hazim Delić, Esad Landžo, and Zdravko Mučič.

<sup>3</sup>War Criminals Watch, 4 April 1997, as reported on p. 66 of *Going nowhere fast: refugees and internally displaced persons in Bosnia and Herzegovina*, International Crisis Group Report 23, 1

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contributing personnel to the Stabilization Force (SFOR, formerly Implementation Force or IFOR) and the Parties to fulfil their legal obligations under international law to seek out and arrest persons indicted by the Tribunal.<sup>4</sup> The policy of avoidance which the North Atlantic Treaty Organization (NATO) powers have chosen to follow has resulted in impunity for the indicted and an increasing threat to the credibility of the Tribunal. Unless those indicted by the Tribunal are brought to trial, the entire peace process risks ending in complete failure.

### *Ensure an effective and sustainable response to human rights violations*

Within Bosnia-Herzegovina, each international agency has a different approach to responding to human rights violations. Generally, most organizations intervene at the regional level with the appropriate authorities, and usually the organizations coordinate informally at the local level to ensure that their approaches do not overlap. However, when such interventions are unsuccessful, further action happens only at the highest level, at projects or working groups initiated by the Human Rights Coordination Centre (HRCC) in the Office of the High Representative, or through pressure on the relevant party by high-level officials of the lead agency on the issue. Because of competing priorities and the obvious lack of time and resources, many issues fall through the cracks and are never addressed, or issues which are initially addressed are not pursued. Even those violations which are addressed do not enjoy any guarantee they will be resolved. This was demonstrated by the incident in Mostar on 10 February 1997 in which one Bosniac man was shot dead and at least 25 other Bosniacs wounded when visiting a cemetery on the Bosnian Croat side of Mostar. To resolve this case, the international community pulled out all the stops: The International Police Task Force (IPTF) conducted a special investigation which implicated three police officers, the Office of the High Representative criticized the subsequent trial and requested that correct legal proceedings based on a new indictment take place, the issue was reported several times to the UN Security Council, and most recently, the Human Rights Ombudsperson, a national institution sponsored by the Organization for Security and Co-operation in Europe (OSCE), issued a special report on the incident in late April 1997 concluding that the incident and the subsequent court proceedings violated the European Convention for the Protection of Human Rights and Fundamental Freedoms. Despite all this activity, the Bosnian Croat authorities have not complied with the international community's demands to initiate new trial proceedings and bring those responsible to justice.

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May 1997.

<sup>4</sup>See *Bosnia-Herzegovina: The duty to search for war crimes suspects* (AI Index: EUR 63/08/96), March 1996; and *Bosnia-Herzegovina: Amnesty International renews call for IFOR to comply with international law*, (AI Index: EUR 63/11/96), April 1996.

The international community has had more success when it has had at its disposal mechanisms with teeth, such as the OSCE Election Appeals Sub-Commission, which had the authority to sanction election candidates or their parties, and the IPTF non-compliance and vetting procedure in the Federation, which has the authority to remove officers from the Federation police forces. However, the vetting procedure has not been agreed to by the Republika Srpska police, and the international community thus relies solely on the will of the Republika Srpska authorities to comply with its requests for the dismissal of police officers found to have violated human rights violations. For example, IPTF and other international organizations have repeatedly raised the case of the death in custody of a Bosniac man, Hasan Kova\_evi\_, on 1 August 1996 in Banja Luka (Republika Srpska). Autopsy reports have reportedly indicated that he died of internal injuries believed to have been caused by severe beating. However, despite international calls for the suspension of five police officers reportedly responsible, the Republika Srpska police have only deducted a small fine from the officers' wages, and the police have been unwilling to provide complete information about their alleged investigations into the incident.<sup>5</sup> In addition, in response to the discovery that individuals indicted by the Tribunal are serving in the Republika Srpska police forces, IPTF repeatedly asked the Ministry of Internal Affairs to provide a list of the names of all police officers serving in the Republika Srpska. Republika Srpska Minister of Internal Affairs Dragan Kijac has refused to provide this information on the grounds that details about police officers are a state secret.<sup>6</sup>

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<sup>5</sup>Information from the OHR Human Rights Coordination Centre, 20 March 1997.

<sup>6</sup>*OHR Bulletin No. 38*, 10 January 1997, p. 3-4.

Although international administration can be a useful tool, it is not a durable solution for human rights protection. The Peace Agreement established a network of human rights institutions to redress human rights violations. However, they have not been backed with the necessary political support and they have been expected to operate with grossly inadequate resources.<sup>7</sup> For example, the Human Rights Chamber, one of the Human Rights Commission's two parts, by the end of May 1997, had still not delivered a decision on the only case in which it has conducted a public hearing, the case of "missing" Father Tomislav Matanović. There are more than one thousand provisional dossiers of human rights violations open before the Human Rights Chamber. If empowered with political support and integrated into the international community's mechanisms for responding to human rights violations, the national human rights institutions would be the most sustainable vehicles for human rights protection. However, the Peace Agreement unrealistically envisaged that the Parties would fund some of these institutions out of their own budgets, a decision which has left these important institutions critically impoverished. The funds received by the Human Rights Chamber lasted only until January 1997, and since that time the 14 judges, who meet only once a month, have worked with neither pay nor reimbursement for their expenses. The head of the Chamber, Peter Germer, reportedly threatened resignation in July 1997 in protest at the lack of funds.<sup>8</sup> On 26 March 1997, the UN Expert on Missing Persons in the former Yugoslavia, Manfred Nowak, resigned because of lack of support from the international community; in particular he complained that there were insufficient funds for exhumations. The international community must recognize that funding the national human rights institutions is as important a contribution to the infrastructure of Bosnia-Herzegovina as the more generous funds which have been provided for physical reconstruction.

To be sustainable, however, human rights implementation should not rely exclusively on the presence of international institutions or organizations. The responsibility to protect human rights is not only the responsibility of the authorities to the international community, but *also* the responsibility of the authorities to their own citizens. Some of the most promising initiatives in the past 18 months have arisen when authorities have been made accountable to their relative constituencies, and the international community must encourage and support similar creative initiatives. For example, at the initiative of Principal Deputy High Representative Michael Steiner, a movement of displaced persons and refugees from all parts of Bosnia-Herzegovina, the Coalition for Return, was formed on 30 October 1996 to encourage those most affected by the war to become a significant political force at the grass-roots level. Displaced persons have been used and manipulated by the authorities, and while the goals of the Coalition for Return are yet to be accomplished, as one of its members stated: "If the displaced persons of various communities take up the return issue themselves, local authorities will have to respond because their political support depends on the local community, including the displaced."<sup>9</sup> A similar initiative was

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<sup>7</sup>For an explanation of the structure and role of the Human Rights Commission, see *The international community's responsibility to ensure human rights*, p. 24 - 27; for discussion of the budget for human rights implementation, see *ibid* p. 38-43.

<sup>8</sup>*Human rights judge says Bosnia mission lacks funds*, Reuters news agency, 28 May 1997.

<sup>9</sup>Quoted in *Going nowhere fast: refugees and internally displaced persons in Bosnia and Herzegovina*, International Crisis Group Report 23, 1 May 1997, p. 22.

developed previously for associations of missing persons, who were invited to inter-party meetings chaired by the International Committee of the Red Cross (ICRC) until that process was discontinued in January 1997. Grassroots initiatives and new non-governmental organizations are multiplying rapidly in both entities, and these initiatives should be supported as well.

### *Assert leadership*

Ultimately, many of the international community's difficulties stem from lack of leadership and in particular the failure of the High Representative to take a strong and visible lead in managing the essential human rights component. Human rights monitoring has been a by-product, rather than the focus, of the international presence in Bosnia-Herzegovina. The new High Representative has the opportunity to assume strong authority take the initiative in not merely coordinating but leading the international presence in Bosnia-Herzegovina. He must commit the necessary resources to make this a priority. The new High Representative must also be given the necessary support by relevant capitals and headquarters to do so.

The system covering how human rights violations are monitored, reported, and addressed also needs urgent review. In assuming prime responsibility for the civilian aspects of the Peace Agreement, the High Representative inherits the complicated network of intertwining inter-governmental and non-governmental organizations, each with separate but overlapping mandates. Each organization reports back to its own headquarters and, as a consequence, the individual priorities of each organization take precedence. The recently organized HRCC Steering Board, which regularly brings together the heads of human rights of the Peace Agreement's implementing agencies, is an important forum for coordination of the international presence. Despite such helpful initiatives, many of the practical difficulties in the human rights effort originate from a basic failure in coordination of, and cooperation between, the many international organizations. To name only a few such problems of coordination: the principal agencies have essentially overlapping mandates on human rights concerns, vitally different geographical areas of responsibilities and chains of commands as well as different methodologies in researching, reporting and responding to human rights violations. Furthermore, inter-organizational bickering has led to prohibitions on the cooperation which is essential for division of responsibilities to be successful. For example, the need for independent trial monitors is crucial given both the number of those facing trial in national courts on war crimes charges, and the importance of the judiciary in establishing rule of law. Although a much-needed project for trial monitoring is now organized in the HRCC, past failure to coordinate trial monitoring has resulted in numerous monitors appearing at the same trial. These monitors then presented different conclusions concerning the fairness of the trial, possibly because they had not all been trained regarding international fair trial standards, or they were not using professional court interpreters. Field organizations must avail themselves of the resources within the HRCC for coordination, and the international community must ensure that resources are available which will ensure that those who are sent to monitor trials are adequately trained and have qualified interpretation. Furthermore, although informal cooperation is common in many areas, Amnesty International was told by field staff of at least two IPTF offices that they were under orders not to share information on cases with "European organizations," and similarly met

OSCE staff who were under orders not to share their reports with staff from any other agency.<sup>10</sup> Most importantly, there is no single body responsible for holding the implementing organizations accountable for meeting their human rights obligations.

The OSCE is specifically referred to by the Peace Agreement as having a human rights monitoring role, but Amnesty International remains unconvinced that the mission has given sufficient attention to human rights.<sup>11</sup> Although with few exceptions the field staff whom Amnesty International has met have been committed, professional and dedicated to investigation of individual cases, the OSCE Mission has given clear priority to its responsibilities to organize and supervise elections, diverting resources from human rights monitoring to preparation for the elections at a time when this decision also compromised their responsibility to determine whether the conditions existed for free and fair elections, a determination which relied upon information about the human rights situation. The OSCE Mission has also always been plagued with a shortage of staff, due partly to a hiring policy of secondment from governments reluctant to commit the necessary resources. Its human rights activities are concentrated on freedom of assembly, association, expression and movement -- issues of primary importance in the context of elections. The bulk of the day-to-day gathering of information about police-related human rights violations is collected by the IPTF and processed through the UN system. Field officers of the UN High Commissioner for Refugees (UNHCR) gather information and respond to refugee issues. However, these divisions of labour were not the result of careful discussions and planning, but of the fact that in 1996 the OSCE mission itself marginalized the human rights element in all aspects they considered irrelevant to the elections, and other organizations found themselves taking on these human rights monitoring duties as an expansion of their mandated activities.

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<sup>10</sup>Conversations by Amnesty International delegates with field staff, November and December 1996.

<sup>11</sup>See Annex VI of the Peace Agreement.

As a result of recent bolstering of the force, the IPTF will soon have approximately 2,000 officers poised alongside the domestic police in 53 stations throughout the country conducting over 450 patrols per day. They are in an advantageous position regarding human rights monitoring considering the extent to which police are responsible for human rights violations, either by acts of commission or omission. IPTF has recognized the importance of its role and its mandate was expanded in December 1996 to include investigation of abuses by the police. A structure which would ensure that IPTF officers receive support concerning human rights issues has been established at a snail-like pace. The creation of appropriate structures for investigation of police-related human rights abuses has been similarly slow. Amnesty International welcomes the Security Council's decision to add 120 officers to the force specifically to strengthen the IPTF's capability to investigate human rights abuses.<sup>12</sup> However, in the past many of those specially appointed as human rights officers have had no human rights background, and the vast majority of IPTF officers remain inadequately trained in human rights issues.<sup>13</sup>

In reassessing the civilian components of human rights implementation, the new High Representative should strengthen the capabilities of his own office's HRCC. With staff dedicated or liaising from the principal agencies, the HRCC has operated primarily as an information clearing house, although its Steering Board is, as previously mentioned, not only an important forum for coordination of the international presence, but also establishing policy direction. However, because of its meagre resources, reliance on cooperation from other, sometimes unwilling, agencies, and relatively low profile, the HRCC has been able to do little long-term work. Instead, it has primarily addressed the most important priorities as they arise. If the HRCC and its Steering Board are to create an overall strategy that would identify the long-term human rights issues and develop tools the international community can use to address them, it must be supplied with adequate resources and authority.

One serious gap in the current arrangement that the High Representative must address is the absence of comprehensive human rights reporting. Neither the IPTF nor the OSCE has a public reporting mechanism on human rights issues (thematic reports do not fulfil the need for comprehensive reporting). The Office of the High Representative is the only coordinating body which has the cross-agency capability of issuing comprehensive periodic reports. The HRCC issues daily reports, and while they are useful for monitoring day-to-day developments, they do not address the need for periodic analyses of human rights violations. Without such comprehensive information, not only is it impossible to recognize the more important human rights trends, but refugees have no recourse to concrete information about the human rights situation in the areas where they hope to return. Furthermore, it means that information about violations which have taken place is lost forever as there is no independent and impartial record of

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<sup>12</sup>Security Council Resolution 1107(1997), 16 May 1997.

<sup>13</sup>Although the UN Centre for Human Rights has conducted training in human rights issues for IPTF officers, most of those with whom Amnesty International delegates have had contact were not able to draw upon human rights provisions in their work, and some IPTF officers excused blatant human rights violations such as ill-treatment by noting that it is common practice in their own countries. Training for UN IPTF human rights officers is being planned as of June 1997.

what has taken place. If it is to perform this essential task, however, the international community must ensure that the HRCC is granted the necessary resources to complement its already overstretched staff.

The extensive SFOR military presence can also be a valuable tool in reporting and preventing human rights violations. The High Representative and SFOR commanders should ensure that operating procedures are in place and all necessary orders given to enable SFOR troops to intervene to prevent human rights violations and ensure their immediate and effective investigation by the appropriate agencies.

### *Develop and implement a strategic action plan*

Amnesty International is deeply concerned that the lack of progress in the 18 months since the Peace Agreement was signed indicates that the domestic authorities are simply stalling on their commitments until the international community loses patience and eventually departs. Correspondingly, it seems that the international community is committed to human rights in Bosnia-Herzegovina only to the extent that it can exit without losing face.

In recent weeks, however, the international community seems to have woken up to the fact that if the civilian provisions of the Peace Agreement are not implemented by 1998, the few and hard-earned successes of the international community's engagement in Bosnia-Herzegovina may be lost. On 30 May 1997 the Steering Board of the Peace Implementation Council (PIC) "reaffirmed its support and commitment to full implementation" of the Peace Agreement, and agreed that "all the authorities of Bosnia and Herzegovina are failing to live up fully to their obligations under the Peace Agreement".<sup>14</sup> Areas identified for further progress included reduction of arms, unification of the country, full implementation of the Constitution, economic reform, conditions for refugee return, public security, freedom of movement, local elections, media, and funding of national institutions. Rather than being integrated into the discussion of these topics, human rights were given attention in only three paragraphs which discussed discrimination, harassment and violence on ethnic or political grounds, as well as cooperation with the Property Commission.<sup>15</sup> Almost all of the points mentioned by the PIC contain elements which are essentially human rights issues, and they deserve more than just lip service. They deserve an action plan.

The High Representative should develop a strategy which has at its centre the essential, underlying requirement of improving the protection of human rights. Amnesty International calls upon the international community to give him all the necessary resources to fulfil his task, noting that governments will have an opportunity to do so at the Donors' Conference planned for 24 June 1997. Amnesty International encourages the new High Representative to review the

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<sup>14</sup>*Political Declaration from Ministerial Meeting of the Steering Board of the Peace Implementation Council, Sintra Portugal, 30 May 1997, paragraphs 8 and 5.*

<sup>15</sup>*ibid.*

recommendations from Amnesty International's June 1996 report *Bosnia-Herzegovina: the international community's responsibility to ensure human rights*.

Amnesty International further recommends:

- *The international community should, as a matter of priority, ensure that those indicted by the Tribunal are brought to trial, recognizing their own duty under international law to ensure that SFOR personnel search for, arrest, and transfer indictees to the Tribunal when domestic authorities continue to fail to do so, as the failure to do so endangers the whole of the peace process;*
- *The new High Representative should develop, in consultation with relevant inter-governmental and non-governmental organizations, a long-term plan for sustainable improvement in the human rights performance of the parties, with emphasis on empowering the national institutions to function effectively and domestic organizations to assume an effective monitoring role upon the international community's departure;*
- *The new High Representative should ensure that national institutions created by the Peace Agreement to redress human rights violations are integrated into the international community's responses to human rights violations. He should support and develop further initiatives which reinforce the accountability of authorities to their constituencies; the new High Representative should ensure that the huge reconstruction budgets for Bosnia-Herzegovina include adequate resources to protect and promote human rights effectively;*
- *The international community should support the national institutions with adequate financial and technical resources as well as the political support necessary to ensure implementation of their decisions. This should include support and resources for national institutions to be able to function efficiently, as well as support, financial and otherwise, for grassroots non-governmental initiatives. It should also include political pressure on the Parties to ensure better protection of human rights; for example by putting the necessary pressure on the Republika Srpska authorities to be part of the restructuring of its police force by the IPTF;*
- *The new High Representative should not merely coordinate, but take a strong and visible lead in managing the essential human rights component of the civilian aspects of the Peace Agreement, as well as provide leadership to ensure that, together with the UN Transitional Administrator for Eastern Slavonia, Baranja, and Sirmium, pressure is maintained on the parties to ensure implementation of both the letter and spirit of the (Dayton) Peace Agreement, and the Erdut Agreement. He must assume ultimate responsibility for their fulfilment by international organizations, and in particular ensure that human rights violations are adequately monitored, reported and addressed;*
- *Relevant capitals and headquarters of international organizations should ensure that they delegate the necessary authority to their field missions to enable them to respond to the*

*duties of fulfilling their mandates, with the lead of the High Representative. They should ensure that their field missions are adequately and responsibly staffed with experienced human rights personnel, and supply comprehensive, intensive and effective training for those whose responsibilities include human rights monitoring duties.*