From Nuremberg to Dayton and Beyond: The Struggle for Peace With Justice in Bosnia

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I. CURRENT SOLUTIONS TO POST-COLD WAR CONFLICTS

Bosnia is a landmark human rights catastrophe. At long last, after three years of genocidal warfare, the current effort to resolve the Bosnia conflict has involved an unprecedented combination of military force, aggressive diplomacy and humanitarian law — all deployed in a highly unstable post-Cold War strategic environment. The stakes for the success of this effort are high.

The Cold War had prepared the international community to meet a different type of conflict, the kind it faced in Iraq’s invasion of Kuwait — a clear-cut cross-border invasion by a foreign aggressor. Bosnia, by contrast, confronted the world with a war that Europe had not thought it would see again: a genocidal, ethnic-religious conflict, generating massive atrocities against civilians, creating millions of refugees and displaced persons within a formerly unified nation, all among a welter of cross-cutting-population groups.

THE DAYTON ACCORDS

Clearly, it is too early to pass judgment on the success of the current international effort in Bosnia.

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We are at the beginning stages of implementing the diplomatic product of this effort, the Dayton Accords, and many important challenges are still pending or yet unforeseen. We face the daunting prospect of facilitating free and fair elections, removing war criminals from positions of political influence and bringing them to justice, assisting with the exchange of prisoners, securing an environment for freedom of movement and the return of refugees and establishing national and local institutions of justice and human rights protection. Nevertheless, major elements of the Dayton Accords have already been successfully implemented, including an agreement to a permanent cease-fire, the deployment of an International Force (IFOR), the release of many prisoners, and the establishment of the transitional institutions of justice to indict and bring to trial suspected war criminals.

Looking beyond the immediate challenges of implementation, Dayton stands as an important breakthrough in modern diplomacy for its integration of policies that promote justice and respect for human rights with the effort to bring peace to the region. If they succeed, the Dayton Accords may come to serve as a model for ending future conflicts. If they fail, the related objectives of conflict prevention and justice promotion will be severely set back.

Two elements of the Dayton Accords are unprecedented in recent history. First, they place human rights in the main fabric of Bosnia's diplomacy, acknowledging that violations of humanitarian law are central to both the origins and solutions of the conflict. Second, the Dayton Accords firmly establish the reach of institutions of transitional justice and accountability in structuring the Bosnian peace. Cooperation with the International Criminal Tribunal for the Former Yugoslavia (War Crimes Tribunal) was required as an important indication of compliance with the Dayton Accords.

INSTITUTIONS FOR STABILITY AND PEACE IN THE POST-COLD WAR PERIOD

The unfolding drama in Bosnia is, of course, inseparable from its place in the historical development of the post-Cold War world. As we enter this era, we would do well to recall its beginnings half a century ago.

At the close of World War II, the Allies set about to create institutions of governance, security, prosperity and justice that
would in turn institutionalize their military victories over fascism and lay the foundation for future stability and peace.

Three out of those four projects have achieved a large measure of enduring success. On the governance front, the United Nations, despite its many well-documented shortcomings, has created a framework for dialogue and cooperation among extraordinarily diverse members of the international community and has led the way on such global issues as health, the environment, and refugees.

On the security front, NATO has withstood the challenges of decades to emerge as the most successful alliance in modern history, effectively bringing about victory in the Cold War without having had to engage in major military conflicts. The new missions that NATO is undertaking today build on that experience in facing new challenges.

On the economic front, the Bretton Woods institutions have created a framework in and through which an open, liberalized economic order is taking root all over the world. This in turn has brought prosperity and stability to many countries, and is now being expanded to address issues of poverty and economic instability in the developing world. These institutions are also undergoing modifications to meet new challenges, such as the development of Eastern Europe, and new concerns, such as the degradation of the global environment.

When we turn to the fourth element of the post-war vision of institutions of justice, the picture is far less clear. At the Nuremberg Tribunal, the Allies laid the foundation for a new international order in which institutions of justice would hold leaders accountable for genocide and crimes against humanity. The Nuremberg trials and to a lesser extent the Tokyo Trials succeeded in demonstrating to weary Allied publics just what had been at stake in the struggle against fascism and in educating future generations about what had happened and why it must never be repeated.

Since Nuremberg, the creation of institutions of international justice have proceeded with difficulty. The deep political divisions of the Cold War made it impossible to build credible international institutions of impartial justice. The gridlock of the U.N. Security Council caused by the veto power of its permanent members precluded any serious efforts to create a criminal tribunal. Meanwhile, many human rights and democracy advocates saw a dichotomy between justice and reconciliation, and felt compelled to choose
between the two in situations where formerly authoritarian regimes were making transitions to democracy. This dilemma was posed most sharply in Latin America, but it has also been seen in Eastern Europe and South Africa.

ROLE OF INTERNATIONAL JUSTICE IN POST-COLD WAR CONFLICT

With the end of the Cold War, we must take a fresh look at international justice and its role in ending conflict. Our world, despite its often overwhelming new problems and sources of instability, is no longer cleft into two opposing ideological and geopolitical camps; this in turn creates new opportunities for overcoming the constraints that have hobbled transitional institutions of justice for decades. In recent years we have witnessed human rights catastrophes in Bosnia, Rwanda, Burundi, Central Asia and elsewhere that have been characterized by the recurrent nightmare of our time: systematic attacks on civilians based on their ethnic and religious identities, resulting in mass atrocities and sometimes genocide. In these conflicts, ethnic and religious differences have been cynically exploited by political elites and their leaders to advance their own interests. Despite varying circumstances of time and place, these vicious wars all have a common theme: they are directed primarily against civilians who have no defense other than the principles of international humanitarian law. And that defense, of course, is worthless unless there is political will to enforce it.

HUMAN RIGHTS LESSONS LEARNED

During the past five years we have learned some lessons from the violence and human rights atrocities that have prevented peace in Bosnia and elsewhere. Chief among those lessons is that justice and peace can, and in many cases must, be pursued simultaneously. Indeed, accounting for human rights abuses through national or international "Truth Commissions" has proven to be an integral part of recent peace processes in such diverse countries as South Africa, El Salvador, Cambodia, Guatemala, Haiti, Chile, and Argentina.

This growing international experience with human rights accountability was incorporated into the U.S.-led peace efforts in Bosnia that were initiated in August 1995. The U.S. strategy went beyond the narrow territorial focus of earlier, unsuccessful Balkan
peace efforts and accorded human rights issues a significant role in the strategy to end the conflict.

During the spring of 1995, the failure of traditional peacekeeping in Bosnia, which had long been questioned, became increasingly evident. The tide was turned by changes on the ground: the U.S campaign to strengthen U.N rules of engagement, the Croat-Muslim offensives to push back the Serbs and, more than anything, the fall of the U.N. safehavens of Srebrenica and Zepa in July, which indelibly showed the terrible human consequences of failed peacekeeping.

Reports of the worst atrocities and mass executions of the war, conveyed by a number of witnesses and observers, galvanized the international community to take the military actions it had been unwilling to consider earlier. At the London Conference in July, the United States led the effort to achieve international agreement for releasing NATO from the debilitating “dual key,” by which U.N. civilian officials could veto military commanders. This decision cleared the way for three weeks of NATO bombing in response to new Serb aggression and atrocities against civilians in August and September, 1995.

THE EMERGENCE OF A NEW PEACE STRATEGY

In mid-August, President Clinton launched a major military and diplomatic effort to start a new peace process, “diplomacy backed by force,” spearheaded by my colleague Assistant Secretary of State Richard Holbrooke. As Holbrooke began his shuttle diplomacy to Balkan capitals, I was dispatched by Secretary of State Warren Christopher on a series of human rights missions in the areas of confrontation on the ground in Bosnia and Croatia. Our new peace strategy involved close coordination between negotiations with regional leaders and real-time investigations of human rights atrocities.

Four central elements of this strategy involved: spotlighting atrocities against civilians the moment they occurred; securing immediate commitments from leaders to end atrocities or face military consequences in the form of NATO bombing; supporting and moving the new War Crimes Tribunal to center stage as a way of raising the personal costs of criminal leadership; and refusing to negotiate with indicted war criminals, and in the process isolating the main opponents of peace.
Growing pressure on the warring parties generated by this strategy led to a latticework of understandings and working arrangements that propelled the entire peace process forward. Over a period of ten months, a series of human rights missions and war crimes investigations fundamentally shaped the course of peacemaking:

**July:** In Tuzla - U.S. interviews with survivors of the mass executions of Muslims in Srebrenica made clear the importance of isolating Bosnian Serb leader Radovan Karadzic and General Ratko Mladic, both of whom were personally implicated in the atrocities.

**August:** In Krajina - Croat atrocities committed against Serb civilians were exposed by U.S. and U.N. missions to the area.

**September:** In Zenica - A new round of vicious ethnic cleansing and Serb paramilitary actions against Muslim civilians around Banja Luka were exposed by U.S. investigations, the results of which were immediately brought by U.S. negotiators to the attention of Serbian President Slobodan Milosevic.

**October:** In Banja Luka - The first international mission, conducted by U.S. officials, crossed the confrontation line to demonstrate the importance of freedom of movement. Milosevic agreed to provide security assistance to the mission, as the peace negotiations scheduled in Dayton for November 1 to 21 drew near.

**November:** In Sanski Most - The first prisoners of war were released, indicating a major confidence-building step for Bosnians and reinforcing the cease-fire.

**January:** In Srebrenica - U.S. officials gathered evidence corroborating the previous statements of eyewitness accounts by survivors of mass executions in July. War Crimes Tribunal investigators secured access to sites of alleged war crimes. In Omarska, Lubija - NATO troops provided security protection for visits by U.S. officials to sites of major atrocities. In Sarajevo, Pale, Mostar - Under heavy international pressure, all parties released additional prisoners.
February: In Sarajevo and in the War Crimes Tribunal - U.S. officials arranged IFOR transportation of suspected war criminals to the War Crimes Tribunal in the Hague. The parties adopted “rules of the road” which prevent the round-ups of civilians under pretext of charges of war crimes.

March: In Belgrade - U.S. and Tribunal officials arranged for Bosnian Serb war crimes suspects in Serbia to be transported to the Hague. In Zagreb - Indicted Croat General Tihomir Blaskic surrendered under U.S. pressure and was transported to the Hague.

These events illustrate how the road map devised in Dayton was oriented, in part, on the exposure of violations through fact-gathering and the assignment of responsibility by human rights missions and the work of the War Crimes Tribunal. From the start, the United States was the main backer of the Tribunal. As the peace process moved ahead, the practical utility of this new institution of justice became even more clear. In the months leading up to Dayton, and currently, the Tribunal has remained essential to implementing the peace agreement on the ground.

CRITICAL ROLE OF THE HAGUE WAR CRIMES TRIBUNAL

There are several closely related reasons why the Hague War Crimes Tribunal has proven essential to the peace process:

- The War Crimes Tribunal has a role in isolating opponents of the process by undercutting the legitimacy of indicted war criminals. The confrontation between the international community and the two leading Bosnian Serb indicted war criminals, Radovan Karadzic and Ratko Mladic, illustrates the War Crimes Tribunal’s role in discrediting peace opponents.

- The War Crimes Tribunal can create breathing room for moderates to emerge. The removal of Karadzic from office has opened the way for moderates from Banja Luka and elsewhere in Srpska to compete successfully in national and municipal elections.

- The War Crimes Tribunal can deter new war crimes by publicizing indictments, and can contribute to breaking the cycles
of violence by beginning to answer the demand for justice by victims who would otherwise seek retribution.

- The War Crimes Tribunal can turn indicted war criminals into international pariahs, making it more difficult for them to seek support abroad. This has already happened to Karadzic and Mladic, as well as lesser known figures in Bosnia, Croatia and Serbia, all of whom must eventually be brought to justice.

Looking beyond the immediate issues in Bosnia, several elements of lasting significance emerge from the War Crimes Tribunal's work. We are witnessing, for the first time in history, war crimes prosecutions in "real time," when peace is not yet permanently secured, when there are no victors, and when no unconditional surrender has been offered. This is justice not for one party only, but for multiple parties, as a crucial element of peacemaking, and not as a by-product of peace. Both the Bosnia and Rwanda War Crimes Tribunals have raised the personal cost of criminal conduct by leaders. In so doing, they provide conflict-torn societies with the possibility of moving beyond horrific communal violence by beginning to hold individuals accountable for their crimes.

Additionally, the War Crimes Tribunals demonstrate that neither international law nor political power can ultimately shield violations of humanitarian law, and that it is possible to create transitional institutions of justice. This does not mean, as is sometimes suggested by both critics and supporters, that state sovereignty is a thing of the past. For example, it is still up to state parties to extradite suspects to the War Crimes Tribunal. But the entity to which they are extraditing them is not another state, but rather an institution whose political and moral force derives from its transitional legitimacy and its power to enforce international humanitarian law.

In short, the international community is beginning to create the rudimentary means of enforcing basic humanitarian standards of behavior. Government leaders will know that henceforth they can be called to account — and sometimes even prosecuted — for genocide and crimes against humanity before the bar of international justice. The very fact that sovereign nations have passed legislation to implement the War Crimes Tribunal's mandate is evidence that transitional legal institutions can be constructed with meaningful reach, where there is the political will to do so.
The success of the War Crimes Tribunals will not only give peace a chance in Bosnia and Rwanda. It will also create significant precedents for the future of international justice and the establishment of a permanent international criminal court.

The ideas animating this historic enterprise were succinctly summarized by President Clinton in a speech delivered on October 15, 1995, marking the fiftieth anniversary of the beginning of the Nuremberg Trials:

No peace will endure for long without justice. For only justice can break finally the cycle of violence and retribution that fuels crimes against humanity. Only justice can lift the burden of collective guilt that weighs upon a society where unspeakable acts of destruction have occurred. By prosecuting war criminals in Yugoslavia and Rwanda we can send a strong signal to those who commit such terrible atrocities that they cannot escape the consequences.¹

Moral leadership should be at the heart of foreign policy. The experience of Bosnia has shown that, taken together, both moral and practical leadership can create a powerful and compelling formula for addressing international human rights catastrophes.
