The OSCE Mission to Bosnia and Herzegovina: Apprehension of indicted war criminals

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'Well, let me put it this way, if you ask me what to do, there are three priorities: No. 1, No. 2 and No. 3, arrest the war criminals.'

Haris Silajdzic, former Bosnian Foreign Minister

I. Introduction
The international community's failure to apprehend persons indicted by the International Criminal Tribunal for the former Yugoslavia (ICTY) directly effects every aspect of the Dayton peace process. The success of the OSCE mission to Bosnia and Herzegovina is threatened by the continuing freedom of the indicted war criminals. The short-term goals of conducting free and fair elections, facilitating the return of refugees and stabilizing the region as well as the long-term goal of establishing a lasting peace in the Balkans, will remain fantasies if the international community does not take a more aggressive role in the apprehension of those indicted by the Tribunal. OSCE Heads of State or Government stated in their Helsinki Summit Declaration in 1992 that 'No international effort can be successful if those engaged in conflicts do not reaffirm their will to seek peaceful solutions to their differences [...]' those who violate international humanitarian law [must be] held personally accountable.'

II. The OSCE at the forefront of the Yugoslav crisis
The OSCE participating States played a prominent role in speaking out against atrocities and acts of aggression form the beginning of the Yugoslav crisis. Particularly, the OSCE participating States consistently declared that violators of international humanitarian law must be held personally accountable for their actions. In November 1991, employing similar language utilized by Chapter VII of the UN Charter, the OSCE professed the war in the former Yugoslavia a threat to peace and security. Most importantly, the OSCE suspended 'Yugoslavia' (now the Federal Republic of Yugoslavia) indefinitely — an unprecedented step — for grossly violating OSCE commitments.

1. Research Fellow for the Coalition for International Justice (cu), a not-for-profit, non-governmental organization that provides in-kind support and technical legal assistance to the International Criminal Tribunals for the former Yugoslavia and for Rwanda. As an advocate, the cu helps to educate the public and opinion leaders on the role of the Tribunals in maintaining international security and establishing the rule of law.
3. General Framework Agreement for Peace in Bosnia and Herzegovina [hereinafter 'Dayton']
Significantly, the first solid proposal for an international criminal tribunal for the former Yugoslavia emerged from an OSCE mission in 1993. While some observers of the conflict had already begun talking about sacrificing the ideal of war crimes trials for a pragmatic peace, the OSCE mission report reflected a keen understanding of the central role individual accountability played for long term peace in the region. That view ultimately prevailed at the United Nations, where the OSCE presented its report to the Security Council, fueling momentum to establish the international Criminal Tribunal for the former Yugoslavia (ICTY). The Tribunal is the first effort by the international community since Nuremberg and Tokyo to hold individuals criminally responsible for violating international humanitarian law.

The OSCE continues to demonstrate its desire to secure a 'just and lasting peace in the region' by serving first and foremost, as a principle vehicle for the implementation of the Dayton Agreement in Bosnia.

III. The Dayton Agreement and the OSCE

Ending bloodshed in Bosnia, the Dayton Agreement’s single most important objective, was to be achieved by holding free and fair elections, ensuring refugee return and freedom of movement, establishing regional arms control and by facilitating the surrender of indicted war criminals. Ultimately, these elements are inextricably intertwined and mutually dependent. The OSCE is responsible for much of Dayton’s civilian implementation.

Formally established at the fifth meeting of the OSCE Ministerial Council meeting held in Budapest, 8 December 1995, the OSCE current Mission to Bosnia and Herzegovina started working in Sarajevo on 29 December 1995. The OSCE’s duty to supervise free and fair elections, monitor the human rights situation and facilitate regional stabilization grew out of its mission to Sarajevo and was solidified in the Dayton Peace Agreement. The OSCE participating States reaffirmed their commitments in the Lisbon summit of December 1996 by stating that ‘[...] We will fully support the Mission’s work and its contribution to implementation of the election results. We will assist in democracy building through concrete programs and be active in human rights promotion and monitoring. We will continue to assist in the implementation of sub-

5. Participating States ‘affirmed their intention to participate actively in efforts to build a just and lasting peace in the region’ at the December 1993 Rome Ministerial.
6. Simultaneous related activities in Croatia, Serbia and Montenegro and elsewhere in the Balkans occur. For example, the OSCE monitored parliamentary and Presidential elections in Croatia in 1996 and 1997, respectively and now has a mission of long duration there; The OSCE is engaged in election monitoring and human dimension activities in Albania; and an OSCE mission of long duration exists in Macedonia. While Serbia-Montenegro remains suspended, the OSCE involvement continues through Dayton-mandated arms control; the OSCE Chair-in-Office sent Felipe Gonzalez to Belgrade in December 1996 in the wake of serious allegations of election fraud there.