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Task Force Statement of the Twentieth Century Fund's Task Force on Apprehending Indicted War Criminals: Meeting the Obligations of Justice

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We have an obligation to carry forward the lessons of Nuremberg. ... Those accused of war crimes, crimes against humanity and genocide must be brought to justice. ... There must be peace for justice to prevail, but there must be justice when peace prevails.

President Bill Clinton

International military forces have engaged in only three attempts to aggressively apprehend indicted war criminals in Bosnia in the two-plus years since the signing of the Dayton Peace Accords and four years after UN Security Council Resolution 827 bound all members of the international community to comply “without undue delay” in “the arrest or detention of persons” indicted for war crimes and “the surrender or transfer of the accused to the International Tribunal.”

In late June and early July 1997, international military forces engaged in two attempted arrests that resulted in the successful arrest of Milan Kovacevic and Slavko Dokmanovic, and the death of Simo Driljaca. On December 18, 1997, Dutch NATO forces captured two Bosnian Croats, Vlatko Kupreskic and Anto Furundzija. In October of 1997, the United States and the European Union successfully pressured the Croatian Government into facilitating the voluntary surrender of 10 Croatian nationals and Bosnian Croats indicted by the International Criminal Tribunal for the Former Yugoslavia.

Despite the successful efforts of the international community in these instances, there are no clear signs that the international community, or the United States and European Union in particular, intend to engage in further military action or the imposition of economic pressure against the Bosnian sub-state entity of the Republika Srpska, which harbors 47 publicly indicted war criminals, or against the Federal Republic of Yugoslavia (Serbia/Montenegro), which harbors three indicted JNA officers and intermittently hosts indicted Bosnian Serbs such as General Ratko Mladic, as well as a number of Serbian paramilitary leaders who are widely assumed to be secretly indicted. Similarly, there are no further signs the United States or the European Union intend to continue their economic pressure on Croatia to encourage it to facilitate the transfer of the remaining two indicted Bosnian Croats, who are presumably subject to its control.

The failure of the international community to apprehend or ensure the apprehension by local forces of the remaining 52 publicly indicted war criminals, including the notorious Radovan Karadzic and Ratko Mladic, a full two

Since 1919, the Twentieth Century Fund has sponsored and supervised research on economic, social, and political issues. The fund is nonpartisan, but not neutral. The Fund established an international task force, chaired by Richard Goldstone, the first chief prosecutor for the International Criminal Tribunals for the former Yugoslavia and Rwanda, to examine what steps the world community should take to bring a stable peace to war-ravaged Bosnia and maintain the international rule of law. This is a summary of the task force report.

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years after the signing of the Dayton Accords has helped consolidate Bosnia's ethnic partition, exacerbated the political and economic tensions in the country, poisoned its social and cultural institutions, and entrenched its ultranationalist and ethnic-supremacist forces.

The Merits of Justice:
The tribunal represents a chance not only for Bosnia. . . . but for the world. We can presume to forget what only God and the victims have standing to forgive, or we can heed the most searing lesson of this century, which is that evil—when unopposed—will spawn more evil. U.S. Secretary of State Madeleine Albright

When the international community created the International Criminal Tribunal for the Former Yugoslavia in 1993, it did so because it believed the only way to halt the atrocities in Bosnia and Croatia was to expose the individuals responsible for those atrocities and to hold them directly accountable with the prospect of a public accounting of their atrocities and commensurate punishment. They could thwart the implementation of the Accords, the growth of democracy and the reunification of Bosnia.

To create a lasting peace in the territory of the former Yugoslavia, the international community further recognized the need to establish an accurate historical record and acknowledge the victims, as well as provide a process to assign specific guilt to individual perpetrators. In assigning individual criminal responsibility for specific acts, it was hoped that the assignation of collective guilt that characterized the years following World War II and in part laid the foundation for the commission of atrocities during the most recent conflict could be avoided.

More broadly, it has become apparent that the Yugoslav and Rwandan Tribunals are serving as a test case for the effective and meaningful operation of a permanent International Criminal Court. The perceived effectiveness of both Tribunals will affect international support and acceptance of the establishment of a permanent International Criminal Court.

Under international law, a state has a duty to comply with its international legal obligations.

In preparing the Dayton Accords, the international community recognized that the only way to ensure the implementation of the provisions of the Accords providing for free and fair elections, the return of refugees, freedom of movement and the protection of human rights was to ensure that individuals responsible for war crimes were extradited to The Hague and thus removed from positions of power from which they could thwart the implementation of the Accords, the growth of democracy and the reunification of Bosnia.

The Obligations of Justice:
The establishment of the International Tribunal on the basis of a Chapter VII decision creates a binding obligation on all states to take whatever steps are required to implement the decision. Former Secretary-General Boutros Boutros Ghali

The obligation of states to provide the necessary cooperation and assistance to the International Tribunal stems directly from its establishment by a UN Security Council decision under Chapter VII, which creates binding obligations on all states. Specifically, UN Security Council Resolution 827 requires all states to "cooperate fully with the International Tribunal and its organs in accordance with the present resolution and the Statute of the International Tribunal."

The obligation of all states to cooperate with the Tribunal is further set forth in article 29 of the Tribunal's statute that provides for (1) the general obligation to provide any cooperation that may be required to facilitate the investigation or prosecution of alleged perpetrators by the International Tribunal, and (2) the obligation to comply with any delay with a specific request or order issued by a Trial Chamber, including arrest warrants.

Although some states and substate entities, such as Serbia/Montenegro and the Republika Srpska entity, assert they lack the necessary domestic legislation to comply with the indictments and orders issued by the International Tribunal, Resolution 827 explicitly requires all states to take any measures necessary under their domestic law to implement the provisions of the Resolution. Under international law, a state has a duty to comply with its international legal obligations, including binding Chapter VII UN Security Council Resolutions, which take precedence over all domestic legal obligations. A state may not therefore assert it is unable to fulfill its international legal obligations on the basis that it is prohibited from doing so by domestic legislation, or that it lacks the necessary domestic authority. (See articles 25 and 103 of the UN Charter, and article 46 of the UN Charter on the Law of Treaties (article 46 is considered to accurately reflect customary international law).)
To ensure that all parties to the Yugoslav conflict understood their obligation to apprehend indicted war criminals, the international community included in the Dayton Accords provisions that require all the parties "to cooperate in the investigation and prosecution of war crimes and other violations of international humanitarian law," and to ensure that "no person who is serving a sentence imposed by the International Tribunal, and no person who is under indictment by the International Tribunal . . . may stand as a candidate or hold any appointive, elective, or other public office in the territory of Bosnia and Herzegovina."

The Bosnian delegation to the Dayton Accords also extracted an explicit promise from the NATO representatives that IFOR would neither interact with indicted war criminals nor tolerate their presence in NATO's area of operation. The Bosnian delegation took this promise to mean that NATO forces would actively participate in the apprehension of indicted war criminals.

Means to Promoting Justice:
Use Military Force to Apprehend Indicted War Criminals
As demonstrated by the apprehension of Milan Kovacevic, Slavko Dokmanovic, Vlatko Kupreskic, and Anto Furundzija, NATO forces are capable of using military force to aggressively apprehend indicted war criminals and defend themselves against those who attempt forcibly to resist apprehension. The political leadership of the nations overseeing military operations in Bosnia, i.e., United States, France, and Britain, and the other countries with troops in Bosnia, should direct forces under their control to replicate their earlier operations and use military force to aggressively apprehend indicted war criminals in Bosnia.

Despite the pronouncements to the contrary of various military officials, unambiguous legal authority does exist for NATO military personnel to engage in operations in Bosnia to apprehend indicted war criminals. This authority may be derived from the Geneva Conventions; at least two UN Security Council Resolutions; the consent of the Bosnian Government; the Dayton Accords; and the UN Security Council Resolution providing for their implementation. A strong legal case can be made that the U.S. and other countries with troops in Bosnia have a legal obligation to arrest indicted war criminals. This obligation is derived from the Geneva Conventions, UN Security Council Resolutions, and the Genocide Convention.

To date, the major objection in the United States and Europe to the more widespread use of force to apprehend indicted war criminals is the fear of casualties, either during the arrests or as a result of retaliation. In the United States, the public reaction to the deaths of American soldiers during the failed attempts to arrest General Mohammed Farah Aideed in Somalia has added to the caution of U.S. leaders.

There has also been expressed a concern that Serbia/Montenegro, Croatia and/or their proxies in Bosnia will withdraw their support for the peace implementation process if military force is used. Each of these entities' support, however, has been minimal to date.

While there are clearly risks in any military operation of this type, and those risks must be acknowledged by political leaders, the risk of not apprehending the indicted and allowing them to continue to wield political and financial power in Bosnia and continue to undermine the peace process is far greater.

The Bosnian Serbs regularly used such intimidation tactics during the war, but desisted from employing them when overwhelming force was brought against them. The risk of eventual action by them against NATO troops is equally small; yet to ensure the safety of NATO personnel, any action to apprehend war criminals must include the readiness of NATO forces to use retaliatory force in the most decisive manner.

Given the inherent risks to NATO personnel associated with the use of military force to apprehend indicted war criminals, once such action is taken, it will be particularly incumbent upon the political elements of the international community to ensure that they in fact utilize the opportunity of the removal of war criminals from Bosnia to implement the Dayton Accords and provide a real opportunity for the reunification of Bosnia and lasting peace on the territory of the former Yugoslavia.

Enact UN Sanctions Against States Harborin Indicted War Criminals
Through the adoption of Resolutions 757, 787, and 820, the UN Security Council imposed sweeping trade sanctions on Serbia/Montenegro and the Republika Srpska entity. The sanctions included an embargo on exports to and imports from Serbia/Montenegro and the Republika Srpska entity, the freezing of all their government assets, the impounding of all the vessels they own, and the prohibition of their participation in international sporting events.

In November 1995, the UN Security Council adopted Resolution 1022,conditionally lifting the trade sanctions on Serbia/Montenegro and the Republika Srpska entity. In that
resolution, the UN Security Council reiterated that compliance with the orders of the Yugoslav Tribunal was integral to the obligations of Serbia/Montenegro and the Republika Srpska entity under the Dayton Accords. The resolution provided that if either the Commander of IFOR or the United Nations High Representative reported that those governments had significantly failed to carry out their obligations, then the sanctions were to be automatically reimposed. Yet, no such action was taken when Yugoslav Tribunal President Antonio Cassese called for the reimposition of sanctions against Serbia/Montenegro for failing to execute arrest warrants. The UN Security Council responded with a statement that it “deplores the failure to date of the Federal Republic of Yugoslavia (Serbia and Montenegro) to execute the arrest warrants,” but it neither threatened nor took any further action. The UN Security Council later permanently lifted the trade sanctions by adopting Resolution 1074, thereby eliminating any inducement to cooperate with the International Tribunal.

The UN Security Council, acting under Chapter VII, should impose phased economic sanctions on any state or entity that has failed to comply with their obligations to arrest and extradite to the Hague the indicted war criminals living with impunity on their territory. Individual member states of the international community should also impose economic sanctions under their domestic authority on both Serbia/Montenegro and the Republika Srpska.

**Freeze the Assets of Individuals Indicted for War Crimes**

In the context of the United Nation’s efforts to dislodge the military regime from Haiti in 1993, the UN Security Council adopted Resolution 841, which required UN member states to freeze the assets located within their jurisdiction of known supporters of the military regime. This was the first time the UN Security Council acted under article 41 of the UN Charter to freeze the assets of private individuals, rather than a government. Drawing upon this precedent, the UN Security Council should pass a resolution requiring states to seize and freeze the assets of any person indicted by the Yugoslav Tribunal. Such action would (1) further isolate persons indicted by the Tribunal, (2) serve as an effective penalty even if such persons evade justice, and (3) induce such persons to surrender themselves to the Tribunal since their assets would be unfrozen (i.e., released) upon their acquittal.

As with the case of state-targeted economic sanctions, individual members of the international community could act under domestic authority, such as the United States International Emergency Economic Powers Act, to seize the assets of indicted war criminals.

**Other Potential Mechanisms for Promoting Peace and Reconciliation in the Former Yugoslavia**

To promote peace and reconciliation in the former Yugoslavia, consideration should be given to the creation of additional mechanisms, which may include the establishment of a nonamnesty-based truth commission, the adoption of a process for vetting suspected war criminals from military and police forces, and the creation of a victims’ compensation commission. The purpose of a truth commission would be to complement the criminal prosecutions before the Tribunal and promote reconciliation through truth by creating an accurate historical record and providing the victims of the conflict with an adequate cathartic process. A vetting mechanism for the military and police forces and for public office holders would ensure that those responsible for or reasonably suspected of committing war crimes would be removed from positions of influence. A victim compensation program would assist victims of human rights abuses in exercising their international legal right to receive compensation for their injury.

**Conclusion**

There can be neither lasting peace nor an end to the long, national nightmare of Bosnia until all war criminals are arrested and brought to justice. Neither Croatia nor Serbia/Montenegro will be able to join the community of nations with all the rights and privileges that entails until they honor their obligations to the Yugoslav Tribunal. NATO will have undermined its raison d’être—the freedom and security of Europe—if it does not execute fully its authority to arrest indicted war criminals. Furthermore, the Yugoslav Tribunal will not have accomplished its mission if it does not move more efficiently and effectively in its pursuit and prosecution of those who have committed war crimes in Bosnia and Croatia. Finally, the United States and the European Union will have failed a profound test of their moral, ethical, political, and military leadership in the world if they do not act decisively to end the illegitimate freedom of men who have committed and condoned grave and heinous crimes against humanity.