

International Conference for Bosnia and Herzegovina

At the International Conference Centre of Geneva

State-building and the constitution, economics, culture and education, security and democracy, justice and reconciliation, regional and EU integration, conditionality and ownership, beyond "lessons learnt", responsibility for the future

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1995
Bosnia and Herzegovina
Ten Years of Dayton
and Beyond
2005

<http://www.bosnia2005.org> bosnia2005@bluewin.ch



Panel on Justice and Reconciliation

Geneva, 21 October 2005

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chair	John B. Allcock, former head of the Research Unit in South-East European Studies (Bradford)
keynote	Manfred Nowak, UN special rapporteur on torture; former judge at the Human Rights Chamber for Bosnia (Vienna)
speakers	Sonja Biserko, director, Helsinki Committee for Human Rights in Serbia (Belgrade)
	Srdan Dizdarević, vice president, International Helsinki Federation (Sarajevo)
	Jakob Finci, president, Association Bosnia and Herzegovina 2005 (Sarajevo)
	Marko Oršolić, director, International Multireligious and Intercultural Center (Sarajevo)
	Vesna Terselić, director, Documenta – Center for Dealing with the Past (Zagreb)
	Mirsad Tokača, president, Research and Documentation Center (Sarajevo)

Summary of points to note from the conference

Points to note

The following summary is far from being a verbatim account of the points made by the panellists. It attempts a synthesis of ideas which appeared to be shared, particularly in that these point towards future requirements for action.

1. The importance of recognising the past

A general point was made by contributors to the conference in other sessions, and reiterated strongly in our panel. Outside observers (including successive High Representatives) have tended to adopt uncritically the view that the Balkan region is burdened by its past, and that progress towards the future is blocked by undue attention to it. Several panellists insisted that this view needs to be challenged strongly, (Nowak, Dizdarević, Finci, Trselić and Tokača). A truthful account of the past is an essential precondition for a fruitful address to the future. Any embargo on honest discussion of history will only serve (as in the past) to create the conditions for misleading accounts of history to remain harboured in secret. This is particularly important in relation to the possibilities of reconciliation.

2. The balance of issues to be faced

The preliminary discussion document circulated to the panellists identified four major areas which might be thought to fall within our remit.

- i) The structure and functioning of the judiciary
- ii) The reform of the police and the fight against crime
- iii) The problem of war crimes and the search for reconciliation, and
- iv) The articulation of local and state with international structures.

In the event, however, panellists concentrated their attention very heavily upon the third of these.

Three key points are indicated by this preponderance of interest.

- i) With the exception of Allcock and Nowak, the panellists are all residents of the region, and this emphasis might be assumed, therefore, to reflect to a significant degree the needs of its inhabitants.
- ii) Perhaps this is a necessary corrective to the tendency within international discussions of the region's problems to set aside local perceptions, assuming that these reflect a diminished understanding of political reality.
- iii) Although not addressed directly by the panel, satisfactory solutions to the problems of the structure and functioning of both the police and the judiciary are indispensable preconditions to any successful attempt to tackle issues relating to war crimes and reconciliation.

3. The imperative need to retain a regional perspective

Matters relating to the fourth of the points made in the preliminary discussion document figured in a number of different contexts, and deserve to be treated separately. The point was made particularly strongly in the presentations by Biserko, Terselić and Tokača, that in addressing the problems of Bosnia and Herzegovina it is essential to retain a *regional* awareness. Both the

understanding of the important issues and the search for problems to them (especially in the area of reconciliation) in Bosnia also must have regard for the situation in Croatia and Serbia/Montenegro. (The shadow of Kosovo lay across several of the contributions, in a number of respects.) This is a key consideration with respect to the questions discussed more widely within the conference. The possibilities for stabilisation, its continuing strategic relevance within Europe, the outlook for integration into the European Union, and the need to confront a number of major practical issues, such as the attempt to combat organised crime, as well as matters relating more specifically to justice and reconciliation, are all enhanced by approaching them in a *regional* framework.

4. *Appraising the ICTY*

The Tribunal in The Hague elicited a number of criticisms from the panellists. For example, its resources are insufficient to the magnitude of the task it faces; it has responded inadequately to the need for “outreach” (the dissemination of information) within the region, and the question of compensation might have been considered as a part of its original terms of reference (Nowak, Dizdarević). Despite these critical comments, the panellists were unanimous in their recognition of its positive importance. All of the participants underscored the importance of a full factual record of events during the war of 1992-95, and while they acknowledged that the ICTY could not be expected to undertake that task on its own, it does have an important contribution to make. The attempt to impose legal justice, represented by the Tribunal, complements the wider process of the search for justice and reconciliation, and whereas it is clear that its work and that of any Truth and Reconciliation Commission are necessarily different, they are intimately interdependent.

“Without The Hague tribunal reconciliation would have been false.” (Oršolić)

“The reconciliation process is unimaginable without the Tribunal.” (Tokača)

5. *Trials for war crimes within Bosnia and Herzegovina*

Whereas panellists recognised that the foundations for justice have been laid by international institutions, these are, in the long run, not adequate alone to the task of providing victims with a sense of justice achieved. Several speakers indicated the huge numbers both of perpetrators needing to be brought to justice, and of victims awaiting redress. It is in the nature of the case that the ICTY will not be able to meet these requirements, and the move towards an institutional framework within the Bosnian judicial system which will support and extend its work was welcomed. Several words of caution were also voiced. Finci pointed out that, at present there is a lack of trust in local courts, raising the possibility that trials conducted in “untrustworthy” courts cannot satisfy the need for justice. This resonated with the observation by Biserko, that trials held in local courts (presumably to the extent that they did not carry the confidence of citizens) might have the consequence of undermining the significance of The Hague. Local trials *in themselves* are not enough to guarantee a wider feeling that justice is being done—that depends upon the legitimacy of the court. In that respect, Oršolić observed that every citizen has a part to play in the legitimisation process. The international community cannot just hand over responsibility for war crimes trials to the Bosnian Chamber, in the purely instrumental expectation that its work will be finished there. International support and supervision will continue to be necessary in relation to the Bosnian judiciary, in order to guarantee the legitimacy of what is undertaken locally, even when the ICTY has finished its own work.

6. The significance and character of the reconciliation process

There was unanimity among the participants on the panel that any judicial process must be complemented by a parallel process of reconciliation. This is important for at least three reasons. Pragmatically, the judicial process cannot exhaust the need for justice, particularly in that the courts focus upon the commission of crimes by individuals, but that reconciliation is a deeper and more complex matter. The complete account of events required by victims can never be rendered by judicial institutions alone. Above all, reconciliation is an essentially *moral* process, which is to be distinguished from questions of the administration of *law*. Oršolić made the important point that the concept of reconciliation is rooted in a religious understanding of the world.

This drew attention to a significant defect in the comprehension of the situation on the part of many international observers. Religious identities have often been treated as a component of the problem—the war has been explained in terms of the mutual intolerance of ethnic communities which are defined in large measure by their confessional character. Secularisation has been depicted as central to the escape from problems of communal conflict. Religious identities should be regarded, however, as an essential ingredient of the *solution* to the problem of the search for reconciliation, because reconciliation must be rooted in the religious traditions of the different communities which are in conflict. Reconciliation cannot be furthered by requiring, as a precondition, that people set aside their identities, as this can only be experienced as threatening, and hence counter-productive.

7. The contribution of international interests to reconciliation

Panellists agreed that reconciliation must come about as a voluntary process, undertaken primarily by the inhabitants of the region. It cannot be imposed in a kind of “moral Dayton”. The main work of promoting reconciliation has to be shouldered by “civil society”, volunteers, or by “non-governmental organisations” (Dizdarević, Nowak, Oršolić, Terselić). There was broad agreement, however, that reconciliation is a problematic process. It will take a very long time to achieve, and the effort involved so far has been considerable (Tokača).

A significant contemporary problem in this respect is the fatigue of those who have been committed to it (Dizdarević, Finci). Perhaps international partners have a role to play here in providing support and encouragement, in reinvigorating the process, although it must be carried locally. Perhaps also international actors might have a role in challenging the disappointing lack of solidarity with victims, which Terselić identified as a significant problem.

8. Utopian expectations of reconciliation

An emphasis upon the importance of reconciliation is emphatically not just a utopian goal, in the opinion of the panel. Nevertheless, it is important to avoid, in its pursuit, entertaining falsely utopian understandings of how reconciliation might be achieved. An illustration of this false utopianism is to be found in the idea that it ought to be possible to produce a unified narrative of the past which is acceptable to all. Terselić in particular challenged the notion that reconciliation depended upon agreement about a single story to be told about the past, advising that we need to accept that there will always be different perspectives on the truth.

9. *Priorities for future action*

i) The Association for Bosnia and Herzegovina might be expected to make a significant contribution towards the achievement of justice and reconciliation by confirming the need for a more complete factual account of the past, and particularly by providing a forum in which contributions to that account can be heard.

ii) The Association has also a valuable part to play in encouraging and contributing to the informed and detailed critique of the justice system in Bosnia and Herzegovina, and the examination of alternatives to existing arrangements. The attention of international actors in the area needs to be drawn constantly to the importance of the reform of judicial and police institutions.

iii) In its continuing discussion of the future for Bosnia and Herzegovina the Association should ensure that it is aware of the relevance of wider *regional* developments, involving the neighbouring states within the former Yugoslavia, and draw these to the attention of its interlocutors. In this way the Association can contribute to the creation of an integrated response to the region's problems.

iv) While reaffirming the importance of the ICTY in the search for justice and reconciliation in Bosnia and Herzegovina, the voice of the Association can contribute to a wider appreciation of the need to support and complement the Tribunal's work through local courts, and through the development of institutions devoted to reconciliation. It can do this best by making a realistic and critical appraisal of all aspects of the justice and reconciliation process, avoiding both uncritical utopianism and disillusioned cynicism.

v) The reconciliation process, hitherto relatively neglected in the shadow of international dependence upon formal legal mechanisms, has a vital part to play in the satisfaction of the need for justice in the region. Whereas the burden of this work must be carried necessarily by groups below the level of the state, international bodies such as the Association have a role to play in the critique of misconceived approaches to reconciliation, and the support and encouragement of those committed to it. Above all, the Association can work to ensure that reconciliation remains firmly on the agenda of international debate.