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## Testimony :: Dr. Haris Silajdzic

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**Former Prime Minister and Head of the Party for Bosnia-Herzegovina -**

Commission on Security and Cooperation in Europe

Testimony of Dr Haris Silajdzic

Former Prime Minister and Head of the Party for Bosnia-Herzegovina

"Bosnia's Future Under the Dayton Agreement"

June 13, 2000

Thank you, Mr Chairman, members of the Commission, ladies and gentlemen. It is a privilege for me to appear once again before you today, to address the most important issue facing my country today: the implementation of the Dayton Agreement. Before I begin, I should like to pay tribute to the enormous contribution of the United States both during and since the war in Bosnia and Herzegovina. Nothing that I shall say here is intended to minimize that contribution, nor the role of the international community as a whole. Some of your soldiers and officials have lost their lives in so doing, and we shall not forget that. We believe that it commits us to working to achieve our common aim - a democratic, modern, European state of Bosnia and Herzegovina.

### Summary

Before responding to the fundamental question of whether the Dayton Agreement, as it has been implemented, has encouraged the restoration of a multi-ethnic Bosnian state - which is clearly the central purpose of the Agreement - it is necessary to consider in brief its structure and interpretation. I shall argue that its structure contains both integrative and disintegrative elements, and that this has allowed for conflicting interpretations. Nationalist parties and their sponsors in neighbouring states have been able to emphasize the disintegrative elements, while the international community has been unduly tolerant towards such interpretations and has given too little support to indigenous forces that favour the restoration of a multi-ethnic Bosnian state. This is the fundamental reason for its unsatisfactory implementation to date.

These assertions are supported by data relating to the specific issues raised: returns (especially minority returns), election outcomes, institutional development and economic reform. I indicate both negative and positive aspects of these issues.

I comment on the performance of the international community, both military and civilian, and of local politicians and officials at all levels of government in Bosnia and Herzegovina; and conclude with a personal view of the continuing threats to the restoration of Bosnia's multi-ethnic society.

### Introduction

Before considering these issues, I should like to point out that Bosnia and Herzegovina is still paying the price for the international politics that determined the fate of former Yugoslavia, and above all of Bosnia itself, in the early 1990s and during the 1992-1995 war. Although it has now been recognized by the International War Crimes Tribunal in The Hague that this was a war of aggression against a sovereign state (as was also implicitly recognized

by various UN Security Council resolutions during the war itself), much international policy appears still to be dictated by the notion that this was a civil war, in which all sides were equally guilty. This has served to equate the victims (primarily the Bosniaks, victims of genocide, together with other pro-Bosnians whatever their ethnicity) with the aggressors (primarily Milosevic's Serbia, and secondarily Tudjman's Croatia).

A second obstacle to an effective resolution of Bosnia's problems is the continuing tendency by the international community to treat symptoms rather than causes. This means, in essence, that the situation brought about by war is permitted to endure, since the factors, and the actors, that gave rise to the war in the first place are still present, for the most part. As a result, too much of the international effort on our behalf has been less effective than it could and should have been. In the analysis that follows, many specific factors of this kind will be considered.

## Structure

Necessary compromises were made at the time of signature of the Dayton Agreement to bring an end to the war (but note the admission, in his book *To End a War*, by chief architect of the Dayton Agreement Richard Holbrooke, that his greatest mistake was the recognition of Republika Srpska [RS]).

The Agreement includes both integrative and disintegrative elements, and is not internally consistent. Examples of disintegrative elements include not only the recognition of an Entity, RS, that was created by aggression and genocide, but also the many constitutional provisions that allow for ethnically-based governance at all levels from the Presidency down. Examples of integrative elements include the centrally important Annex 7 on returns, and clause III.5.a of the Annex 4 Constitution which provides for the formation of additional state institutions as required to fulfil the provisions of the Annexes or 'as are necessary to preserve the sovereignty, territorial integrity, political independence, and international personality of Bosnia and Herzegovina'.

Nor is the Dayton Agreement consistent in all respects with the provisions of the international conventions that form an integral part of it, nor indeed with the general principles of international law which the Annex 4 Constitution states 'shall be an integral part of the law of Bosnia and Herzegovina and the Entities' (Art. III.3.b). To give just one example, the 1965 International Covenant on the Elimination of All Forms of Racial Discrimination is an integral part of the Constitution, yet the Constitution's own provisions establish racially discriminatory government structures, including for example the impossibility of anyone other than a Serb from Republika Srpska, or a Bosniak or a Croat from the Federation, becoming a member of the joint Presidency - thereby wholly excluding Bosnia's Jews, Roma, and persons of mixed background or those who do not wish to declare themselves as belonging to a particular 'constituent people', all of whom are constitutionally classed as 'Others'.

## Interpretation

Its official title indicates the nature of the Dayton Agreement - it is a General Framework Agreement (GFAP). Its eleven Annexes, which include the Constitution of Bosnia and Herzegovina (Annex 4) go some way to fleshing it out, but are still far from a complete basis for its implementation. It thus requires interpretation, and its implementation requires it to be complemented and supplemented by an appropriate legislative framework.

Its interpretation should be informed by its underlying principles set out in the GFAP itself and in its Annexes, that Bosnia and Herzegovina is a sovereign state 'that shall continue its legal existence under international law as a state . . . with its present internationally recognized borders' (Annex 4 Constitution, Art. I.1.). The parties signatory express in the preamble to the Constitution their commitment to 'the sovereignty, territorial integrity, and political independence of Bosnia and Herzegovina in accordance with international law'.

Because of its inconsistencies, the Agreement allows great scope for differing and conflicting interpretations. Nationalist parties seize on the disintegrative elements, using them to block the institutions of state, and ignore the integrative. Non-nationalist, pro-Bosnian parties and individuals who try to use the integrative elements to create a legislative and political framework appropriate to a sovereign state and to the implementation of the principles and provisions of the GFAP and its Annexes are consistently prevented from doing so by the obstructive measures of the nationalist parties, and receive too little support from the international community. This latter point is examined in greater detail below.

## Implementation

As a result of these differing interpretations, and the lack of support for integrative interpretations, implementation has been disastrously slow. The only Annex to the Dayton Agreement that has been almost wholly implemented is Annex 1 on military matters. Implementation of the remaining Annexes is running, in percentage terms, in single figures only.

Far from restoring a multi-ethnic Bosnian state, slow implementation has allowed the status quo achieved by aggression, ethnic cleansing and genocide to be maintained and consolidated. I shall show below that, though party pluralism has advanced in some areas, the outcome of the latest local government elections provides evidence of the absence of ethnic pluralism, which means the victory of ethnic cleansing.

## Returns

The core provision of the Dayton Agreement, and the one that, more than any other, has the potential to restore Bosnia's multi-ethnic society, is the right of refugees and displaced persons to return to their homes (Annex 7). If this Annex were implemented it would go a very long way to reversing the effects of ethnic cleansing. The reality is that only a very small percentage of refugees and displaced persons have so far returned to their pre-war homes.

Such returns as are taking place, which receive extensive media publicity, are chiefly of elderly people to rural areas; the brain drain of young, skilled people from the cities is actually accelerating, and returns of people of any age to the cities (which are the generators of Bosnia's multi-ethnicity) are at derisory levels, with the sole exception of Sarajevo.

Obstacles to returns include:

- Security - there have been numerous attacks on would-be returnees and their property, while in many areas those who have returned live in constant fear for their safety
- Discrimination - of Bosnia's three constituent peoples, as defined in the Constitution, only Serbs have constituent status in Republika Srpska and only Bosniaks and Croats in the Federation, although this is clearly contrary to the Constitution. As a result of the continuing failure to restore equal citizenship rights to all peoples throughout the country, discrimination is entrenched and systematic in what amounts to apartheid, with accompanying and extensive human rights violations.
- Property - despite the undertakings of Annex 7 on the right to their property, very large numbers of would-be returnees are unable to regain possession of their property, even where they have a decision issued by a competent body such as the Commission for Real Property Claims of Displaced Persons and Refugees. This is largely due to the failure of the authorities, above all in Serb and Croat controlled towns and cities, to evict illegal occupants of the properties from which refugees and displaced persons were forcibly expelled during the war
- Economic issues - the lack of job prospects acts as a disincentive to returns, particularly of younger people

## Minority Returns

The first four years after signature of the Dayton Accord showed very slow progress on all returns, and in particular so-called 'minority returns' - defined as returns to areas where a different ethnic group retains military control and a population majority (see Annex A). Yet it is these returns that are most crucial for the restoration of a multi-ethnic state. (It may be noted that would-be returnees are overwhelmingly 'minorities', in the sense that the areas from which they were expelled, and where they were in many cases in a relative or absolute majority prior to the war, are now almost wholly 'ethnically pure'). According to a recent report by the International Crisis Group (30 May 2000), 'as of 31 August 1999, minority returns throughout Bosnia numbered a mere 100,714, less than 5 per cent of all the refugees and displaced persons created by the war. As a result, by September 1999, approximately 1,189,150 people, including 836,500 internally displaced persons, were still without permanent secure access to their pre-war homes four years after the cessation of hostilities' (figures from UNHCR, of which the total of 1,189,150 appears very conservative, considerably underestimating the numbers of refugees in third countries whose status remains unresolved). Of these 836,500 displaced persons, 58 per cent were living in the Federation (Bosniak-Croat majority areas) and 42 per cent in Republika Srpska (Serb majority areas) (31 May 1999 figures).

The ICG report notes that 'in the first four months of 2000, the number of minority refugees returning to their pre-war homes without targeted assistance from the international community has increased nearly four-fold over 1999 levels, to 12,579' (which still represents barely more than 1 per cent of the total number of refugees and displaced persons as of September 1999). 'Many of these returns are occurring in the previously impenetrable hard-core Serb nationalist heartland of eastern Republika Srpska. In addition to Bosniaks, both Serbs and Croats are also returning to their pre-war homes, challenging assumptions about the political appeal of pro-partition policies and ethnic separatism.'

The ICG report also notes, however, that 'the international community needs to improve its capability to support these long-awaited returns through reconstruction assistance and security, while the Bosnian government must focus on self-sustainability. Lack of donor support for reconstruction and other infrastructure projects would compel many returnees to de-mine and de-booby-trap their own homes, and reconstruct their homes and schools, roads, water, sewage and electrical systems from their own limited or non-existent funds. Although the security situation is improving gradually, continued attacks on minority returnees have underlined SFOR's uneven record in providing security for returnees. . . . Despite pledges of new money from the Stability Pact, available donor aid may be sufficient to support reconstruction in only 10 per cent of the spontaneous returns to date, with heavier requirements looming this summer. Just when refugee returns are beginning to increase, major donors, such as the European Union, lag far behind - in some cases years - in the expenditure of pledged aid. To date, only the U.S. and a few smaller bilateral donors, such as The Netherlands, have proven able to target aid rapidly and effectively at needed areas. As a result, some refugees who returned to their homes two years ago are still waiting for assistance to reconstruct their homes and provide electricity and running water.' (emphases added).

In the light of the above, it is encouraging that the latest Declaration of the Peace Implementation Council, meeting in Brussels on 23/24 May 2000, includes a commitment on the part of the Council to focus on three key strategic areas, including:

- Accelerating return of displaced persons and refugees with a particular emphasis on enabling citizens to exercise their property rights.

#### Election outcomes

The recent local government elections have seen, once again, the victory of nationalist parties in both Serb-majority and Croat-majority areas, albeit with a reduced number of votes for nationalist parties in Croat-majority areas, as a result of low turn-out. In Bosniak-majority areas, voting patterns showed a marked swing away from the (Bosniak) Party for Democratic Action, especially in many urban areas.

That elections have served to consolidate, rather than to reverse, the effects of ethnic cleansing is most easily demonstrated in the case of Republika Srpska. The number of Bosniaks in the electorate in the latest municipal elections was 50% less than in the previous elections. The result is that in not a single municipality in Republika Srpska does the majority party have any Bosniak participation, although prior to these elections this was the case in eleven municipalities in RS.

As a result of a sharp fall in the number of out-of-country votes (mainly Bosniak), the percentage of Bosniaks voting in RS has actually fallen since the first post-war elections. For example, in Zvornik, where before the war the population of was 60% Bosniak, in the first elections Bosniaks formed 40% of the electorate, while in these latest elections they formed only 23.5%. In Bratunac, where the pre-war population was 68% Bosniak, they formed 44% of the electorate in the first elections, while in the latest elections they were only 30%. The position is similar in all the municipalities of Republika Srpska and in many of those of the Federation.

In 1997 there were 268,374 out-of-country voters, while in 2000 only 115,125 out-of-country voters cast their vote. This means that more than 150,000 out-of-country voters are missing, most of them Bosniaks, although it is clear from the figures on returns of refugees and displaced persons that they have not returned to their pre-war homes.

It remains unclear why the OSCE insists upon general elections being held this November when the outcome is almost certain to repeat this pattern.

## Institutional Development

In a post-war state where the population balance has been dramatically altered by ethnic cleansing and genocide, the merits of decentralization as a means of empowering local communities need to be carefully weighed against the risks of devolving power to the very forces that, thanks to a combination of divisive constitutional provisions and elections conducted prior to the establishment of conditions 'for the organization of free and fair elections' (Dayton Agreement, Annex 3, Art. I.1.), remain in power at lower governmental levels (Entity, Canton, municipality) in many parts of Bosnia and Herzegovina.

The central institutions established by the Dayton Agreement, and those that are necessary to fulfil the constitutional responsibilities of the state of Bosnia and Herzegovina, remain weak and dysfunctional.

As a result necessary reforms, including appropriate legislation to create essential central institutions, continue to be blocked. This is despite the fact that such reforms have repeatedly been called for by the international community (eg. Peace Implementation Council Madrid Declaration, 1988; Peace Implementation Council Brussels Declaration, 2000). In addition, my party and I personally, during my tenure as Co-Chair of the Council of Ministers, have sought to introduce such legislation, but have been unable to see it through the Parliamentary process because of obstruction by nationalist parties - the Serbian Democratic Party (SDS) and the Croatian Democratic Union (HDZ).

A list of 138 priority state-level laws that it is essential to pass to establish at least the fundamental legal framework for the functioning of the institutions of the state of Bosnia and Herzegovina was drawn up by me and my associates three and a half years ago. The list was submitted both to the Parliamentary Assembly and to the Office of the High Representative. This resulted in the submission of thirty-five legislative projects in the form of proposed draft laws. Only a small number of those initiatives have been accepted, such as the laws on foreign trade, foreign investment, customs policy, travel documents, the state borders and the border services. Annex B gives a selection of the most important of these legislative proposals.

It is encouraging that the Peace Implementation Council agreed, at its latest meeting in Brussels in May 2000, that one of the three key strategic areas on which it will focus in the future is:

- Fostering functional and democratically accountable common institutions supported by an effective, merit-based civil service and a sound financial basis, based on the Rule of Law.

## Economic Reform and the Issue of Corruption

Economic reform is an undoubted priority, and has also proceeded far too slowly. However, economic reform in the absence of another priority, steps to reverse the results of ethnic cleansing, risks further perpetuating divisions in society. Having said this, it is true that the conditions for self-sustaining, market-driven economic growth have yet to be created, although they are essential if Bosnia is to make a successful transition from a donor-dependent economy. This involves not only formal economic reform, but also a change in the culture, after fifty years of communist rule followed by the war years which saw a complete economic collapse. Bosnia's people are being asked to adapt to a market economy, which carries with it levels of personal economic insecurity unknown to them under communist rule, at a time when many of them are already living at or below the poverty level. Unemployment is still running at high levels, pensions are low and are paid late.

Privatization, an essential prerequisite of economic revival, is in practice being effected almost solely on an ethnic basis, since it is taking place at the entity and not at the state level, and in ethnically cleansed areas is being carried out in the absence of the expelled population. This is no accidental error, since certain representatives of the international community (in this case the Office of the High Representative had a different opinion) rejected state-level privatization, defending this stance with the argument that privatization had to be carried out rapidly. Contesting this view, my part, the Party for Bosnia and Herzegovina, pressed for a full eighteen months for the adoption of a law at the state level. Unfortunately the law, when finally adopted, was inadequate; privatization as currently being carried out continues to represent yet another form of ethnic cleansing, in the field of ownership, with wealth increasingly being concentrated in the hands of those who are politically (and therefore ethnically) acceptable to the ruling party in each area. Insistence on speeding up the process of privatization, therefore, merely further reinforces ethnic divisions, tending towards the disintegration of the state and the fragmentation of the economic space.

When pressing for the state-level Law on Privatization, I also insisted on the formation of a Privatization

Monitoring Commission. The Commission's Secretariat has just (May 2000) issued its final report, in which it recognizes many of the problems I have just referred to. The original concept 'was to transfer ownership quickly from the state to claimsholders. However, what was ignored was the effect . . . of transferring state enterprises to people without the financial and technical wherewithal to development. . . In addition, fundamental property issues, such as clear ownership title and restitution, were overlooked. Finally, in an effort to appease local politicians in the wake of Dayton, privatization was splintered/atomized among Entities, cantons, banks, the special Brcko District'. The Secretariat's Final Report recognizes that 'in the case of BiH, political and economic goals were essentially incompatible'. It adds: 'At its inception in 1995, privatization had been perceived not as a means to create viable enterprises but as a way to satisfy citizens' claims. By emphasizing redemption of claims at the expense of a dynamic, competitive economy, the BiH privatization program unwittingly reinforced all the elements Dayton was supposed to remedy: "ethnic cleansing", corruption, stultified economic progress.'

The issue of corruption is a very real one. However, the fundamental problem is the lack of an adequate legislative framework and appropriate enforcement mechanisms: corruption thrives because there are no means of controlling it. I have persistently warned of the need for this in the context of legal reform.

Although reform of the customs system has begun, very large sums are still being lost to the economy through customs fraud.

The lack of economic reform contributes to the absence of jobs; and the absence of employment prospects contributes directly to the accelerating brain-drain of Bosnia's young and best-educated potential. This in turn will have a negative impact on the future economic growth of the country, which lacks almost an entire generation of skilled personnel as a result of the interruption to studies during the war and the post-war brain-drain.

#### International Presence

Without the international presence things would undoubtedly be worse than they are, in particular as regards the military presence, which has successfully maintained the peace. However, as noted by the International Crisis Group in its report of 30 May 2000, much more could have been done by IFOR/SFOR within its mandate to ensure the return of refugees and displaced persons, and to arrest indicted war criminals.

The civilian international presence has been far less successful than the military. While paying lip service to the integrative elements of the Dayton Accord, the international community has shown excessive tolerance towards the obstructive tactics of nationalist parties and individuals at all levels, consistently following the line of least resistance, and a disinclination to take advantage of powers conferred upon the High Representative to overcome such obstruction by the imposition of laws, dismissal of individual functionaries, etc. Some functionaries have been dismissed, but such dismissals have been too few and too late.

Initiatives by pro-Bosnian politicians and parties to introduce even a minimal legislative framework for the effective functioning of a normal modern state receive too little support, and indeed are at times met with criticism. Calls by the international community for Bosnian politicians to 'take responsibility' have rung hollow when those who attempt to do so have too often been marginalized in this way.

When state-level laws are imposed by the High Representative, it is only after long delays, ostensibly to allow the Bosnian authorities the chance to take responsibility, even when it is manifestly clear that nationalist obstruction will continue to prevent their adoption by the Parliament without the intervention of the High Representative. It was not until some years had passed from the time the initiatives were first launched that OHR imposed individual laws such as the Framework Law on Privatization and regulations to prohibit the abuse of state property in the entities, and some of these regulations were imposed too late for the damage already caused to be reversed. In this connection the Final Report of the Secretariat of the Privatization Monitoring Commission notes that 'although lack of political will on the part of BiH politicians at the state, Entity, cantonal and municipal levels, and their cronies in line ministries or enterprises, has contributed to the failure [of the privatization process], the International Community also bears responsibility, through sponsorship of a privatization program neither well thought through nor well executed'.

The election process, overseen by the OSCE, has been conducted from the very outset in such a way as to consolidate rather than reverse war gains, and in the absence of the conditions for 'free and fair elections, in particular a politically neutral environment', that the OSCE was required to certify as existing before effective elections could be held (Annex 3 Art. I.1 and 2.).

The Peace Implementation Council has issued some excellent Declarations, but in practice has done very little to ensure their implementation, since obstruction does not lead to sanctions. The past four and a half years of civilian implementation have been characterized above all by the line of least resistance. It is to be hoped that more resolve will be shown in implementing the commitments set out in the most recent Declaration (Brussels, 23/24 May 2000).

#### Performance of local politicians

As noted above, nationalist politicians continue to obstruct effective governance at all levels, and are too often able to appeal to the disintegrative elements of the Dayton Accord in justification. It could be said cynically that they are highly effective in achieving their aims, which are in fact contrary to the spirit and fundamental provisions of the Dayton Accord.

The Peace Implementation Council, in its Brussels Declaration, noted its deep concern 'over ing