The Implications of the Peace Agreement for the International Criminal Tribunal for the former Yugoslavia

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The Peace Agreement signed in Paris on 14 December 1995[1] and the International Criminal Tribunal for the former Yugoslavia ("the Tribunal"), share a common purpose: the restoration of peace in the former Yugoslavia.[2] The former aims to be a „comprehensive settlement"[3] to the conflict in the region, addressing such diverse issues as demilitarization, elections, constitutional arrangements and human rights, and the latter is incorporated in its provisions as one aspect of that settlement. The Tribunal does not, however, loom large in the Peace Agreement. It is not, for example, *explicitly* mentioned in the "General Framework Agreement for Peace in Bosnia and Herzegovina" - the basic text of the Agreement - but only in the Annexes attached thereto. Several articles in the Annexes do refer specifically to the Tribunal, reaffirming the Parties' duty to co-operate with it and to comply with its orders. This is significant, not least because it is the first occasion since the London Agreement[4] which established the International Military Tribunal at Nuremberg that a treaty has endorsed an international tribunal to try crimes against humanity and war crimes.[5] Nevertheless the Peace Agreement's marginalisation of the Tribunal is

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1 General Framework Agreement for Peace in Bosnia and Herzegovina and the Annexes thereto (referred to collectively hereinafter as "the Peace Agreement" or "the Agreement").

2 The Tribunal was established by the Security Council under Chapter VII of the United Nations Charter as an enforcement measure aimed at restoring and maintaining international peace and security in the region (S/RES/827 (1993)). Prior to the Tribunal's creation, the Council had already determined that the situation posed by continuing reports of widespread violations of international humanitarian law occurring in the former Yugoslavia constituted a threat to international peace and security (see paragraphs 10 and 25 of the Report of the Secretary-General (S/25704)). In resolution 808 (1993), the Council stated that it was convinced that in the particular circumstances of the former Yugoslavia, the establishment of an international tribunal would contribute to the restoration and maintenance of peace.

3 Preamble to the Peace Agreement.

4 Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, Signed at London, 8 August 1945.

5 The Tribunal was established not by treaty but by Security Council resolution 827 (1993), although it has a treaty basis in the United Nations Charter, having been established under Chapter VII of the Charter. The Convention on the Prevention and Punishment of the Crime of Genocide (1948) mentions the prospect of an „international penal tribunal" (Article 6), but no such tribunal had been established at the time of its adoption.

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in stark contrast to the pivotal rôle assigned to it by the Security Council, which has noted that „compliance with the requests and orders of the International Tribunal for the former Yugoslavia constitutes *an essential aspect* of implementing the Peace Agreement."[6] There is therefore a discrepancy between the Agreement's text and its implementation regarding the prominence to be granted to the Tribunal.

The Agreement's text, for the most part, simply affirms and elaborates the Parties' duty to co-operate with the Tribunal and to comply with its orders; a duty under which Security Council resolution 827(1993)[7] and Article 29 of the Tribunal's Statute already placed both States and *de facto* governments.[8] The Agreement stops short of requiring co-operation from the international implementing force ("IFOR"). While the IFOR may have the authority, as discussed below, to arrest suspects and deliver them to The Hague, it is a moot point whether it will in fact do so.

In contrast to these equivocal provisions, a powerful mechanism for enforcement has been established by Security Council resolution 1022(1995), which permits the Council to reimpose sanctions, suspended by that resolution, against the Federal Republic of Yugoslavia (Serbia and Montenegro) ("FRY") and the Bosnian Serb authorities, (referred to in the Peace Agreement as the Republika Srpska ("RS")), if seized of significant non-compliance by them with the Agreement. The threat of sanctions may prove a powerful weapon for obtaining co-operation with the Tribunal from FRY and RS. Whether it will do so depends on how the High Representative and the IFOR Commander, as the final authorities in theatre regarding implementation of the civilian and military aspects of the Agreement,[9] interpret the importance assigned by the Agreement to such co-operation, as well as on the extent to which the Security Council can influence their interpretation.

6 Resolution 1022 (1995) (emphasis added). In the debates on this resolution, a number of representatives emphasized the importance of co-operation with the Tribunal. See, for example, the statements of the representative of the United Kingdom, „It remains more important than ever, now that peace is truly in prospect for Bosnia, that all sides cooperate fully with the Tribunal, for, if reconciliation is one of the vital ingredients in the process of re-building a war-torn society, then that process must also include a place for justice. No Government ... should suppose that it is at liberty to obstruct the Tribunal's work". See also the statements of the representatives of Germany,Czech Republic, the United States, Italy, Bosnia and Herzegovina, Islamic Republic of Iran, Morocco, Spain, speaking on behalf of the European Union, Norway, and Korea (Verbatim Records on resolution 1022, S/PV.3595).

7 See resolution 827 (1993), „ ... all States shall co-operate fully with the International Tribunal and its organs in accordance with the present resolution and the Statute of the International Tribunal ...".

8 Under the Rules of Procedure and Evidence (DOC. IT/32/REV.7), the term, "State" is defined as „a State Member or non-Member of the United Nations or a self-proclaimed entity *de facto* exercising governmental functions, whether recognised as a State or not" (Rule 2), which thus includes the self-proclaimed Serb Republic based in Pale, the former Serb Krajina Republic and the Croatian Community of Herceg-Bosna. The Rules applicable to States were applied to the authorities in Pale in the *Nikolic* case (IT-94-2-R61). In that case, the Tribunal made a report to the Security Council (S/1995/910) that the failure to serve the arrest warrant on the accused was due to the refusal of the Bosnian Serb authorities in Pale to co-operate with the Tribunal. In response, the Security Council adopted a resolution expressing deep concerns at the Bosnian Serbs" non-compliance (S/RES/1019 (1995)).

9 Article V of Annex 10 and Article XII of Annex 1-A, respectively.

I. The Security Council context: Threat to International Peace and Security

In order fully to understand the relationship between the Peace Agreement and the Tribunal, the former must be placed in the context of the relevant Security Council resolutions on the former Yugoslavia. Under the United Nations Charter, the Security Council has „primary responsibility for the maintenance of international peace and security“,[10] and the Charter itself prevails over Member States“ obligations under any other international agreement.[11] The Council was seized of the situation in the former Yugoslavia before the signing of the Peace Agreement, having determined in a number of resolutions that the situation constituted a threat to international peace and security, and thus it has primary responsibility for the situation in the region. In recognition of this primacy, the Agreement "invites" the Council to authorize the implementation of the Agreement acting under Chapter VII of the United Nations Charter ("Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression").[12] Since the Peace Agreement assumes a continuing threat to international peace and security, as determined by the Security Council, the reasons for the Tribunal's establishment remain in effect, at least for the time being.[13]

Since the signing of the Peace Agreement, moreover, the Security Council has been careful to retain jurisdiction over its implementation. In authorizing the Agreement it has determined „that the situation in the region continues to constitute a threat to international peace and security“,[14] and has expressed „its intention to keep the implementation of the Peace Agreement under review“.[15] In resolution 1022 (1995), the Council decided that if either the High Representative or the Commander of the IFOR report that FRY or the Bosnian Serb authorities, i.e. RS, „are failing significantly to meet their obligations under the Peace Agreement“, it will automatically reimpose sanctions against them. The question is: what would constitute significant failure to co-operate with the Tribunal under the Peace Agreement?

10 Article 24(1) of the United Nations Charter.
11 Article 103 of the United Nations Charter.
12 See Article VI(1) of Annex 1-A, „ ... the United Nations Security Council is invited to authorize Member States or regional organizations and arrangements to establish the IFOR acting under Chapter VII of the United Nations Charter.“
13 See paragraph 28 of the Report of the Secretary-General (S/25704): „As an enforcement measure under Chapter VII ... the life span of the international tribunal would be linked to the restoration and maintenance of international peace and security in the territory of the former Yugoslavia, and Security Council decisions related thereto“.
14 Resolution 1021 (1995) and resolution 1022 (1995).
15 Resolution 1031 (1995).

II. Co-operation with the Tribunal by the Parties

A. The General Framework Agreement

The General Framework Agreement ("GFA"), signed by the Republic of Bosnia and Herzegovina ("RBH"), the Republic of Croatia and FRY, affirms the duty to co-operate with the Tribunal in three ways. First, Article IX provides that:

> The Parties shall cooperate fully with all entities involved in implementation of this peace settlement, as described in the Annexes to this Agreement, or which are otherwise authorized by the United Nations Security Council, pursuant to the obligation of all Parties to cooperate in the investigation and prosecution of war crimes and other violations of international humanitarian law.

The Tribunal clearly falls within the compass of this provision, despite the glaring failure to mention it by name.[16]

Second, the Parties agree to „fully respect and promote fulfilment of the commitments made" in the Annexes to the Agreement, which contain provisions which do specifically mention co-operation with the Tribunal. Third, FRY undertakes to ensure compliance with the Peace Agreement by RS,[17] which is a signatory to the Annexes. Therefore, by signing the GFA, FRY acting on its own behalf and on behalf of RS has recognized, and undertaken to co-operate with, the Tribunal. This duty of co-operation is further elaborated in the Annexes.

B. The Annexes to the Agreement

A number of articles in the Annexes explicitly refer to the Tribunal, while others implicate the Tribunal without mentioning it by name. Those which mention the Tribunal cover subjects falling into five broad categories: 1. General Commitment to Co-operate; 2. Freedom of Movement and Unrestricted Access; 3. Repatriation of Prisoners of War; 4. Exclusion from Public Office; and 5. Amnesty.

16 This is a blatant omission. Article X of Annex 1-A is virtually identical save it includes the phrase, "including the International Tribunal for the Former Yugoslavia".

17 See the Preamble, „Noting the agreement of August 29, 1995, which authorized the delegation of the Federal Republic of Yugoslavia to sign, on behalf of the Republika Srpska, the parts of the peace plan concerning it, with the obligation to implement the agreement that is reached strictly ...". In side-letters, FRY has also pledged to ensure RS"s compliance with Annex 1-A, and Croatia has undertaken to ensure compliance by "personnel or organisations in Bosnia and Herzegovina which are under its control or with which it has influence", i.e. Bosnian Croats. See letter of Mate Granic to the Acting Secretary General of NATO, dated 21 November 1995.

1. General Commitment to Co-operate

Several articles reaffirm, in general terms, the duty of the Parties to co-operate with the Tribunal. An important example is in Annex 1-A, signed by RBH, the Federation of Bosnia and Herzegovina ("FBH") and RS and "endorsed" by FRY and the Republic of Croatia:

> The Parties shall cooperate fully with all entities involved in implementation of this peace settlement, as described in the General Framework Agreement, or which are otherwise authorized by the United Nations Security Council, *including the International Tribunal for the Former Yugoslavia.*[18]

Articles obliging the Parties to provide unrestricted access, discussed below, also mention co-operation with the Tribunal. Article II(8) of Annex 4 notes, in particular, the duty to „comply with orders issued pursuant to Article 29 of the Statute of the Tribunal". An arrest warrant is the most obvious example of an order which a Party is required to comply with under Article 29, but this article also requires Parties to comply with requests for assistance, for example a formal request to a national court to defer to the Tribunal's competence pursuant to Article 9(2) of the Statute and Rule 10 of the Rules of Procedure and Evidence ("the Rules"). This latter type of request could become important if RS or FRY were to decide to prosecute persons accused by the Tribunal in their own courts.[19] If a Party fails to comply with a request for deferral within sixty days, the Tribunal may, under Rule 11 of the Rules, report the matter to the Security Council. If RS or FRY failed to comply, they would also have failed to fulfil their obligations *under the Agreement*, and might be independently reported to the Council by the High Representative for this breach.[20]

2. Freedom of Movement and Unrestricted Access

Annex 4 and Annex 6 both guarantee unrestricted access to the Tribunal.[21] In addition, under Article II(4) of Annex 1-A, the Parties undertake to facilitate „unimpeded access and movement" to „any international personnel including investigators ... or other personnel in Bosnia and Herzegovina pursuant to the General

18 Article X of Annex 1-A (emphasis added). Another example is Article IV of Annex 9.

19 A recent article suggests that the Bosnian Serbs might try Radovan Karadzic themselves. See the *New York Times*, 4 January 1996, "Top Leader of the Bosnian Serbs now under attack from within": „ .... there are increasing calls within Serb-held parts of Bosnia for him (Karadzic) to be removed from power and tried as a war criminal, *if not in The Hague, then in Bosnia.* ... "Our main goal now is to take these war criminals, like Karadzic, and put them on trial. *The Bosnian Serbs must punish those who carried out these crimes*, otherwise, in the eyes of the world, we will bear the guilt for the atrocities they committed in our name." (Emphasis added).

20 If acquitted by the national court, the Tribunal could still request the arrest of the accused if „(a) the act for which he or she was tried was characterized as an ordinary crime; or (b) the national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted." (Article 10(2) of the Statute).

21 See Article II(8) of Annex 4 and Article XIII(4) of Annex 6: „All competent authorities in Bosnia and Herzegovina shall cooperate with and provide unrestricted access to ... the International Tribunal for the Former Yugoslavia ...".

Framework Agreement". Since Annex 1-A concerns the military aspects of the Agreement, the IFOR, which was established pursuant to that Annex may employ „the use of necessary force, to ensure compliance" by the Parties.[22] Thus, upon request by the Tribunal, the IFOR could secure sites by force to ensure access to the Tribunal"s investigators.[23]

Access to sites is important to the Tribunal in the investigation of possible mass graves.[24] The majority of such sites are in the territory of RS.[25] RS is a party to Annexes 1-A and 6, and has approved, in a separate declaration, Annex 4. Its compliance with Annex 1-A is additionally underwritten by FRY.

The discovery of mass graves may help to demonstrate a systematic campaign of genocide in Bosnia and Herzegovina,[26] although oral testimony attesting to mass killings may be sufficiently probative in itself. The importance of access to suspected mass grave sites was recently affirmed by the Security Council in resolution 1034 (1995) of 21 December 1995. This strongly-worded resolution indicates the Council"s firm intention to remain seized of the matter and to dictate the terms of the Parties" compliance with the Agreement. The resolution is worth quoting at length:

> The Security Council ...
> 7. Takes note that the International Tribunal ... issued on 16 November 1995 indictments against the Bosnian Serb leaders Radovan Karadzic and Ratko Mladic for their direct and individual responsibilities for the atrocities committed against the Bosnian Muslim population of Srebrenica in July 1995;
> 8. Reaffirms its demand that the Bosnian Serb party give immediate and unrestricted access to the areas in question, including for the purpose of the investigation of the atrocities, to representatives of the relevant United Nations and other international organizations and institutions ...
> 9. Underlines in particular the urgent necessity for all the parties to enable the Prosecutor of the International Tribunal to gather effectively and swiftly the evidence necessary for the Tribunal to perform its task;
> 10. Stresses the obligations of all the parties to cooperate with and provide unrestricted

22 Article I(2)(b) of Annex 1-A.

23 IFOR has been equivocal about its willingness to perform this task. The attitude of the Clinton Administration has, on the other hand, been more robust. See, the remarks of US Defence Secretary Perry: „If the War Crimes Tribunal (sic) wants to go to Srebrenica and dig up some graves, we'll provide the security ... I don't consider that mission creep", reported in the *New York Times*, 13 January 1996, "U.S. Sees Bosnia Role Widening to Protect War Crimes Inquiries".

24 Note that Article IX(2) of Annex 1-A also mentions mass graves. This article, however, only allows access to such sites for the „limited purpose" of recovering the dead by registration personnel of a party, and not by the Tribunal, and it is also qualified by the strange wording, „... where places of burial, whether individual or mass, *are known as a matter of record, and graves are actually found to exist* ...", which appears to be intended to exclude *suspected* sites which have not been confirmed.

25 See the Report of the Commission of Experts, Annex X, Mass Graves, *passim*. See also *The Times*, 13 January 1996, p.10/1: „War Crimes team told of 8,000 bodies in mineshafts"; and *Le Monde*, 26 January, 1996, p.2, "Les principaux charniers repérés".

26 The indictment in *Karadzic and Mladic* (IT-95-18-I), charges the accused with, *inter alia*, genocide, for their involvement in the events following the fall of Srebrenica to Serb forces. The confirming Judge in that case noted the evidence of „thousands of men executed and buried in mass graves".

> access to the relevant United Nations and other international organizations and institutions so as to facilitate their investigations and takes note of their commitment under the Peace Agreement in this regard;
> 11. Reiterates its demand that all parties, and in particular the Bosnian Serb party, refrain from any action intended to destroy, alter, conceal or damage any evidence of violations of international humanitarian law and that they preserve such evidence;
> 12. Reiterates further its demand that all States, in particular those in the region of the former Yugoslavia, and all parties to the conflict in the former Yugoslavia, comply fully and in good faith with the obligations contained in paragraph 4 of resolution 827 (1993) to co-operate fully with the International Tribunal and calls on them to create the conditions essential for the Tribunal to perform the task for which it has been created ...

It may be inferred from this resolution that failure by RS to provide "unrestricted access to the areas in question" would constitute a serious breach of both RS's and FRY's obligations under the Peace Agreement, and would be a ground for the reimposition of sanctions under resolution 1022, provided that the Security Council were first seized of such non-compliance by the High Representative or the IFOR Commander. As discussed below, the Council's perception of the gravity of the breach might influence the views of these officials.

3. Repatriation of Prisoners of War

Article IX(1)(g) of Annex 1-A provides:

> ... each Party shall comply with any order or request of the International Tribunal for the Former Yugoslavia for the arrest, detention, surrender of or access to persons who would otherwise be released and transferred under this Article, but who are accused of violations within the jurisdiction of the Tribunal. Each Party must detain persons reasonably suspected of such violations for a period of time sufficient to permit appropriate consultation with Tribunal authorities.

This paragraph has to be read in conjunction with paragraph (c) of the same article, which provides for the release and transfer of all prisoners held by the Parties within thirty days of the transfer of authority from the UNPROFOR Commander to the IFOR Commander. Exchange of prisoners has now officially taken place, although many may remain in custody, without resulting in the surrender of accused to the Tribunal under Article IX(1)(g), a provision which was not, in any event, designed to result in *leaders* being surrendered to The Hague.

4. Exclusion from Public Office

The Peace Agreement contains a number of "office-barring" clauses, most notably in Annex 4, "Constitution of Bosnia and Herzegovina". Article IX(1) of this Annex reads:

> No person who is serving a sentence imposed by the International Tribunal for the Former Yugoslavia, and no person who is under indictment by the Tribunal and who has failed to comply with an order to appear before the Tribunal, may stand as a candidate or hold

> any appointive, elective, or other public office in the territory of Bosnia and Herzegovina.[27]

The natural interpretation of this provision is that it is a corollary of a Constitution which is „determined to ensure full respect for international humanitarian law“ and is „guided by the Purposes and Principles of the Charter of the United Nations“.[28] It does not imply that exclusion from public office is an alternative to being tried by the Tribunal; rather it would be a further "sanction" to ensure the appearance of the accused before the Tribunal. Arguably, a private citizen is also easier to arrest than a public official, and the latter might try to claim sovereign immunity, notwithstanding the fact that Article 7(2) of the Tribunal's Statute provides that, „[t]he official position of any accused person ... shall not relieve such person of criminal responsibility ...“. In any event, the main purpose of the provision is to reflect the value judgement that a person convicted by the Tribunal, or indicted and failing to appear before it to defend himself, is not fit for public office.

The phrase, „and who has failed to comply with an order to appear before the Tribunal“, in Article IX(1) of Annex 4 is unfortunate, since the Tribunal does not have a practice of ordering persons to appear before it, but of issuing arrest warrants addressed to States.[29] Such an order could, of course, be issued as a summons under Rule 54 of the Rules if „necessary for the purposes of an investigation or for the preparation or conduct of the trial“. Equally, it could be argued that an arrest warrant which has been brought to the attention of the accused operates as a form of summons.

5. Amnesty

Article VI of Annex 7, which addresses the sensitive issue of amnesty, reads:

> Any returning refugee or displaced person charged with a crime, other than a serious violation of international humanitarian law as defined in the Statute of the International Tribunal for the Former Yugoslavia since January 1, 1991 or a common crime unrelated to the conflict, shall upon return enjoy an amnesty. In no case shall charges for crimes be imposed for political or other inappropriate reasons or to circumvent the application of the amnesty.

By definition, this Article does not interfere with or impinge in any way upon the work of the Tribunal. It should be seen as having the purpose of satisfying Article 6(5)[30] of Additional Protocol II,[31] and thereby confirming that Additional Protocol

27 See also Article VIII(4), Establishment of a Joint Military Commission, of Annex 1-A, and Article II(1) of Annex 8, "Commission to Preserve National Monuments".

28 Preamble to "Constitution of Bosnia and Herzegovina", Annex 4.

29 This does not apply to Article VIII(4) of Annex 1-A, which does not require that the person be ordered to appear before the Tribunal, but would apply to Article II(1) of Annex 8, which does.

30 "At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict ... ". See Paragraph 4618 of the *Commentary on the Additional Protocols*: "the object of this sub-paragraph is to encourage gestures of reconciliation which can contribute to reestablishing normal relations in the life of a nation which has been divided".

II contemplates amnesty only for having participated in the fighting, and not for having committed violations of international humanitarian law while so participating.

The absence of any amnesty for those accused by the Tribunal underscores the point that the Peace Agreement must comply with previous Security Council resolutions relating to the former Yugoslavia, in particular those establishing the Tribunal. An amnesty for those accused of genocide[32] might, in any event, be contrary to *jus cogens* and therefore void.[33]

Many articles could also be invoked in the Tribunal's favour which do not specifically mention it by name, notably articles which remind the parties of their obligations under international humanitarian law,[34] or which refer to co-operation with international organizations or personnel. An example of the latter is Article III(2) of Annex 7, which could be relied upon to provide the Tribunal's investigators with access to refugees and displaced persons for the purposes of taking statements regarding the circumstances of their displacement - an activity "vital to the discharge of their mandate".

A number of clauses mention co-operation with non-governmental organizations ("NGOs").[35] In the early stages of an investigation, the Tribunal often receives valuable information from NGOs.[36] It is also significant that whereas before the Peace Agreement, the Parties were not strictly required to co-operate with NGOs, as they were required by Security Council resolutions to co-operate with the Tribunal, the relevant clauses now impose such a requirement.

C. Sanctions for Non-Compliance

As stated, Security Council resolution 1022 (1995) provides for enforcement of the Peace Agreement by conferring on the High Representative and the IFOR Command-

31 Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (16 I.L.M. 1442 (1977)).

32 To date, the Tribunal has charged five accused with genocide: Zeljko Meakic (IT-95-4-I), Radovan Karadzic and Ratko Mladic (IT-95-5-I and IT-95-18-I), Dusko Sikirica (IT-95-8-I) and Goran Jelisic (IT-95-10-I).

33 Article 53 of the Vienna Convention on the Law of Treaties. See the International Court of Justice's Advisory Opinion on Reservations to the Convention on the Prevention and Punishment of Genocide (1951), in which it stated that genocide was „contrary to moral law and to the spirit and aims of the United Nations"; see also the Separate Opinion of Judge Lauterpacht in the Case Concerning Application of the Convention on the Prevention and Punishment of Genocide (Order of 13 September 1993): „... the prohibition of genocide has long been regarded as one of the few undoubted examples of *jus cogens*" (paragraph 100).

34 See, e.g., the Preamble to Annex 4: „Determined to ensure full respect for international humanitarian law".

35 See, again, Article III(2) of Annex 7, and Article XIII(3) of Annex 6, „The Parties shall allow full and effective access to non-governmental organizations for purposes of investigating and monitoring human rights conditions in Bosnia and Herzegovina and shall refrain from hindering or impeding them in the exercise of these functions".

36 See the Tribunal's Second Annual Report (A/50/365; S/1995/728), paragraphs 154-156.

er the power to report to the Council significant non-compliance by either RS or FRY. The Council will then reimpose sanctions against those parties, without the need of a decision, after 5 days, „unless the Council decides otherwise taking into consideration the nature of the non-compliance". Thus sanctions will be reimposed automatically unless members of the Security Council decide to the contrary (although such a decision could of course be vetoed by one of the permanent members).

The provision for sanctions is, however, subject to an important qualification: it may terminate after six to nine months. Operative paragraph 4 of the resolution stipulates that the Council will terminate sanctions "on the tenth day following the occurrence of the first free and fair elections provided for in annex 3 of the Peace Agreement ...", which are due to take place, under annex 3, six months after the Agreement enters into force or, if the Organization for Security and Cooperation in Europe deems a delay necessary, "no later than nine months after entry into force" (Article II(4)). This raises the issue: what if it proves impossible to organize free and fair elections in that time, given the conditions in Bosnia and Herzegovina, notably the many hundreds of thousands of refugees? Presumably the termination of sanctions under resolution 1022 would then have to await such elections, even if they were not to be held for a year or more. It should be added that, if elections are held in time, termination would not be automatic; operative paragraph 5 of the resolution refers to termination "by a subsequent Council decision in accordance with paragraph 4 above", clearly indicating that the Council must take a decision to terminate sanctions. A permanent member could veto this decision if there were continuing non-compliance by the FRY or RS. Indeed, the prospect of using the veto in these circumstances may have been hinted at by the United States Representative during the debates on resolution 1022:

> .... compliance by the Bosnian Serbs cannot be assumed. After the siege of Sarajevo, the market-place shelling, the years of "ethnic cleansing" and the unforgivable savagery at Srebrenica, the world has had enough of Bosnian Serb arrogance and brutality. Their compliance with this agreement must be demanded by the Government in Belgrade; it must be demanded by this Council; and it must be demanded by every civilized person on earth.[37]

If the two conditions demanded by paragraph 4 were met, namely free and fair elections and withdrawal from the zones of separation, but the Bosnian Serbs were recalcitrant in other areas, for example refusing to co-operate with the Tribunal, sanctions might still not be terminated. To terminate sanctions in the face of barefaced non-compliance with "an essential aspect of implementing the Peace Agreement" would appear to be inconsistent with the entire spirit of resolution 1022 (1995).

The sanctions suspended under resolution 1022 are contained in a number of resolutions against FRY and, to a lesser extent, RS (notably resolution 942(1994)).

37 S/PV.3595, p.15.

Interestingly, it appears that sanctions would be reimposed on both Parties if either of them failed to comply. While it is logical for sanctions to be reimposed on FRY for RS's non-compliance, since FRY is the guarantor of RS's compliance, it is curious that sanctions may be reimposed upon RS for FRY's non-compliance. The close identification of FRY and RS suggests a perception that they are, in fact, one entity. This perception is reinforced by the Agreement of 29 August 1995,[38] and the constitutional provision which would allow RS to establish a "special parallel relationship" with FRY.[39] The *de facto* establishment of a "Greater Serbia" has potential implications for the Tribunal, both in respect of the characterisation of the conflict in Bosnia and Herzegovina as international, based on the notion that Bosnian Serb forces are agents of FRY, for the purposes of the application of international humanitarian law, and in respect of the existence of an expansionist project in Bosnia and Herzegovina on the part of FRY.

An important feature of resolution 1022 (1995) is that it requires the Security Council to be seized by the High Representative or the IFOR Commander of non-compliance by FRY or RS with regard to a matter within the scope of their respective mandates. Thus these officials have a vital rôle to play in monitoring compliance by these Parties.[40] The High Representative's mandate is to monitor compliance

38 See footnote 17.

39 Article III(2)(a) of Annex 4.

40 The present holder of the office of the High Representative, Mr. Carl Bildt, has sought to play down his capacity to ensure compliance by the Parties. Replying to an editorial of 17 December 1995 in the *New York Times*, Mr. Bildt wrote, "You seem to overestimate the powers of the High Representative. His powers are not to execute or enforce but to monitor and coordinate. In contrast to the military implementation with its distinct chain of command and single-key approach, the civilian implementation structures have numerous chains of command and multiple keys"(*New York Times*, 21 December 1995). This passive interpretation of his rôle deliberately overlooks the High Representative's power to re-activate sanctions against FRY and RS under resolution 1022 (1995). The Commander of the IFOR, Admiral Leighton Smith, has also appeared at times to labour under a misconception of his responsibilities. In reply to a question whether the arrest, in February this year, of Bosnian Serbs by the Bosnian Government, on suspicion of having committed war crimes, violated the Peace Agreement, Admiral Leighton Smith replied, "The issue rests now, with the international tribunal", thus abdicating to the Tribunal his "final authority in theatre" to interpret the Peace Agreement (see CNN Transcript # 90-3, 7 February 1996). Smith of course had it in his power to state that there was no violation of the right to liberty of movement, guaranteed in the Agreement (for example, by Article I(13) of Annex 6), in effecting *bona fide* arrests of those suspected of committing war crimes or crimes against humanity.
Interestingly, new "rules for the road" announced by U.S. envoy Richard Holbrooke in the wake of this affair also led to far greater powers being conferred upon the Tribunal than envisaged at Dayton. After the two detainees referred to were transferred to the Tribunal on 12 February 1996, Holbrooke declared an agreement pursuant to which the Bosnian government would send a list of suspects to the Tribunal and only those certified by the Tribunal as suspects could be arrested at will on the territory of the Federation of Bosnia and Herzegovina. This agreement in effect treats the Tribunal as a „detaining authority", or even a „prosecuting authority", in Bosnia and Herzegovina for those suspected of committing violations of international humanitarian law. While these measures were no doubt expedient as a means to forestall retaliatory arrests by the Bosnian Serbs, one has to question the constitutionality and legitimacy of this abdication by Bosnia and Herzegovina of the right to arrest those it suspects of having committed grave crimes on its territory. It is also highly questionable to what extent the Tribunal, with its limited facilities, may appropriately act as an overall „prosecuting authority" for Bosnia and Herzegovina, with regard to war crimes and crimes against humanity. The principle of an international tribunal has always been conceived

with the civilian aspects of the Peace Agreement,[41] which include such issues as humanitarian aid, rehabilitation of infrastructure and economic reconstruction, the establishment of political and constitutional institutions in Bosnia and Herzegovina, promotion of respect for human rights and the return of displaced persons and refugees, election arrangements, and, notably, co-operation with the Tribunal. The IFOR Commander is responsible for enforcing compliance with the military aspects of the Peace Agreement (Annex 1-A), which includes provisions regarding co-operation with the Tribunal, free movement of investigators, including access to sites, and access to prisoners held by the Parties.

Resolution 1031 (1995) confirms that the IFOR Commander and the High Representative have „final authority to interpret"[42] the military and civilian aspects of the Agreement, respectively. This would seem to imply that the Security Council is not competent to determine, *proprio motu*, non-compliance by a Party, although the words, „in theatre", could be construed to mean that the Council, being „out of theatre", is not subject to this „final authority". Resolution 1031 (1995) would then represent a partial delegation of power by the Security Council to the IFOR Commander and High Representative, the Council however retaining a residual power to determine, at least, a Party's non-cooperation with the Tribunal. It is possible to imagine tension arising where there is substantial non-cooperation with the Tribunal by RS or FRY, but neither the High Representative nor the IFOR Commander consider it a significant breach of the Parties' obligations under the Peace Agreement. The Security Council would, on the above theory, not be barred from adopting new resolutions to condemn and, if necessary, to apply sanctions against RS and FRY for non-cooperation. Since it has primary responsibility for the maintenance of international peace and security, its resolutions might also mould the views of the IFOR Commander and the High Representative as to the interpretation of the Agreement and of what constitutes significant non-compliance.

It is salient to note that the Tribunal's Rules[43] provide for direct notification to the Security Council where a State fails to co-operate: a useful safeguard against inaction by the High Representative or the IFOR Commander. A finding by a Trial Chamber that failure to execute an arrest warrant is due to the failure of a State to co-operate may implicitly involve finding that a Party has failed to meet its obligations under the Peace Agreement.[44] This judicial determination would be independent of, and not subject to, the High Representative's „final authority to interpret" the Agreement. Thus a system of „checks and balances" may emerge in which the High Representative's „final authority" to interpret civilian implementation of the

as operating *alongside* national courts. For these reasons, Holbrooke's „rules of the road" represent more of a *realpolitik* stop-gap, born of „shuttle diplomacy", than a long-term solution.

41 Article II(1) of Annex 10.

42 See footnote 9.

43 See Rules 11, 13, 59(B), and 61(E) of the Rules.

44 See Rule 61(E) of the Rules.

Agreement is balanced in certain cases by the monitoring activities of other organs enjoying concurrent jurisdiction.[45]

III. Co-operation with the Tribunal by Non-Parties

Having considered the position of States and Entities under the Agreement, it is pertinent to note the impact which the various international organizations and human rights bodies established by the Agreement may have on the Tribunal's activities.

A. The Implementation Force - IFOR

The deployment of the IFOR may facilitate the work of the Tribunal by creating a secure environment for investigators to interview witnesses and examine important sites. Additionally, IFOR may have the authority to effect the Tribunal's arrest warrants, in contrast to the United Nations Protection Force ("UNPROFOR") which was understood to have no such power.[46] Annex 1-A does not explicitly confer on IFOR the authority to execute the Tribunal's arrest warrants. Nevertheless, it is clear that IFOR, unlike UNPROFOR, may use force to accomplish its task,[47] and its task is to ensure compliance by the Parties with Annex 1-A. Compliance includes co-operation with the Tribunal under Article X, and co-operation pre-eminently involves the arrest of accused persons.

The Parties to Annex 1-A cannot gainsay their duty to arrest accused persons. If they do not make the arrests themselves, they may be deemed to have granted IFOR the authority to do so on their behalf, since those arrests are "actions ... required ... to ensure compliance" with Annex 1-A. They have also agreed, under Article VI(4), that „further directives from the NAC (North Atlantic Council) may establish additional duties and responsibilities for the IFOR in implementing this Annex"; thus the North Atlantic Council could simply confer on IFOR the duty or responsibility, whenever possible, to execute the Tribunal's arrest warrants.

45 Another such "check" is the IPTF Commissioner's duty to report directly to the Secretary-General of the United Nations (Article II(4) of Annex 11).

46 See, James W. Houck, in 4 *Duke J. Comp. & Int'l L.* 1 " ... if the United Nations were to play a larger role in the maintenance of international peace and security, it would have to pursue its increasingly challenging mandates more aggressively. In certain cases this would require a military capability -- *a capability which the United Nations does not have*, and, to a large extent, that only the United States can provide". (Emphasis added). The execution of arrest warrants would appear to be such a case requiring a military capability.

47 Article I(2)(b) of Annex 1-A authorizes IFOR, „to take such actions as required, including the use of necessary force, to ensure compliance with this Annex...". See also Article VI(2) of Annex 1-A: „... IFOR shall have the right: (a) to monitor and help ensure compliance by all Parties with this Annex ... „ Resolution 1031 (1995) confirms this right, in operative paragraph 5, recognizing „that the parties shall co-operate fully with ... the International Tribunal ... and that the Parties have in particular authorized the multinational force... to take such actions as required, including the use of necessary force, to ensure compliance with Annex 1-A of the Peace Agreement".

Statesmen and IFOR officials have also repeatedly stated that they do have the authority, under certain circumstances, to arrest persons.[48] These statements have not been contradicted by the Parties, who may be considered, therefore, to have acquiesced in them.

Two arguments might be made that IFOR has not only the right but also the *duty* to execute the Tribunal's arrest warrants. The first argument derives from the Tribunal's Rules and the overriding obligation of all States to comply with the Tribunal's orders pursuant to Resolution 827 (1993). If an accused „resides, or was last known to be, or is believed by the Registrar to be likely to be found" in an area of Bosnia and Herzegovina under IFOR's „jurisdiction or control",[49] then an arrest warrant may be transmitted under Rule 55 of the Rules to the national authorities of the State in control of that sector, which are then under a duty to execute it. For example, the United States contingent of the IFOR currently has responsibility for the operational area which includes Srebrenica. If the Registrar believed an accused to be in Srebrenica, she could send an arrest warrant to the appropriate authorities of the United States, which would then have the duty to execute the arrest warrant.[50]

Second, it may be argued that a duty to execute the Tribunal's arrest warrants arises, where the accused is charged under Article 2 of the Statute ("Grave breaches of the Geneva Conventions of 1949"), from the troop-contributing States' obligation under the four Geneva Conventions "to search for persons alleged to have committed, or to have ordered to be committed ... grave breaches, and (to) bring such persons, regardless of their nationality, before (their) own courts".[51] Once the accused are before the national courts, which would include courts-martial convened in Bosnia and Herzegovina, the State must either try the person or extradite him to another High Contracting Party for trial. Since the Tribunal is, like a High Contracting Party, competent to prosecute persons for grave breaches of the Geneva Conventions, its

48 See the remarks of Secretary of State Warren Christopher at NATO Headquarters in Brussels, on December 5, 1995, „ ... with respect to the responsibility of IFOR, IFOR's responsibility -- or NATO's responsibility -- is to turn over the war criminals if they come into possession of them, or if they come into contact with them, or if the war criminals do something to obstruct the implementation process. But it is not part of the NATO obligation -- not part of IFOR's responsibility -- to hunt down or to seek out war criminals. That's the responsibility of the countries involved, but it's not part of the NATO mission, except insofar as I mentioned in the course of my answer" (Federal News Service, 5 December 1995).

49 It can be argued that, under the Agreement, IFOR enjoys rights analogous to that of an occupying force. See Article VI(9)(a) of Annex 1-A: „The IFOR shall have complete and unimpeded freedom of movement by ground, air, and water throughout Bosnia and Herzegovina. It shall have the right to bivouac, maneuver, billet, and utilize any areas or facilities to carry out its responsibilities as required for its support, training, and operations, with such advance notice as may be practicable". The prerogative to billet troops is normally that of the Sovereign, and then only in times of war (see the Third Amendment to the Constitution of United States: „No soldier shall, in time of peace, be quartered in any house, without the consent of the Owner; nor in time of war, but in a manner to be prescribed by law").

50 It is noteworthy that a provision which was originally an amendment to the Defense Authorization Bill, and is now pending in the United States Senate, provides for the extradition of accused persons to the Tribunal and might thus allow the United States, under its national law, to transfer those arrested by its troops in Bosnia and Herzegovina to The Hague.

51 Articles 49, 50, 129 and 146 of Conventions I, II, III and IV respectively.

position could be equated, at the very least, with that of a Party receiving extradited persons. With the exception of Milan Martic, all of the fifty-two persons so far indicted by the Tribunal are alleged to have committed, *inter alia*, grave breaches. The Geneva Conventions may therefore require, and certainly authorize, troop-contributing States to search for and arrest those accused.

In order to provide for the transmission of arrest warrants to IFOR, the Judges of the Tribunal adopted a new Rule at the Ninth Plenary Session on 17-18 January 1996. Rule 59 *bis* of the Rules provides, in part, that:

> (A) Notwithstanding Rules 55 to 59, on the order of a Judge, the Registrar shall transmit to an appropriate authority or international body a copy of a warrant for the arrest of an accused, on such terms as the Judge may determine, together with an order for his prompt transfer to the Tribunal in the event that he be taken into custody by that authority or international body ...

This Rule was adopted to take account of the fact that Rules 55 to 59 were drafted with States, and not international organizations, in mind. Arguably, Rule 54 would, in any event, permit the transmission of such orders and warrants to IFOR, since it is a general rule enabling a Judge or Trial Chamber to „issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial". Notably, the Tribunal's Statute does not exclude the possibility of arrest by international bodies; Article 20(2) of the Statute is drafted in general language not limited to arrest by States.

B. The International Police Task Force

The principal interest of the International Police Task Force ("IPTF"), for the Tribunal, is that it shall provide it with information concerning human rights violations.[52] As regards the Parties to Annex 11 (RBH, FBH and RS), which establishes the IPTF, Article IV(3) lays down stringent obligations. The Parties „shall not impede the movement of IPTF personnel or in any way hinder, obstruct or delay them in the performance of their responsibilities. They shall allow IPTF personnel immediate and complete access to any site, person ... or other item or event in Bosnia and Herzegovina as requested by the IPTF in carrying out its responsibilities under this Agreement". Failure to comply with an IPTF request is deemed, under Article V(1), „a failure to co-operate with the IPTF". Under Article V(2), the IPTF Commissioner notifies the High Representative and the IFOR Commander of such failure.

It is not clear, however, from Article III of Annex 11 that assistance to the Tribunal is part of the IPTF's „responsibilities under this Agreement" referred to in

52 Article VI(1) of Annex 11 reads, „When IPTF personnel learn of credible information concerning violations of internationally recognized human rights or fundamental freedoms or of the role of law enforcement officials or forces in such violations, they shall provide such information to the Human Rights Commission established in Annex 6 to the General Framework Agreement, the International Tribunal for the Former Yugoslavia, or to other appropriate organizations."

Article IV(3). The IPTF will consider requests for assistance from the Parties, but it is not required to consider such requests from the Tribunal. As regards the Parties, the "Constitution of Bosnia and Herzegovina" stipulates that international criminal law enforcement is the responsibility of the institutions of Bosnia and Herzegovina, and not of the Entities.[53] Accordingly, it may only be Bosnia and Herzegovina which can request the IPTF to arrest persons accused by the Tribunal, and such a request could always be blocked by the Entities exercising their "veto".[54]

The IPTF may prove a useful resource, readily available on the ground, as observers for the questioning of suspects who may be delivered to The Tribunal. Since interrogation is a „law enforcement activity", the monitoring, observing and inspecting of which falls within the IPTF's mandate,[55] IPTF officers could be employed to observe whether any such interrogation adequately respects the rights of suspects and is otherwise properly conducted. Since statements made by suspects or accused under interrogation may often be challenged by the defence at trial, on the basis that the evidence was improperly obtained, it may be useful for the Tribunal to be able to call IPTF personnel to testify as to the conditions under which such statements were made, in order to ascertain whether they are admissible.[56]

C. Commission on Human Rights

Annex 6 to the Agreement, "Agreement on Human Rights", provides for the creation of a Commission on Human Rights,[57] consisting of an Ombudsman and a Human Rights Chamber, which may receive complaints of human rights violations by Parties from „any Party or person, non-governmental organization, or group of individuals claiming to be the victim of a violation by any Party or acting on behalf of alleged victims who are deceased or missing ...".[58] These organs are authorised to gather information, publish findings and conclusions, and bring pressure to bear upon Parties to ensure that they respect human rights, including violations of international humanitarian law.

53 Article III(1)(g) of Annex 4.

54 The concept of "ethnic sovereignty" and veto by the Entities is discussed by Mr. Sienho Yee in this issue.

55 See Article III(1) of Annex 11.

56 See Rule 95 of the Rules of Procedure and Evidence, "Evidence Obtained by Means Contrary to Internationally Protected Human Rights": „No evidence shall be admissible if obtained by methods which cast substantial doubt on its reliability or if its admission is antithetical to, and would seriously damage, the integrity of the proceedings".

57 Legitimate doubts may be raised as to whether the Commission will ever be established, since Article III(2) of Annex 6 provides that, „[t]he salaries and expenses of the Commission and its staff shall be determined jointly by the Parties and shall be borne by Bosnia and Herzegovina", while „Bosnia and Herzegovina" is given no revenue-raising power under the new Constitution, only the power to decide upon „the sources and amounts of revenues ... (Article IV(4)(b) of Annex 4).

58 Articles V(2) and VIII(1) of Annex 6.

These activities are of obvious interest to the Tribunal. To take an example: the Commission, receiving an application from a person „acting on behalf of alleged victims who are deceased or missing", might investigate an allegation that a person has been killed and buried in a mass grave, in violation of their right to life.[59] Or, it might investigate a complaint that a Party has violated, or is continuing to violate, the Genocide Convention 1948,[60] for example, by refusing to allow refugees to return to their homes as part of a continuing policy of "ethnic cleansing". If these investigations revealed evidence of widespread or systematic abuses, the Tribunal could subpoena the evidence under Rule 54 of the Rules. Equally, the Prosecutor could request information under Rule 8 of the Rules.

There is bound to be overlap between the work of the Commission and that of the Tribunal,[61] especially considering that both the Ombudsman and the Human Rights Chamber are mandated to give „particular priority to allegations of especially severe or systematic violations and those founded on alleged discrimination on prohibited grounds"(Articles V(3) and VIII(2)(e)). The danger of overlap is, however, substantially reduced by the fact that the Commission will investigate complaints against *States* and *Entities*, whereas the Tribunal prosecutes only *„natural persons"*.[62] Additionally, the Tribunal's temporal jurisdiction begins on 1 January 1991; the Commission's *ratione temporis*, it may be argued, could only begin with the signing of the Peace Agreement on 14 December 1995, subject to the right to complain of „continuing violations".[63]

D. Commission for Displaced Persons and Refugees

This Commission, established by Annex 7 of the Peace Agreement, could, by bilateral arrangement, become the restitutionary arm of the Tribunal. Under Rules 88(B) and 105 of the Rules, a Trial Chamber of the Tribunal may order restitution, after

59 The Party could incur liability for a continuing violation if it does not provide adequate assistance or remedies for the alleged violation, including not having any structure to bring the perpetrators to justice or to investigate it. In this way, the international human rights law applicable to „disappearances" might bear on the issue of mass graves (See the *Velasquez-Rodriguez* case (Merits) (1987) in the Inter-American Court of Human Rights).

60 Article II(2)(b) gives the Commission on Human Rights jurisdiction to consider, *inter alia*, „alleged or apparent discrimination on any ground such as sex, race, color, language, religion ... or other status arising in the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to this Annex, where such violation is alleged or appears to have been committed by the Parties, including by any official or organ of the Parties, Cantons, Municipalities, or any individual acting under the authority of such official or organ". The Genocide Convention of 1948 is the first international agreement listed in the Appendix. The application of this Convention to non-States, i.e. the Entities, is novel, and may lead to interesting developments.

61 Note that, under Article III(5) of Annex 6, the Commission could receive information from the Tribunal: „With full regard for the need to maintain impartiality, the Commission may receive assistance as it deems appropriate from any governmental, international, or non-governmental organization".

62 Article 6 of the Tribunal's Statute.

63 See footnote 59, above.

holding a special hearing to determine the matter, where it „finds the accused guilty of a crime and concludes from the evidence that unlawful taking of property by the accused was associated with it". Under Rule 105, any summonses, orders and requests issued by a Trial Chamber are transmitted by the Registrar to the „competent national authorities".

The Tribunal may decide to consider the Commission for Displaced Persons and Refugees as the „competent national authority" for the purposes of Rule 105. According to Article XII(5) of Annex 7:

> The Commission shall have the power to effect any transactions necessary to transfer or assign title, mortgage, lease, or otherwise dispose of property with respect to which a claim is made, or which is determined to be abandoned. In particular, the Commission may lawfully sell, mortgage, or lease real property to any resident or citizen of Bosnia and Herzegovina, or to either Party, where the lawful owner has sought and received compensation in lieu of return, or where the property is determined to be abandoned in accordance with local law. The Commission may also lease property pending consideration and final determination of ownership.

These are wide-ranging powers, which could make the Commission a very effective restitutionary device for the Tribunal. The Commission could also settle claims for *compensation*, as distinct from restitution of proceeds, on the basis of a judgement transmitted to the Commission under Rule 106 of the Rules, where the „injury to a victim" involves loss of property, since the Commission's mandate extends to „claims for just compensation in lieu of return".[64]

E. Commission of Inquiry

In side-letters to the Peace Agreement, the President of RBH, Alija Izetbegovic, and the President of Serbia, Slobodan Milosevic, agreed to establish „an international commission of inquiry into the recent conflict in the former Yugoslavia".[65] According to these side-letters, the commission „will include participation by the governments of the states involved, as well as distinguished international experts to be named by agreement among the Republics of former Yugoslavia", and its mandate will be „to conduct fact-finding and other necessary studies into the causes, conduct, and consequences of the recent conflict on as broad and objective a basis as possible, and to issue a report thereon, to be made available to all interested countries and organizations". Both Presidents pledge the full co-operation of their respective governments with the Commission.

The fact that the Commission's experts must be named „by agreement among the Republics of the former Yugoslavia", and are therefore political appointees, raises substantial doubts about its *bona fides*. A panel of experts selected by an independ-

64 Article XI of Annex 7.
65 Letters addressed to Warren Christopher, Secretary of State of the United States of America, from Presidents Izetbegovic and Milosevic, dated 21 November 1995.

ent body would have been greatly preferable. Notwithstanding this scepticism, the Commission's studies might contribute to an understanding of the nature of the conflict in the former Yugoslavia, in particular regarding the involvement of FRY in the war in Bosnia and Herzegovina.

IV. Conclusion

The key to the Peace Agreement lies in its strict enforcement, since the Party which has shown itself most willing to co-operate with the Tribunal, RBH,[66] has been the least able to do so, and those Parties most implicated by the Tribunal's work, RS and FRY, have been the least willing, indeed have resolutely refused, to co-operate.[67] The Peace Agreement establishes an important mechanism for ensuring compliance with its terms by RS and FRY, namely the threat that sanctions will be automatically reimposed. Enforcement in turn depends on the will of the international community. In the words of the then Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia, Mr. Tadeusz Mazowiecki, „the very stability of international order and the principle of civilization is at stake over the question of Bosnia",[68] and, by the same token, over the enforcement of the Peace Agreement.

66 See the Tribunal's Second Annual Report (A/50/365; S/1995/728), paragraphs 50, 51, 132, 138. On 3 December 1994, RBH signed a Memorandum of Understanding with the the Prosecutor in which it agreed to co-operate fully and unconditionally with the Prosecutor. RBH has, in fact, fully co-operated with the Tribunal, enacting legislation enabling it to defer cases to the Tribunal, deferring cases in the *Karadzic and Mladic* (IT-95-5-D) and *Lasva River Valley* (IT-95-6-D) cases and providing information on war crimes to the Tribunal through its War Crimes Commission. It has been unable to execute arrest warrants sent to it by virtue of the fact that the accused live in "temporary occupied territory controlled by aggressors" (*Nikolic*, IT-94-2-R61, para. 35).

67 See the Tribunal's Second Annual Report (A/50/365; S/1995/728), paragraph 191.

68 Letter dated 27 July 1995 addressed by Mr. Tadeusz Mazowiecki to the Chairman of the Commission on Human Rights (E/CN.4/1996/9, Annex 1).