

**The Eighth Hauser Lecture on International Humanitarian Law by Paddy Ashdown,
High Representative for Bosnia and Herzegovina, New York, 3 March 2004**

'International Humanitarian Law, Justice and Reconciliation in a Changing World'

Introduction

It is a great honour to have been invited to deliver this, the eighth Hauser Lecture on International Humanitarian Law.

I must make a confession at the outset. I whisper it quietly in these hallowed surroundings, at a gathering attended by so many members, or aspiring members, of the legal fraternity.

I am not a lawyer.

Nor am I an expert in international humanitarian law.

But I am a former politician, diplomat and soldier, with a passionate belief in the international rule of law, and in the need for governments to stand up for justice and human rights the world over.

I also come to these issues with the perspective of the practitioner, with a strong view as to how things look not in far-flung capitals, but as seen on the ground.

Today, I carry that practical responsibility in my work in Bosnia and Herzegovina, where I am responsible for helping to see through the international community's commitment to lasting peace and stability in that country.

So I hope you will forgive me if I approach the subject of tonight's talk – the related questions of international humanitarian law, justice and reconciliation – as I see them through my experience in Bosnia, and in the Balkans more generally.

Bosnia, of course, is arguably the first crucible in which the modern doctrine of international humanitarian intervention was forged.

It was a painful process indeed, as the world prevaricated and dithered while villages burned.

225,000 lay dead in a small European country, as diplomats in capitals weighed the costs and consequences of decisive military intervention.

In the words of the Bosnian poet Dragan Jancar: *“The world lay still in the morning mist and gave itself over to the angel of evil”* while the diplomatic gavotte was played out in Western capitals.

W.H Auden has even more terrible lines, which come from an earlier age, but seem to have grim relevance to this failure, for which I believe history will judge our Western leaders harshly. In his Sonnet *“In Time of War”* he writes of diplomats who fail in their greatest task – that of keeping the peace

‘And on the issue of their charm depended

A land laid waste with all its young men slain

Its women weeping, and its towns in terror...’

If some small good came out of this Bosnian Golgotha, it was, perhaps an acknowledgement that it could never be allowed to happen again.

So when Milosevic embarked on a sequel to his Bosnian madness, this time in Kosovo in 1999, the doctrine of the inviolability of sovereign states was turned on its head.

I remember vividly wandering among refugees in the northern Albanian town of Kukes, just a few kilometres from the Kosovan border, and the comment of a twenty year old Kosovar girl, who said: 'I was always told the West went to war for land or oil; yet here is NATO fighting for me.'

Faced with a clear choice between standing up for human rights, or respect for national sovereignty, the international community chose to stand up for human rights, with fundamental consequences for the assertion of domestic sovereignty in Article 2, paragraph 7 of the UN Charter.

There are those who suggest, of course, that this is slippery slope. Intervene once to stand up for the weak against the mighty, and where do you draw the line? There would gloomy predictions that the West would be sucked into a myriad of conflicts it would be incapable of resolving.

I thought that was an overly gloomy prognosis at the time.

And in the post September 11 world, I still believe it to be wrong.

Because it is posited on the assumption that since we can't intervene everywhere, we shouldn't intervene anywhere.

What we need, surely, is a way – however rudimentary – of assessing the circumstances in which the international community has a right, if not a clear moral obligation, to defend

people from oppression, often when the oppressor is their own, sometimes even elected government.

It seems to me that there are a number of tests, which could form the basis of such a new doctrine for international intervention in the domestic jurisdiction of a sovereign state. They include the following:

-- Is the state in question acting in gross violation of international law or the Universal Declaration on Human Rights?

-- Do the consequences of the State's action reach beyond its own borders, for example by destabilising the region with refugees?

-- Would intervention, if undertaken, prove militarily and politically practicable?

Today, of course, we approach all these issues in the post September 11, post Iraq world.

President Bush has articulated, and in Afghanistan and Iraq, has carried out, a pre-emptive policy based, above all, on grounds on national security.

But in both cases, that has not been the only argument adduced in favour of action.

Saddam's Iraq and the Taliban's Afghanistan were miserable places, in which millions of human beings suffered untold horrors at the hands of despotic regimes.

The football stadiums that served up Saturday afternoon execution specials outside Kabul, or the mass graves that litter Iraq, are testimony to that.

Evil and despotic regimes very often pose a danger, not just to their own people but also to the world at large, as we Europeans know all too well from our own history.

But if the willingness to intervene is increasingly firmly established in the minds of Western policy makers, an understanding of how to handle the aftermath remains more elusive.

How, in practice, does one set about establishing justice and promoting reconciliation?

Again, the history of post war Bosnia is instructive.

In Bosnia, we have been busily engaged for over eight years now in precisely that task – the task of peace implementation, of so-called nation building.

There has long been a school of thought that derides the idea of peace implementation, of nation building, of democratisation, call it what you will, as the worst sort of international fad, social work and busy bodied do-gooderism.

Indeed, I understand that there were some people on this side of the Atlantic, some of them I understand in quite senior positions, who took that view until recently.

Nation building, so the argument goes, is a hopeless task, beloved of naïve idealists, incapable of adapting to hugely difficult and different political and cultural situations, while invariably exhibiting a voracious appetite for taxpayers' money and a nostalgia for by-gone imperialism; all of which can end up exacting a heavy cost not just in treasure, but in human lives.

To those who subscribe to this view, the daily news reports from Iraq provide a ready supply of grist to their mill. Acres of newsprint have been devoted to explaining how it's all a disaster, and one which could and should have been predicted. They forget that they said the same about Bosnia after Dayton.

While much has been written about Iraq, there has been comparatively little discussion of the lessons that can be learnt – and perhaps transferred – from those places where the international community has been working on all of these tasks for some time.

So I hope you will forgive if I look in some detail at our experience in Bosnia, and what lessons it might hold for our efforts elsewhere to promote justice and reconciliation in the wake of intervention.

Let me acknowledge in doing so that every situation is different, and requires different solutions.

But there are surely, and Bosnia suggests this, some common denominators.

Time is one. Nobody is calling for one-year mandates for the peacekeepers to finish their job, like we did in Bosnia in 1995.

Money is another. Rebuilding nations shattered by war or decades of misrule is expensive, even when you have oil.

Determination and the ability to act robustly is a third. The divided and bureaucratic command and control arrangements for UN military action during the Bosnia war were a disaster; the Americans have been right ever since to demand a single, robust, chain of command for international military missions.

Prioritising the establishment of the rule of law and restarting the economy is a fourth. Without a functioning judiciary and police, democracy and investment will not take root. Without a functioning economy, social unrest is likely to grow into chaos.

These conclusions are rarely now disputed. They are part of what we could call the “nation building” consensus.

But I would like today to argue that several other conditions essential for success.

- Legitimacy: an agreed plan of what we are trying to do, that has both international and domestic support.
- Regional stability: lasting and successful reconstruction is harder in a bad neighbourhood.
- And finally, a destination. A vision of what a country can become that can motivate its people to make the sacrifices necessary to undertake the reforms that will prevent the past from returning.

More on these later.

Let me turn first to where we've got to in Bosnia and Hezegovina.

It is true that watching Bosnia's progress is a bit like watching grass grow. You have to go away and come back at decent intervals to notice it.

But then consider that it is only eight short years since the trauma of that war; the 225,000 killed and the 2 million driven from their homes. And you realise that it is a little short of miraculous how much has been achieved; how much has changed.

Eight years ago, Bosnia, torn apart by nationalism had been left shattered and near fatally wounded by a five year war in which a quarter of a million of its four million population lay dead and its nationhood, a matter of barter between Milosevic and Tudjman. Today Serbia and Croatia are focused, not on territorial expansion, but on European integration.

Then, it would have been unthinkable to travel freely and safely all over the country. Now it is taken for granted.

Then, 65% of the housing stock was heavily damaged. Today the bulk of it has been repaired and most of it re-occupied.

Then, Bosnia was in economic turmoil, with no universally accepted currency. We now have a central bank, a stable currency and one of the lowest inflation rates in the Balkans.

And, perhaps the greatest miracle of all, a million of those burnt, raped and brutalised from their homes have now returned to live again in the communities from which they were driven just a few short years ago.

Slowly but surely and steadily, Bosnia is becoming a 'normal' country, and, increasingly, the challenges it is facing are 'normal' challenges – the familiar issues of transition that Hungary and Poland and the new democracies of Eastern Europe have already dealt with.

Major reforms in these areas too are now underway.

Bosnia is at last merging its divided and inefficient Customs and Excise system and setting up a single state-wide system of VAT.

We are now tackling the big, structural and supply side reforms that all transition countries have had to tackle, from labour market reform to privatisation, from bankruptcy to public administration reform.

And we have seen a package of defence reforms passed that creates a State level Ministry of Defence, and puts the military under a single Command and Control structure

Soldiers, border guards, customs officers, policemen, tax collectors, central bankers, secret service agents. All are, or very shortly will be in the employ of the State of Bosnia & Herzegovina.

Eight years ago, none of them were.

Bosnia is now starting to look more and more like a State capable of joining Euro-Atlantic structures.

It is those twin aims – integration into and eventually membership of – the European Union and NATO which drag reform forward.

Last year, the European Commission issued a broadly positive response to Bosnia's European Feasibility Study, summarised by Chris Patten as a "Yes but" – yes Bosnia can move towards formal negotiations for an EU Stabilisation and Association Agreement in the latter half of next year. But first it must demonstrate real progress on a discrete number of key reforms.

And NATO has also made clear that – depending on Bosnia's progress in implementing defence reforms and cooperating with the War Crimes Tribunal in The Hague - the Alliance would like to be in a position to invite Bosnia to join Partnership for Peace at its Summit in Istanbul in June. Those are important conditions: but now it's up to BiH to honour them.

We are starting, in other words, to move out of the era of Dayton and into the era of Brussels. And, in due course, as the pull of the Euro-Atlantic institutions gradually replaces the push of my emergency powers, as High Representative so we will be able, progressively, to restore full authority and responsibility for decision-taking to the Bosnian authorities.

Lessons for elsewhere?

Now, none of this is to say that there are not still plenty of powerful threats to that process of establishing justice and promoting lasting reconciliation.

My biggest worry is the parlous state of the economy and whether the country will one day be able to join the European Union. These are serious issues.

I do not believe the people of Bosnia will return to ethnic conflict. But I cannot predict what would happen if the economy spirals and the hope of Europe were ever to be denied them.

But the very fact that we are talking about these sorts of issues highlights how far the country has come.

So what, then, are the lessons that one might venture to draw, on the basis of our experience to date in Bosnia, for this new growth area in the world's diplomatic and military activity, peace stabilisation?

It's worth reflecting on this point.

Because while we have been become good, very good, at winning the sharp, short hi tech wars of the last two decades - we can now do it almost by numbers -we are far less good at the hard, patient, resource-consuming task of building the peace that follows. At winning what Kipling called "The savage war of peace".

But we need to learn and master this skill.

Because it looks very likely that building peace after war is going to be a crucial part of the work of our diplomats and soldiers in the decades ahead.

I repeat: no two situations are the same. Iraq is not Bosnia. It's about ten times larger; it is perched on massive oil reserves; and the war there last a matter of weeks, not years.

So let's beware the easy parallels. All I am saying is that there may be some elements of our experience in Bosnia that could be useful as we confront peacemaking and peace building situations elsewhere in the world.

Principles for peace-making

Last year, in a different context, I spoke about the seven pillars of peace making that could be said to apply more or less universally. Nearly a year later, I think these have stood up reasonably well.

The first is the importance of having a good plan and sticking to it. This needs to be drawn up, not as an after-thought to the fighting, but as an integral part of the war planning for the military campaign. Because the process of peace building begins in the first second after the midnight hour when the war ends. As Clausewitz implied when he said that war was the extension of politics by other means; the opposite is also true; the politics continues, and resumes in earnest again the moment the war ends. One runs into the other – and the process needs to be seamless.

This means a change to how the military and the politicians have to think and act.

The most difficult change will be for the military, trained as so many of the world's armies have been, for total war and nothing less.

The second principle is the over-riding priority, as we have discovered in Bosnia, in Kosovo, in Afghanistan and now Iraq, of establishing the rule of law – and doing so as quickly as possible.

Crime and corruption follow swiftly in the footsteps of war, like a deadly virus. And if the rule of law is not established very swiftly, it does not take long before criminality infects every corner of its host, siphoning off the funds for re-construction, obstructing the process of stabilisation and corrupting every attempt to create decent government and a healthy civil society.

This, above all was the mistake we made in Bosnia. We took six years to understand that the rule of law should have been the first thing. We are paying the price for that still.

Alongside the rule of law, there is of course the related question of establishing justice – not just ensuring that the state has the mechanisms to dispense justice in respect of crimes yet to be committed, but also to make sure that a means exists to ensure that the perpetrators of war crimes face justice.

There are those who argue that pursuing war criminals is inimical to peace implementation.

I profoundly disagree. Pursuing war criminals is essential to successful peace implementation.

It is perhaps a truism to say that to say that you cannot have reconciliation without justice: but like many truisms, it also happens to be true.

Again, this is a lesson we have learned in Bosnia the hard way. Catching Karadzic and Mladic should have been a top priority at the outset. It would have been much easier to do then. Today, eight years on, it remains essential for lasting peace in BiH.

The third lesson is that it is vital to go in with the authority you need from the start. On the military side, that means establishing credibility straight away. The more effectively a peacekeeping force copes with early challenges, the fewer challenges there will be in the future.

On the civilian side, this means starting off with the powers needed to get the job done, rather than having to acquire them later, as we did in Bosnia to our cost.

The fourth principle is that it is vital to start as quickly as possible on the major structural reforms – from putting in place a customs service or reliable tax base, to reforming the police and the civil service, to restructuring and screening the judiciary, to transforming the armed

forces, and above all to pushing through the structural changes that will restart the economy. Long-term success always depends on these fundamental reforms: the sooner they are embarked upon, the sooner the job will be completed.

It is vital – and this is my fifth principle – that the international community organizes itself in theatre in a manner that enables it to move fast and take decisions. You can't re-build war torn countries by committee, or by remote control from several thousand miles away. It has to be done by the people on the ground, and they have to be empowered – and trusted – to drive the process forward.

Then there is the question of the breadth of the international effort. As Prime Minister Blair has noted, one supremely powerful nation or a small group in concert can win a war. But it takes many nations to win the peace, working in partnership with the many international agencies, NGOs and other groups that have played such a significant role in Bosnia and elsewhere. And it is vital – repeat vital – that the international agencies speak with a single voice, and use the diplomatic 'sticks and carrots' available to them in a co-ordinated and determined way. In Bosnia, at least, the tactical use of targeted conditionality is crucial to delivering results.

The sixth principle is the importance of an exceptionally close relationship between the military and civilian aspects of peace implementation. Civilians depend on the military if they are to succeed. But the military depend on the civilians too if they are to succeed – witness Iraq: both need each other's leverage and each other's skills.

The final lesson I set out earlier this year is perhaps the most important of them all.

Indeed it ought not to be a surprise to us at all, since it proved the case after the World War II with the Marshall Plan, and it has proved the case in every major conflict since.

Building things up takes much longer than knocking them down.

That is true – literally true – of buildings, of homes, of bridges, of power stations.

Building the hardware of the state, its institutions – of professional police forces, of independent judiciaries, of courts, of civil services, of legislatures and executives, of free and responsible broadcasters and newspapers – all these can be done relatively quickly – in a matter of a year or two.

But changing the software of the state, the minds of its citizens, takes a very long time indeed. Just look at Northern Ireland. It can take even longer to develop – or allow to develop, because these things cannot be imposed from above - especially the civil society that every healthy state needs, and we take so much for granted.

The conclusion is obvious. Winning the high tech war may take weeks. But winning the peace that follows is measured in decades. It just cannot be done – as we initially claimed in Bosnia – in a year or so. So we need to avoid deadlines, and settle in for the long haul.

That means staying on, and sticking at it, long after the CNN effect has passed.

I think these principles have withstood the raging debate, about what's going on in Iraq and what we should be doing, relatively well. But I no longer think they tell the whole story.

As I said at the start of this speech, I believe there are three other factors we need to consider, because they have formed the essential framework for progress of post-conflict reconstruction in Bosnia. I believe these also apply to Kosovo, Afghanistan and even Iraq, but I leave that for others to judge.

The first factor is legitimacy. Or put another way, agreement on what we are trying to rebuild, or is most of these countries, build for the first time. Not only amongst the key nations and international agencies I referred to earlier, whose participation is vital for success. But even more crucially, amongst the people and the political, economic and social leaders of the country we are trying to assist. Post-war reconstruction is the most collective

of all enterprises. For success, everyone needs to agree and work off the same architectural plans.

In Bosnia, we have the Dayton Peace Agreement. It is fashionable now to say that it is out-of-date, has become a straight-jacket, needs to evolve. That may be true. Dayton, after all was designed to end a war, not build a state; and whatever its drawbacks, and I have a far more charitable view of its utilities than its critics, I still think that most people in BiH would have preferred an untidy peace to a continuing war.

But what I do know for certain is that the enormous progress Bosnia has made since 1995 would not have been possible without Dayton. It has provided the agreed plan for rebuilding Bosnia. Agreed by the international community, whose leading members signed it. And agreed by the Bosnians as the basis for ending the war. It provided the legitimacy for international engagement and the basis for our partnership with Bosnia's domestic politicians and institutions.

The second factor is regional stability. I am now confident today that Bosnia and Herzegovina will survive as a state, albeit not a centralised one of classic European tradition – more Belgium, probably, than France. I am confident of that, not just because of Bosnia's progress, but also and perhaps chiefly because South East Europe is not what it was. Tudjman is gone. Croatia's ambitions are now focused on Brussels, not Bosnia. Milosevic is in The Hague, overthrown by a democratic revolution. The plans for Greater Serbia and Greater Croatia, which so threatened Bosnia's very existence at the start of the 1990s, are dead. The plans that Tudjman boastfully drew for me in 1995, on the back of a British banquet menu, sketching out his joint plans with Milosevic for the division of the Balkans, are now no more relevant than any other dinner table detritus.

And the third factor is a destination. That's more than just an agreed framework for reconstruction. It is a goal that can motivate the people of war-torn countries to make the sacrifices necessary to transform their societies, their economies, their political systems, in a way that lasts. Bosnia has a clear destination. Its called Europe. People in Banja Luka in

Republika Srpska or Siroki Brijeg in Herzegovina may not know what the *acquis communautaire* means. But they know and believe that Europe means stability, visa free travel, prosperity, investment, and the best guarantee they can get that history will not repeat itself. The hope of getting into NATO and the EU has now become the main driving force of reform in Bosnia, replacing the executive powers of the international community.

Conclusion

We live today in a world more insecure and whose prospects are more uncertain than at any time in my lifetime.

The two years and a half years since September 11, 2001 have taught us a great deal. We are learning to live with the new reality that the menace of global terrorism has brought to us.

One of the foremost of those lessons is surely that in this small and inter-connected world, we cannot afford to ignore failed or failing states, because what happens in them can pose a grave threat to our own security and our own well-being.

Perhaps that is not such a surprising lesson. We know from history what can happen when we ignore what happens in far off countries, of which we claim to know little.

Over 500 years after he wrote it, never has John Donne's maxim been more true:

'No man is an island, entire of itself...any man's death diminishes me, because I am involved in Mankind...'

That used to be a moral admonition. But in our interdependent world it has perhaps become our code for survival.

In today's world, it is not for altruistic reasons – or not only for altruistic reasons – that we must work actively to spread stability, entrench the rule of law, and help communities ravaged

by conflict to pick up the pieces and build a better future. This is not a matter of soft-headed idealism, but of hard-headed pursuit of our own interests and our own security

Some may find that a sombre, even gloomy note on which to end. But it is not intended to be so.

Because we have been doing just that in Bosnia all these years, and we have been succeeding. What has happened in Bosnia, the extraordinary generosity and commitment of the international community and the sheer indomitable will to live in peace again of the ordinary people of Bosnia and Herzegovina, should offer us hope – hope that it is possible to build from the ashes, hope that it is possible to overcome, by working together, apparently insuperable obstacles, and to deliver a better future and a greater peace.

Our task in Bosnia is not yet done. But if we stick with it soon could be.

We owe it, not just to Bosnians, not just to ourselves, but especially to all those for whom peace has yet to be won elsewhere in the world, to see this task through to permanent success.