

The United Nations Security Council in the Age of Human Rights



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The Socialist Federal Republic of Yugoslavia (SFRY or the Former Yugoslavia) disintegrated in violence between 1991 and 1999. This was the first serious post-Cold War conflict. It forced members of the international community to redefine their common security interests and to shape multilateral diplomatic and military intervention.¹

The disintegration of the Former Yugoslavia lasted a decade, manifesting itself in four wars – the first in Slovenia in 1991, followed by the wars in Croatia in 1991–1992 and again in 1995, in Bosnia-Herzegovina (BiH)² from 1992 to 1995, and in Kosovo in 1998–1999.

This chapter will deal with the United Nations' (UN) involvement in the third of the four conflicts that occurred in BiH between April 1992 and December 1995 (the Bosnia War). In the three-and-a-half years of the war, the UN got involved politically, diplomatically, and militarily as well as at the humanitarian level. Its involvement covered pre-conflict, conflict, and post-conflict periods.

To begin with, it was considered a local conflict to be resolved in a European political and diplomatic context through involvement of the European Community (EC).³ Unhappily, and almost from the start, the EC was unable to handle the crisis on its own, not least because it did not have the political, diplomatic, and military infrastructures in place required to deal with such conflicts. The EC's transformation into the European Union (EU) in February 1992 brought no significant change, as an EU (or previously EC) foreign policy institutional framework had yet to be developed. Manifest weaknesses of the EC/EU were to be compensated by the UN,

¹ "International Community" is a term used somewhat randomly in different contexts. Typically here it connotes international bodies such as the European Union (EU) and the UN together with individual states such as the United States, Russia, and others, reaching joint views and acting in concert.

² In the local language, the country is called *Bosna i Hercegovina* and is therefore abbreviated to BiH. As the name denominates two separate geographic areas, the "BiH" abbreviation will not be used when different geographic parts of Bosnia or Hercegovina are referred to, such as Eastern Bosnia, Northern Bosnia, Western Bosnia, or Western Hercegovina.

³ The term "European Community" (EC) will be used for the period prior to February 1992 when it was reshaped into the EU.

which got involved in peace mediation soon after the outbreak of the first major war of the conflict that unfolded in Croatia in June 1991.

From early in the Bosnia war, the UN cooperated with the EU in attempting to negotiate a peace agreement. The failure of this joint effort in 1993 led, in April 1994, to the formation of an ad hoc body, called the Contact Group, which included representatives from France, Germany, Russia, the United Kingdom, and the United States. Its formation was a pragmatic attempt to overcome the shortcomings of the joint EU and UN diplomatic effort and to revive the failed peace proposals by a new multilateral approach. The Group included US and Russian representatives, demonstrating increased US interest and a growing awareness that without Russia's active involvement it would be difficult to persuade the Serb side to accept any peace proposal. The Contact Group Peace Plan of August 1994 ultimately failed, but the Group's existence nevertheless led to new developments by paving the way for an active role of the United States in further negotiations.

The peace effort continued, and the end of the war in BiH was brought about in 1995 by a combination of military and diplomatic activities, all initiated by the United States. The determination of the United States to bring the parties to the negotiating table led to the bombing of Serb military positions in BiH at the beginning of September 1995. The US-initiated peace conference held in November 1995 at the US Air Force base in Dayton, Ohio, led to the Dayton Peace Agreement in November 1995. The United States was celebrated as the broker and peace enforcer in BiH, while the UN will be remembered for its inability to prevent genocide, even in the areas of BiH that were officially proclaimed by the UN Security Council as safe areas and where UN Protection Forces (UNPROFOR) were stationed. The most notorious of these – unhappily named – safe areas was Srebrenica.

The conflict in the Former Yugoslavia triggered a global debate on the functioning of the UN in post-Cold War conflicts. The failings of the Security Council in not preventing genocide or ending the fighting in BiH may best be understood with an appreciation of the changing role of the UN after the Cold War. New security challenges showed that UN peacekeeping and peacemaking should be complemented by peace-enforcing capabilities, as signaled by the UN Secretary-General Boutros Boutros-Ghali in *An Agenda for Peace* of 1992.

With this in mind, this chapter argues, first, that it was not any absence of early signs of disintegration of Yugoslavia that led the international community to react inadequately. The initial assessment by all international actors – the EC, the UN, and the United States – that Yugoslavia could and should be kept together was simply flawed. The collective failure to have grasped the nature of the BiH conflict added to the confusion inherent in distinguishing causes of violence from their consequences and to the difficulties of conflict resolution. Once the war started, the international community avoided distinguishing between culpabilities of the warring parties, whom they declined to identify as either "aggressors" or "victims."

Second, it is contended that there were no *conflict prevention* or *peace enforcement* mechanisms at the multilateral level available to prevent or stop the violence in the early stages of the conflict. Instead, once violence started, the UN had to balance its roles between *peacekeeping*, providing *humanitarian aid*, and *peacemaking* through negotiations. Absent success in peacekeeping and peacemaking – and with atrocities continuing – on May 25, 1993, the Security Council, through Resolution 827, established the International Criminal Tribunal for the Former Yugoslavia (ICTY) to prosecute those individuals most responsible for war crimes.

In the end, the inability of the Security Council to engage in peace enforcement marked the UN mission in the BiH wars as a failure, the scale of which became painfully obvious in the summer of 1995 when Bosnian Serb forces took the two Bosnian Muslim enclaves of Srebrenica and Žepa. This led to commission of the gravest crimes in the Bosnian war. Although both towns had been proclaimed UN safe areas in 1993, the Security Council failed to protect the civilians during or after the takeovers.

In the peace agreement and beyond there was no “victors’ justice,” nor was one side identified as “guilty” or “responsible” for unleashing violence and mass atrocities. The signing of the Dayton Peace Agreement ended with symbolic handshakes of Croatian President Franjo Tuđman, Serb President Slobodan Milošević, and Bosnian Muslim President Alija Izetbegović. What are the practical, historical, and ethical implications of constructed “neutrality” as endorsed by the international community in the BiH conflict for the lasting peace, justice, and stability of the post-conflict states and societies?

I. DETERMINATION OF THE NATURE OF THE CONFLICT AS AN IMPORTANT PRECONDITION FOR A SUCCESSFUL UN MISSION

The disintegration of Yugoslavia seemed to take the outside world by surprise.⁴ This is hard to understand. Many articles and books dating back to the 1970s had warned of the difficulties and possible political changes that would follow Josip Broz Tito’s death – and he died at the age of eighty-eight on May 4, 1980.⁵ The truth is the outside world had much time to consider the inevitable and to prepare for what was to come.

In the decade following Tito’s death Yugoslavia slid into a deep economic and political crisis without benefit of mediation or interference from any other country or international organization. The crisis, as it developed and grew, led to a series of austerity measures that had profound consequences for the living conditions of the majority of Yugoslav citizens. The communist leadership seemed unable to find a

⁴ Ajvor Roberts, RAZGOVORI S MILOŠEVIĆEM (Sluzbeni glasnik, 2012), 7.

⁵ Carl Gustaf Ströhm, OHNE TITO: KANN JUGOSLAWIEN ÜBERLEBEN? (Styria, 1976); Andrew Borowicz, YUGOSLAVIA AFTER TITO (Praeger, 1977); Gavriel D. Ra’Anan, YUGOSLAVIA AFTER TITO: SCENARIOS AND IMPLICATIONS (Westview Press, 1977).

way out of the crisis. Yugoslav citizens, once proud of their relatively high living standards and the openness of Yugoslav borders compared to those of other Eastern Bloc countries, turned against the communist elites. Space was created for ideological alternatives, including those cultivated by political opposition groups inside the country and in the diaspora. The communist political paradigm, with its commitment to “Yugoslavism” as a state ideology, was challenged by the revival of arguably anachronistic, nationalist ideologies that advocated the formation of independent nation-states.

Paradoxically, post-communist changes of the political system in Yugoslavia started earlier than in other former Eastern Bloc countries. In the period between April and December 1990 there were multiparty elections in all six Yugoslav republics. The emerging leaderships in the majority of the republics won elections on essentially anticommunist platforms. This changed the ideological paradigm and the citizen’s essential concept of social order. Federal response to these changes and federal progress lagged behind republican electoral developments. No free elections were held at the federal level, and the federal leadership came up with no policies that generated momentum sufficient to defeat the popular separatist republican political agendas. Without an electoral mandate for change, the federation struggled to offer a political alternative for all republics, including those that had already expressed a desire to separate. The republics, for their parts, provided no constructive plans for a different future for the federal body and were unwilling or unable to reach consensus on how it might be reformed. Slovenia and Croatia insisted on a confederal Yugoslavia whereas Serbia and Montenegro advocated a centralized federation. That left Macedonia and BiH pushing for a compromise to be identified between those two options, but to no avail.⁶

After failure by the republican leaderships to effect federal reforms, Slovenia and Croatia declared independence on June 25, 1991, provoking reactions from the federal authorities and in particular from the Yugoslav National Army (the JNA – *Jugoslavenska Narodna Armija*).⁷

However it was not only the federal authorities that were interested in preserving the common state. The Serbian and Montenegrin authorities claimed to have the same objective. On April 28, 1992, they formed the Federal Republic of Yugoslavia (FRY), leaving an opening for other Serb territories from Croatia and BiH to join it.⁸

⁶ For discussion about the Izetbegović-Gligorov Proposal, see, e.g., ICTY’s trial record: International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Milošević*, Case No. IT-02-54, Testimony of Audrey Budding, July 24, 2003, T 24947:07-24948:08; Testimony of Milan Milanović Mrgud, Oct. 15, 2003, T 27625:25-27626:09; Testimony of Milosav Đorđević, Mar. 11, 2003, T 17618:18-17619:02; Testimony of Nikola Samardžić, Oct. 10, 2002, T 11429:21-11430:01; Testimony of Ibro Osmančević, Nov. 24, 2003, T 29528:09-29528:20.

⁷ Sonja Biserko, YUGOSLAVIA’S IMPLOSION: THE FATAL ATTRACTION OF SERBIAN NATIONALISM (The Norwegian Helsinki Committee, 2012) 166, 170–172.

⁸ *Constitution of the Federal Republic of Yugoslavia*, Apr. 1992, Article II: “The Federal Republic of Yugoslavia may be joined by other member republics, in accordance with the present constitution.”

This federation was not recognized as a successor state of the SFRY by the UN.⁹ This response to the crisis by the international community was in part a reflection of previous Cold War security concerns, based on the position of Yugoslavia as a communist state that had been free of Soviet influence since 1948. Any change in the political system of Yugoslavia, or its potential disintegration, had been perceived as a potential threat to an already precarious security situation in the bipolar world. Both Cold War blocs had considered the territorial integrity of Yugoslavia as a key for security in the region and for the stability of the post-Second World War European state system.¹⁰ After the victories of nationalist parties at multiparty elections, first held in Slovenia and Croatia in 1990, new options for the future were discussed that included creating independent states out of former SFRY republics. That process was bound to lead to conflicts over borders in contested territories given the ethnic mixture of some of the presumptive new states, most notably BiH. For that reason alone, preservation of a form of Yugoslavia was considered by many as the preferred, even the only, way to avoid violence.

Domestic political dynamics, of course, explain much about the disintegration of the Former Yugoslavia, but the changing European political landscape brought about by the fall of the Berlin Wall in 1989 and the end of the Cold War division of Europe provides more than just a backdrop. Yugoslavia was not alone in its collapse – other communist federal and multiethnic states, such as the USSR and Czechoslovakia, disintegrated around the same time. Yet, none of those other disintegration processes was as violent as Yugoslavia's.

Resolution of the crisis in its early stages was complicated by initial confusion about how to define the Yugoslav conflict. There were at least two different interpretations of the crisis, which led to very different diplomatic approaches and proposed solutions. One view, advanced by the seceding republics of Slovenia and Croatia, was that Serbia had been obstructing reform of federal Yugoslavia by insisting on its centralization. Slovenia, Croatia, Macedonia, and BiH interpreted this as a reflection of Serbia's ambition to use the common state of Yugoslavia to realize a "Greater Serbia."¹¹ According to this view the international community had to recognize that Serbia was responsible for the disintegration of Yugoslavia by

⁹ The FRY was recognized as a UN Member State in October 2000, after Milošević's loss of power. The history of the FRY is an interesting and a confusing one. Officially it existed from 1992 to 2003 when it changed its name to Serbia-Montenegro. In 2006 when Montenegro declared independence, Serbia remained a successor of the FRY. The change of the name explains to some degree the occasional confusion in legal and other documents when FRY is used along with or instead of Serbia.

¹⁰ Although not a binding document the Helsinki Final Act of 1975 identified ten points of importance for the recognition of state borders and their inviolability, which were considered as guiding principles in international relations in Cold War Europe. See *The Final Act of the Conference on Security and Cooperation in Europe (Helsinki Declaration)*, 14 I.L.M. 1292, entered into force Aug. 1, 1975.

¹¹ "Greater Serbia" is a term that has been used to mean different things. Milošević never used the term publicly and was never linked to the broadest, most theoretical use of the term by which peoples from many Balkan countries were said properly to fit within a "Greater Serbia." Nevertheless, Milošević's policies that sought to have all Serbs living within one geographically contiguous state were said by

having driven Croatia and Slovenia out of federal Yugoslavia and obstructed proposed federal reforms for a confederation, thus unleashing violence once the two republics had declared independence.

The opposing approach was that Slovenia and Croatia caused the disintegration by unilaterally declaring their independence, leading the JNA to act in accordance with its constitutional duty to protect the territorial integrity of Yugoslavia. According to this view, the EU's recognition of the independence of those two republics was premature because conditions for consensual declaration of independence and secession required by the constitution of Yugoslavia had not been met.

One might argue that the international community did not consider the disintegration of Yugoslavia as a surprise but that the violence that accompanied it was unimaginable. This violence was a consequence of a "clash of state projects," an apt phrase coined by a British scholar, encapsulating how mass atrocities took place in those areas where two or more parties – aspiring new states – had overlapping territorial claims.¹² The extent of the violence seemed to be proportionate to the ethnic mix of each of the succeeding republics. Out of the six republics only Slovenia had in 1991 a relatively homogeneous ethnic composition with more than 90 percent of the population being of Slovenian ethnic origin. The proclamation of independence by Slovenia did not lead to protracted violence. Croatia had a Croatian ethnic majority with approximately 12 percent of its population being ethnic Serbs. When Croatia proclaimed its independence, the ethnic Serbs claimed territorial autonomy and sovereignty in the enclaves where they constituted an absolute or relative majority, claiming that they wanted to remain in Yugoslavia. This led to war between 1992 and 1995, during which the Croatian Serbs initially seized and retained one-third of Croatian territory until retaken by Croatian armed forces in 1995. However, the ethnic composition of BiH was such that none of the three consistent nations – Bosnian Muslims, Bosnian Serbs, Bosnian Croats – was able easily to take control. The Bosnian Muslims and the Bosnian Croats voted for independence at the referendum held on February 29, 1992. The Bosnian Serbs boycotted the referendum and never accepted the independence of BiH. In military campaigns between April 1992 and August 1995 they ethnically cleansed and seized control of Serb-designated territories, systematically removing non-Serbs. If the war in Croatia took the international community by surprise, this could certainly not be said for the conflict in BiH. BiH, situated between Croatia and Serbia and where Croats and Serbs coexisted with Bosnian Muslims, who had a relative majority at 43.5 percent of the population, became a theater for the next war as soon as the

others to be rooted in a historical "Greater Serbia" concept. The ICTY trial of Milošević left an extensive record on "Greater Serbia." See, e.g., International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Milošević*, Case No. IT-02-54, Testimony of Vojislav Šešelj, Aug. 25, 2005. See the whole discussion at T 43224:16-43231:15 and more precisely at T 43225:12-43225:21.

¹² James Gow, *After the Flood, Literature on the Context, Causes and Course of the Yugoslav War – Reflections and Refractions*, 75(3) SLAVONIC AND EAST EUROPEAN REVIEW 446 (1997).

independence of BiH became a political reality. The Bosnian Serbs followed, step by step, the Croatian Serbs' political and military strategies and tactics into a second "clash of state projects," which now involved three parties: the Bosnian Serbs, the Bosnian Croats, and the Bosnian Muslims. Each of the three parties initially pursued its own state project, fighting over contested territories. The Bosnian Serb leaders, supported by the leadership from neighboring Serbia, rejected BiH's independence and swiftly replicated the policy of the Croatian Serbs by identifying and conquering by arms "Serb designated territories" in Bosnia, which were intended eventually to join Serbia in a single in a "Single State for all Serbs." To that end the Bosnian Serb leadership in February 1992 proclaimed the existence of Republika Srpska (RS), with borders established by violence in war between April 1992 and August 1995 but that would be officially recognized by the Dayton Peace Agreement of December 1995.

The Bosnian Croats initially supported independence for BiH but in the first two years of the war in BiH moved to a policy of conquest of territory resembling that of the Bosnian Serbs. They established their own Croatian autonomous region of Herceg-Bosna, a Croatian equivalent of RS. Although the Bosnian Croats' conquest of territory was achieved by crimes against non-Croats living in Herceg-Bosna, their leadership, unlike the Serbs, yielded to international pressure. They forged an alliance with the Bosnian Muslims in 1994 and both ended the war as cooperative parties. The Serbs could, in consequence, be singled out as aggressors and villains of the war.

II. ADVANTAGES AND LIMITATIONS OF THE UN POLICY OF NEUTRALITY, 1991–1992

The response of the international community to the violent disintegration of Yugoslavia went through several stages. In the first stage, efforts initiated and led by diplomats from the EC were aimed at the preservation of Yugoslavia. Diplomatic mediation started with visits by the EC "Troika," an ad hoc mission consisting of three national Ministers of Foreign Affairs: one from the previous, one from the current, and the third from the next state to preside for six months over the EC. This initiative was supposed to be "Europe's Finest Hour," as announced by prominent European politicians in 1991 who saw the crisis in Yugoslavia as an opportunity to engage in post-Cold War diplomacy without depending on the United States for leadership.¹³ By 1991 the EC was in the process of forging a political union that might lead eventually to a common foreign policy. However with no EU military infrastructure, save for the developing Western European Union (WEU), the EU

¹³ Netherlands Institute for War Documentation, *Srebrenica – A "Safe" Area*, Apr. 2002, 195–196. See statement by former German chancellor Helmut Kohl, stating that the crisis could be resolved without the United States, as Yugoslavia was a European country.

remained dependent for what it actually did in Yugoslavia on its cooperation with the UN, United States, and NATO.¹⁴

In the early months of the crisis, the EU approach was characterized by individual national interests and diplomacy. Germany and Italy were the most active in influencing EC policy toward Yugoslavia and it was this that paved the way for the coming – some would later say early or premature – recognition of Slovenia and Croatia by Germany in mid-January 1992. The diplomatic adventure of the EC acting alone did not last long and by November 1991 the UN got involved.

The EC could do little to enforce any political solution on noncooperative parties, let alone stop the fighting and bring peace. The then EC President, Jacques Delors, summarized the position, saying that the EC was not a political power and had only three weapons at its disposal to handle the crisis: public opinion, recognition of independence of the Former Yugoslav republics, and the introduction of limited economic sanctions against the noncooperative republics.

The EC's initiative to stop the war in Slovenia and Croatia in July led to a peace conference in The Hague that lasted from September to December 1991. The draft proposal for a political solution, the so-called Carrington proposal, was presented to the parties on October 18, 1991, proposing a loose Yugoslav federation. All parties except Serbia accepted it. Failure to preserve Yugoslavia created an interesting moment for EC diplomats and mediators: the EC had to decide how to deal with Serbia's noncooperation.

In November 1991, the EC announced a package of "selective sanctions" that singled out and targeted noncooperative parties, including Serbia itself. For sanctions that could bite, involvement of the UN Security Council was essential, not least because any serious sanctions had to include an oil embargo. Serbia's oil supplies came largely from the USSR. EC diplomats eventually approached Security Council members to discuss selective sanctions only to confront opposition not just from the USSR and China, as might have been expected, but also from France. Although France had agreed to selective sanctions in the EC Council, its representative in the Security Council allegedly received instructions from Paris not to support a resolution on similar measures.¹⁵ This was a telling illustration of the chaos of the multilateral diplomatic approach attempted in the first stage of the Yugoslav conflict; not that things got better in the next stage.

The UN eventually took over peace negotiations from the EC and that led, in November 1991, to the end of hostilities in Croatia under the initiative of the UN Secretary-General's special envoy Cyrus Vance. The Vance Peace Plan was signed

¹⁴ The WEU existed since 1954. Under the Maastricht Treaty of 1992, it was envisaged as the future military arm of the EU. In 1995, EUROCORPS, a joint force of some WEU members, became operational. In 1999, the EU voted to absorb all the functions of the WEU by incorporating it in the EU newly formed defensive and peacekeeping military organization. The process was completed in 2009, and in 2011 the WEU was dissolved.

¹⁵ *Srebrenica – A "Safe" Area*, 384.

by all involved parties and led to the recognition of Croatia as an independent state by the EU in January 1992 and, subsequently, by the General Assembly of the UN in May 1992.¹⁶

One of the earliest manifestations of UN neutrality was Security Council Resolution 713, the first resolution dealing with the Yugoslav crisis, unanimously adopted on September 25, 1991 and which imposed a weapons embargo on the whole territory of Yugoslavia.¹⁷ Its nonselective nature reflected the determination of Council members to get involved but to appear neutral and unbiased. This resolution had a great impact on the war in BiH, which would break out several months later, as it advantaged the Serb side that was well-equipped for war, but disadvantaged the Bosnian Muslim side that entered the war poorly armed. The Bosnian Muslims were to lose two-thirds of BiH territory to the Serbian armed forces by December 1992. The consequences of the weapons embargo were soon to emerge with the first reports of mass atrocities by Serb armed forces against Bosnian Muslim civilians. European citizens were outraged by being able to contemplate mass atrocities on European soil that evoked historical analogies, such as the Holocaust. Yet, there was no ready plan that could stop the violence. The international community, including the Security Council, was not willing to, and could not, engage in peace enforcement, whereas the Bosnian Muslims armed forces remained militarily weak despite clandestine weapon imports from countries such as Iran. That moved the Clinton administration to initiate a "lift-and-strike" diplomatic initiative in 1993, by which the weapons embargo for the Bosnian Muslims would be lifted and air strikes launched from outside the territory. The United States saw this as the way to attack Serbian military positions from the air without engaging its own or allies' troops to fight on the ground, a task the United States left to the BiH Army, as the official army of BiH was called. The initiative never really had a chance. On June 29, 1993, a proposed Security Council resolution that would have exempted BiH from the arms embargo so that it could exercise its "inherent right to self-defence" did not pass. No country actually opposed the Resolution; it was defeated by a majority of abstentions.¹⁸ The UN weapons embargo remained in force until the end of the war in 1995. Former US president Bill Clinton spoke of the Islam factor playing a role in the articulation of European politics concerning BiH. He explained the trouble the United States had in convincing European allies to adjust or end the arms embargo that disadvantaged the Bosnian Muslims and made them an easy target for the well-equipped Serb armed forces. According to Clinton,

¹⁶ UN Security Council Resolution 753, S/RES/753, May 18, 1992. Adopted without vote.

¹⁷ UN Security Council Resolution 713, S/RES/713, Sept. 25, 1991. Adopted unanimously.

¹⁸ Kenneth Manusama, *THE UNITED NATIONS SECURITY COUNCIL IN THE POST-COLD WAR ERA: APPLYING THE PRINCIPLE OF LEGALITY* (Martinus Nijhoff, 2006), 258–259; *Srebrenica – A "Safe" Area*, Appendix XIII, *Chronology of the Bosnian Conflict 1990–1995*, 127, available at http://www.srebrenica.nl/Content/NIOD/English/srebrenicareportniod_en_part17.pdf.

European countries used humanitarian grounds as public justification for the embargo, reasoning simplistically that more arms would mean more bloodshed. Yet privately, Clinton noted, they objected that an independent BiH would be "unnatural" as it would be the only state in Europe with a Muslim majority. According to Clinton, in reality, they favored the embargo precisely because it would work to the disadvantage of BiH. Apparently, French President Francois Mitterand was very blunt in articulating that BiH did not belong in Europe, while some British officials spoke of a need to restore a Christian Europe.¹⁹

As much as the Security Council insisted on remaining neutral in its approach to the BiH war, the exposure of atrocities against civilians, as early as the spring of 1992, called for concrete measures to stop human suffering. Security Council Resolution 757, adopted on May 30, 1992, for the first time singled out one side in the conflict, imposing UN sanctions on Bosnia's Serb neighbor, now the Federal Republic of Yugoslavia (FRY), a federation comprising Serbia and Montenegro that had been proclaimed on April 27, 1992, but that was not to be recognized as the SFRY successor state.²⁰ Using very careful language, Resolution 757 stated that "all parties bear some responsibility for the situation," and yet the FRY was identified as the party not complying with Resolution 752. Resolution 752 of May 15, 1992, had been the first resolution specifically mentioning the conflict's impact on civilians, calling on the parties concerned to stop all attempts to change the ethnic composition of the population anywhere in the Former Yugoslavia. In July 1992, foreign news media for the first time published images from Serb-run detention camps in northern Bosnia, sending a strong message to the world about the violent nature of the war that aimed at the civilian population.²¹ A meeting with the warring parties was convened in London at the end of August 1992. The Serbian side was put under pressure to stop atrocities and, in the conclusions of the London Conference, Serbia and Montenegro, the two republics constituting the FRY, were explicitly called on to stop interventions outside its borders.

The wording of the conclusions revealed that the representatives of Serbia and Montenegro agreed with the qualification as formulated by mediators in London that the FRY was involved in interventions across its borders in Croatia and BiH, two

¹⁹ Taylor Branch, *THE CLINTON TAPES: WRESTLING HISTORY WITH THE PRESIDENT* (Simon & Schuster, 2009), 9–10. Clinton said that Germany and its leader Helmut Kohl held a different view and were indeed in favor of adjusting the UN arms embargo, which failed in part because Germany did not hold a seat in the UN Security Council.

²⁰ UN Security Council Resolution 777, S/RES/777, Sept. 19, 1992. Adopted 12-0-3, with China, India, and Zimbabwe abstaining. The resolution recommended that the General Assembly request the FRY to apply for UN membership considering that the SFRY has ceased to exist. The FRY did not apply then and only became a member of the UN in October 2000, after its leader Slobodan Milošević lost power.

²¹ *Muslims' Nightmare under the Long Yugoslav Sun*, *THE GUARDIAN*, July 29, 1992; *Ethnic Cleansing: Yugoslavs Try to Deport 1,800 Muslims to Hungary*, *NEWSDAY*, July 3, 1992; Roy Gutman, *A WITNESS TO GENOCIDE: THE 1993 PULITZER PRIZE-WINNING DISPATCHES ON THE "ETHNIC CLEANSING" OF BOSNIA* (MacMillan, 1993).

internationally recognized neighboring countries.²² Milošević was furious about the final text and tried to reduce the damage by arguing that the final version of the document had never been discussed with FRY and Serbian members of the delegation who should have had a chance to deny the FRY's involvement in the wars.²³

III. THE UN'S FAILED PEACEMAKING IN BIH

One of the major outcomes of the London conference in August 1992 was the launch of the International Conference for Former Yugoslavia (ICFY). Within the ICFY framework, the EU and UN launched a joint peace initiative under the chairmanship of Lord David Owen, representing the EU and Cyrus Vance, representing the UN. Their peacemaking initiative was known as the Vance-Owen Peace Plan (VOPP), negotiations for which lasted from September 1992 to May 1993 when the plan failed because the Bosnian Serbs rejected it.²⁴

The VOPP preferred option was to negotiate terms for a loose federation with three sets of provinces, none of which would enjoy geographical contiguity. Problems arose in the next step of the negotiations when the map had to be drawn. From the start it was clear that ethnic separation would not be easy.²⁵ The official VOPP map divided BiH into ten provinces, the boundaries of which would be drawn according to ethnic, geographical, historical, communication, economic viability, and other relevant factors.²⁶ The provinces were not necessarily ethnically contiguous and, in some instances, their borders cut through municipal boundaries. In an attempt to avoid ethnic labels, the provinces were assigned only numbers and place names.²⁷ Yet, the provincial boundaries seemed to be based primarily upon ethnicity.²⁸

Not only did the VOPP fail to produce a peaceful settlement in BiH, it also seemed to incite violence among the three warring parties, especially between the Bosnian Croats and the Bosnian Muslims, each of whom sought to gain actual control over

²² International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Milošević*, Case No. IT-02-54, Testimony of Kosta Mihailović, Dec. 17, 2004, T 34778:07-34778:20.

²³ International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Milošević*, Case No. IT-02-54, Council for Harmonisation on Position on State Policy, Exhibit P 469.43, ERN 0294-3802-0294-3851/ET 0294-3802-0294-3851, 11-24.

²⁴ The options were: a centralized state; a centralized federal state; a loose federal state of three ethnic units, not geographically contiguous; a loose confederation of three ethnically determined republics with significant independence, possibly even in the security field; a Muslim state, created through partition, with Serbian territory becoming part of Yugoslavia and Croat territory becoming part of Croatia. David Owen, BALKAN ODYSSEY, CD-ROM (Electric Company, 1995); Working Group of Bosnia and Herzegovina, *ICFY Working Paper on Constitutional Options*, Oct. 4, 1992.

²⁵ UN Security Council, *Report of the Secretary-General on the International Conference on the Former Yugoslavia*, S/25015, Dec. 24, 1992.

²⁶ International Conference on the Former Yugoslavia (ICFY), STC/2/2, Oct. 27, 1992.

²⁷ Owen, BALKAN ODYSSEY, 131.

²⁸ Opening Statement of Lord David Owen at the First Plenary Session. UN Security Council, *Report of the Secretary-General on the Activities of the International Conference on the Former Yugoslavia*, S/25050, Jan. 6, 1993.

territories allocated to them under the peace proposal.²⁹ After the Croatian Defence Council (*Hrvatsko vijeće obrane*, the HVO) engaged in an ethnic cleansing campaign against the Muslim population in the Prozor area in October 1993, Croat-Muslim hostility became an open military conflict driven by desire for conquest of territory to alter the VOPP maps.³⁰

IV. THE UN'S HUMANITARIAN RESPONSE TO THE WAR IN BIH AND PRESSURE ON SERBS TO STOP COMMISSION OF CRIMES

Unable to stop the escalating wars, the international community looked to the UN to provide humanitarian relief. On October 25, 1991, UN Secretary-General Perez de Cuellar designated UNHCR the leading UN agency in the Former Yugoslavia, preceding the formation of UNPROFOR. Its main areas of concern were with refugees and humanitarian aid in war-struck areas. Resolution 752 of May 15, 1992, dealt with the importance of humanitarian aid, calling on the parties in BiH to allow for it. Eventually, after a visit to Sarajevo by President Mitterrand in June 1992, a deal was reached with the Serb side for an opening of the airport to humanitarian aid. Yet, in the months and years to come, humanitarian aid remained problematic, as safety for its transports was not guaranteed. By July 1992, official reports counted over 2 million displaced persons, many of whom would eventually leave BiH as war refugees. The deteriorating situation led to a UNHCR conference in Geneva on July 29, 1992, days after the end of the London Conference, which dealt with mass atrocities committed in BiH and how to respond to them. UNHCR addressed three important topics at the conference: how to finance its activities, how to offer shelter to refugees within BiH, and how to deal with the large number of refugees from BiH fleeing to other countries. It was UNHCR that first suggested the formation of safe havens or safe areas where refugees and displaced persons could be helped without leaving BiH territory.³¹ Safe areas were eventually established by the Security Council in Resolutions 819 and 824, adopted on April 16 and May 6, 1993, respectively, but they failed to save local Bosnian Muslim populations from mass atrocities.

From May 1992 onward, almost every Security Council resolution dealing with the war in BiH referred to the commission of international crimes and the need to stop them. Security Council Resolution 764 of July 13, 1992, affirmed that "all parties are bound to comply with international humanitarian law" and that "all persons who commit grave breaches are individually responsible." It is significant that the

²⁹ Tensions between the Bosnian Muslims and the Bosnian Croats reached a new stage of hostility, which could be understood in the context of the VOPP negotiations. Given the fact that the VOPP endorsed ethnic separation by creation of nine ethnic cantons and a mixed canton of Sarajevo, the Bosnian Croats leadership proclaimed Mostar the capital of Herceg-Bosna and declared that the HVO, not the Bosnian Army, was the military authority. Owen, BALKAN ODYSSEY, 93.

³⁰ Owen, BALKAN ODYSSEY.

³¹ *Srebrenica - A "Safe" Area*, 608.

texts of resolutions from May 1992 and 1993 condemned abuses against the civilian population on ethnic grounds, but without specifying which groups were perpetrators and which were victims. "Ethnic cleansing," without specifying what it really meant, entered the lexicon of official texts along with other descriptions of crimes such as "forcible expulsions" and "mass killings."³² Media revelation of the crimes, which started in July 1992, led to a request for documentation of crimes. During a meeting of the UN Commission for Human Rights held on August 13-14, 1992, Tadeusz Mazowiecki, the former Polish prime minister, was appointed as Special Rapporteur for Former Yugoslavia with a mandate to report on breaches of human rights and war crimes. Simultaneously Resolution 771 of August 13, 1992, called upon all states and international humanitarian organizations to submit information to the Security Council on breaches of international humanitarian law in the Former Yugoslavia. What the Security Council and the UN were going to do with the information remained unclear. On October 8, 1992, Resolution 780 was adopted, in which the Security Council formed a UN Commission of Experts tasked to report on breaches of the Geneva Conventions and international humanitarian law.

On November 16, 1992, the Security Council passed Resolution 787 without explicitly attributing abuses to any particular party to the conflict. In fact, it condemned all parties, in particular the Bosnian Serb paramilitary forces, for their refusal to comply with previous resolutions. The wording of Resolution 787 left some space for confusion as it did not specify by which resolutions the parties had not abided, and it is unclear if the FRY and Croatia fell into the category of "all parties in BiH."

During the Council's meeting at which the Resolution 787 had been adopted, Venezuelan Ambassador Diego Arria referred to the crimes of "Serbians" without specifying whether he meant the Bosnian Serb forces or forces of the FRY.³³

Resolution 798 of December 18, 1992, referred to the "massive, organized and systematic detention and rape of women, in particular Muslim women, in BH," but did not attribute the criminal acts to any specific party to the conflict.

The Vance-Owen peace talks intensified in January 1993, as the final draft of the VOPP plan was due to be presented to the parties. Simultaneously, based on the work of the Commission created a few months earlier, on February 22, 1993, Resolution 808 formally established the International Criminal Tribunal for Former Yugoslavia (ICTY) with a mandate to investigate and prosecute individuals accused of crimes committed in the conflicts, as allowed for in the ICTY statute.³⁴

³² See UN Security Council Resolution 771, S/RES/771, Aug. 13, 1992; UN Security Council Resolution 779, S/RES/779, Oct. 6, 1992; UN Security Council Resolution 780, S/RES/780, Oct. 6, 1992; UN Security Council Resolution 808, S/RES/808, Feb. 22, 1993. All adopted unanimously.

³³ UN Security Council Provisional Verbatim Record of the 3136th Meeting, S/PV.3136, Nov. 16, 1992.

³⁴ S/RES/808.

V. FROM NEUTRALITY AND PRESSURE TO THE POLICY OF APPEASEMENT OF THE SERBS

It can be concluded that initially the Security Council's resolutions in the period of 1991 to mid-1993 maintained a tone of neutrality with respect to the parties to the conflict. Although Resolution 757 of May 30, 1992, contained the first explicit condemnations of the Serbian side, it did not explicitly connect the FRY to atrocities against civilians. Several resolutions implicated the FRY by association with the Bosnian Serb forces. For instance, Resolution 787 identified the FRY as the main negotiator for the Bosnian Serbs. Other resolutions, such as 838, 943, and 1003, implied that the FRY had been assisting the Bosnian Serbs militarily at different points throughout the conflict.

The tone of Security Council resolutions toward the Serbian side, the Bosnian Serbs and the FRY, changed drastically in 1993, as the Security Council took more notice of abuses committed by the Bosnian Serbs. Resolutions identified the whole range of crimes, from ethnic cleansing and forced displacement, to systematic rape and attacks on safe areas.³⁵ Other resolutions suggested that the impression was being formed that the FRY assisted the Bosnian Serbs in "ethnic cleansing."³⁶ A significant development in the wording of the resolutions occurred when Resolution 819 of April 16, 1993, mentioned "genocide" for the first time and required Serbia and Montenegro, as the FRY, to take measures within its power to prevent the commission of genocide.

The political and military context of the war in the first part of 1993 was marked by the failure to reach a peace agreement, as the Bosnian Serbs kept rejecting the VOPP, while at the same time engaging in the conquest of more territory. One day after Resolution 819 compelled the FRY to prevent genocide, Resolution 820 was adopted, expressing a grave concern about the refusal of the Bosnian Serbs to accept the peace plan.³⁷ Although the resolution did not deal with the involvement of the FRY in the BiH war or failed peace talks, it reinforced the UN sanctions regime against the FRY, clearly indicating that the FRY was perceived as enabling the Bosnian Serbs to wage a war. Referencing reports of Bosnian Serb crimes committed against civilians, as in Resolution 821 of April 28, 1993, the Security Council reaffirmed that the FRY could not continue membership of the former SFRY in the UN and

³⁵ UN Security Council Resolution 819, S/RES/819, Apr. 16, 1993, adopted unanimously; UN Security Council Resolution 820, S/RES/820, Apr. 17, 1993, adopted 13-0-2, with China and Russia abstaining; UN Security Council Resolution 824, S/RES/824, May 6, 1993, adopted unanimously; UN Security Council Resolutions 836, S/RES/836, June 4, 1993, adopted 13-0-2, with Pakistan and Venezuela abstaining.

³⁶ UN Security Council Provisional Verbatim Record of the 3200th Meeting, S/PV.3200, Apr. 18, 1993. At the Security Council debate, Ambassador Diego Arria highlighted the International Court of Justice's April 8, 1993 Judgment, which implied that the FRY was "possibly responsible for committing crimes of genocide."

³⁷ S/RES/820.

recommended that the FRY not participate in the UN Economic and Social Council. Resolution 838 of June 10, 1993, implied that the FRY had been giving the Bosnian Serbs forms of support other than humanitarian aid.³⁸

The tone of Security Council resolutions changed again from September 1994, this time in favor of the FRY. The Security Council sought to apply "carrot and stick" tactics where the FRY's role in the conflict was concerned. Despite the FRY's overt commitment to the border blockade with BiH, there is significant evidence that the "split" between the FRY and the RS was not genuine as the aid kept flowing.³⁹ It seemed the Security Council was satisfied by the public demonstration of Belgrade's denouncement of the Bosnian Serbs leadership without checking if this blockade actually worked. On September 23, 1994, Resolution 943 expressed satisfaction with FRY's decision to close its borders with BiH except for humanitarian aid.⁴⁰ The resolution rewarded the FRY by suspending restrictions on trade that had been imposed by two previous resolutions from 1992 and 1993.⁴¹ This "carrot" was followed by a new "stick" when, in the following year, Resolution 988 of April 21, 1995, expressed concern that the FRY had failed to prevent helicopter flights from crossing the FRY-BiH border. A warning was issued that the old restrictions suspended by Resolution 943 would be reintroduced. Resolution 1003 of July 5, 1995, actually further rewarded the FRY's cooperation in keeping the FRY-BiH border closed by prolonging the suspensions authorized in Resolution 943. FRY officials reacted by requesting the UN to lift the sanctions unconditionally.⁴² The FRY side considered the UN approach to be biased and unfair given the fact that both the Bosnian Muslims and Croatia had violated the arms embargo.⁴³

³⁸ See UN Security Council Resolution 821, S/RES/821, Apr. 28, 1993, adopted 13-0-2, with China and Russia abstaining; UN Security Council Resolution 838, S/RES/838, June 10, 1993, adopted unanimously.

³⁹ International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Milošević*, Case No. IT-02-54, Record from a meeting of highest political and military leadership of the Federal Republic of Yugoslavia and Republic of Serbia, Aug. 25, 1995, Exhibit P 469.20, ERN 0115-2319/ET0115-2334: 8. Milošević stated that "...the blockade was merely a formality and aid flows daily."

⁴⁰ UN Security Council Resolution 943 followed UN Security Council Resolution 942 of September 23, 1994, the same day that 943 was passed, which called on states to prevent those associated with Bosnian Serb forces from entering their territory. Although Resolution 942 did not specify which states could be failing to prevent Bosnian Serb forces from entering their territory, the prominence of the FRY's decision to close its border in Resolution 943 suggested that the message of Resolution 942 was targeted at the FRY.

⁴¹ UN Security Council Resolution 757, S/RES/757, adopted 13-0-2, with China and Zimbabwe abstaining; S/RES/820.

⁴² UN Security Council Provisional Verbatim Record of the 3551st Meeting, S/PV.3551, July 5, 1995.

⁴³ See FRY Ambassador at UN Dragomir Đokić's speeches for the claim that the UN Security Council's approach was biased against the FRY, to the point of being unjust and counterproductive in the search for peace. UN Security Council Provisional Verbatim Record of the 3454th Meeting, S/PV.3454, Nov. 8, 1994. Đokić's successor at the UN representing FRY from the summer 1995, the Foreign Minister Vladislav Jovanović, used similar rhetoric, as he referred to sanctions as "cruel and comprehensive" and asserted that Croatia's role in the war has been underestimated. By asserting that the Council's actions were biased, the FRY government may have been trying to exploit the Council's desire to

In reality, although several resolutions had dealt critically with the government of neighboring Croatia, in particular over the Croatian UN Protected Areas (UNPAs), on only a few occasions did the Security Council threaten Croatia with UN sanctions for its involvement in the war on BiH territory. Nor were any resolutions expressly critical of actions taken by the Bosnian Muslims or the BiH government, which left the Security Council record overall pointing to Serbian responsibility for the continuation of war and the commission of mass atrocities. The difference in roles during the war between the FRY and Croatia was indeed considerable. Notwithstanding Croatia's support for the creation of the Croatian autonomous region of Herzeg-Bosna in November 1991 and continuous military and political support afterward, the Croats showed more political pragmatism when the cease-fire between the Bosnian Croats and the Bosnian Muslims was achieved at the negotiating table.⁴⁴ The US-brokered Washington Agreement followed in February 1994, signed by representatives of the neighboring Republic of Croatia, the Bosnian Croat "Croatian Republic of Herceg-Bosna," and the BiH government.⁴⁵ The Agreement envisaged the formation of a loose federation of Bosnian Croats and Bosnian Muslims comprising territorial units – cantons – where those ethnic groups had majorities. The newly forged alliance also led to military cooperation and joint offensives to win back territory for the Croat-Muslim federation that was still held under Serb control. The end of armed conflict between the Bosnian Croats and the Bosnian Muslims singled out the Serbs as the uncooperative party and rehabilitated Croatia, so far as the war in BiH was concerned.

VI. THE UN'S FLAWED MILITARY RESPONSE TO THE BIH WAR AND ABSENSE OF UN CAPABILITIES FOR PEACE ENFORCEMENT

In *An Agenda for Peace* released in August 1992, Secretary-General Boutros Boutros-Ghali responded to the BiH crisis by announcing an ambitious role for the UN in the maintenance of international security and peace.⁴⁶ This report reaffirmed growing concerns about UN peacekeeping as being inadequate if attention was not also given to conflict prevention, peacemaking, the provision and protection of

appear fair and evenhanded. Jovanović also addressed the Security Council as Minister of Foreign Affairs in September 1994. UN Security Council Provisional Verbatim Record of the 3434th Meeting, S/PV.3434, Sept. 30, 1994, 5-6; UN Security Council Provisional Verbatim Record of the 3595th Meeting, S/PV.3595, Nov. 22, 1995, 24-25.

⁴⁴ Herzeg-Bosna was formed in stages at the meetings on October 15, 1991 in Grude, October 22, 1991 in Busovača, and Nov. 12, 1991 in Grude. See *Srebrenica – A "Safe" Area*, 451, fn. 345.

⁴⁵ *Washington Agreement, entered into force* Mar. 1, 1993.

⁴⁶ UN Security Council, *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping – Report of the Secretary-General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council on 31 January 1992, A/47/277 - S/24111*, June 17, 1992.

humanitarian aid in conflict areas, and peacebuilding in the post-conflict period.⁴⁷ Some international diplomats, politicians, and security analysts interpreted *An Agenda for Peace* as an announcement that the UN could, and should, move from peacekeeping to peacemaking to peace enforcing.

Indeed, criticism often heard about the UN involvement in BiH concerned its peacekeeping operations in circumstances where there was no peace to be kept. UN peacekeeping started before war broke out in BiH. The UN Protection Force (UNPROFOR) was created by Security Council Resolution 743 on February 21, 1992, in order to maintain the fragile peace in Croatia, negotiated by Cyrus Vance. The text of Resolution 743 maintained neutrality, stating "the force is not intended to prejudge the terms of a political settlement."⁴⁸

The military mission was authorized in February 1992 by Security Council Resolution 743. It started with sending lightly armed UNPROFOR units, which could use weapons only in self-defense under a precondition of a lasting cease-fire and acceptance by all warring parties of a UN military presence in Croatia. With 14,000 peacekeepers, it was to become the largest UN peace operation after that in the Congo between 1960 and 1964. They were to be located in the so-called UN Protected Areas (UNPAs). Absurdly, the UN established the UNPROFOR headquarters in Sarajevo, for geographic centrality, apparently unaware that the next armed conflict might break out in BiH. When the war in BiH started in April 1992, UNPROFOR headquarters were evacuated on May 16 and 17 to Belgrade and again from there to Zagreb at the end of July as a result of UN sanctions that were imposed on the FRY in May 1992.

BiH and Macedonian politicians asked the EU to station observers on their territories for conflict-prevention purposes. Their request was met with hesitation and no concrete action. The first Security Council meeting on the situation in BiH took place on April 23 and 24, 1992, only for the Council to conclude that sending a UN peacekeeping force to BiH was out of the question given the extent of the violence. The Secretary-General, however, decided to send a small group of military observers in order to assess the possibilities for a peacekeeping operation.⁴⁹ On the evacuation of UNPROFOR from Sarajevo in May, approximately 200 UNPROFOR members stayed behind to protect Sarajevo's airport from being besieged by Serbian armed forces.⁵⁰

⁴⁷ The need to readdress the UN peace operations policy arose from the increase of such operations in a very short period of time, leading to an increase in expenditure in the period between 1990 and 1993 from \$400 million to \$4 billion per year. *Srebrenica - A "Safe" Area*, 491; Milton J. Esman and Shibly Telhami (eds.), *INTERNATIONAL ORGANIZATIONS AND ETHNIC CONFLICT* (Cornell University Press, 1995), 3.

⁴⁸ UN Security Council Resolution 743, S/RES/743, Feb. 21, 1992. Adopted unanimously.

⁴⁹ *Srebrenica - A "Safe" Area*, 547.

⁵⁰ UN Security Council Resolution 758, S/RES/758, June 08, 1992; UN Security Council Resolution 764, S/RES/764, July 13, 1992. Both adopted unanimously.

A breakthrough came in Resolution 769 of August 7, 1992, immediately after media disclosure of the existence of the detention camp where the Serb authorities detained Bosnian Muslims and other non-Serbs from territories occupied previously by Serbian armed forces. Resolution 769, decided on UNPROFOR's mandate and strength and the original Croatian UN Protection Force, was now dubbed UNPROFOR I, while the newly established Protection Forces for BiH became UNPROFOR II.⁵¹

Three years after the publication of *An Agenda for Peace*, and after several quite disastrous UN conflict mediations in BiH and Rwanda, a more modest role for the UN emerged from the *Supplement to the Agenda for Peace* of February 1995, in which Boutros-Ghali toned down the initial ambitions of peace enforcement. Emphasis was now back on peacekeeping and peacemaking.⁵² Peace enforcement was described by Boutros-Ghali as an unrealistic option given that the UN had no capacity "to deploy, direct, command and control operations for this purpose, except perhaps on a very limited scale."⁵³

The text on peace enforcement in the *Supplement* of 1995 reflected the failure by the international community to bring an end to mass atrocities in BiH by military intervention. Intense public debate about the need for external military intervention to stop the violence unfolded in the spring 1993, and politicians in the West had to explain to their domestic constituencies why the democratic world was neither willing nor able to intervene on behalf of defenseless civilians. A military response became possible only after US and NATO involvement. The United States was not fully engaged with the Yugoslavia conflict, and the Clinton administration needed time to articulate its role following engagement by the UN and the EU. It took several years of unsuccessful peace initiatives, including the failures of the Contact Group plan and of the VOPP in 1993, to reveal the inadequacy of the UN-EU multilateral platform to resolve on their own political and military aspects of the conflict.

For any major military engagement, NATO's infrastructure would be needed, and it was hard to imagine that NATO could be engaged without active political and military participation of the United States. The first mention of the use of NATO and WEU was in the context of protection for humanitarian convoys, following Security Council Resolutions 770 and 776, which allowed for the use of force only in protection of humanitarian aid.⁵⁴ Resolution 776 went further, formulating the mandate for UNPROFOR that had been created by Resolution 743 in 1991, and

⁵¹ UN Security Council Resolution 769, S/RES/769, Aug. 7, 1992. Adopted unanimously.

⁵² UN General Assembly and Security Council, *Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations, A/50/60-S/1995/1*, Jan. 3, 1995, ¶ 35.

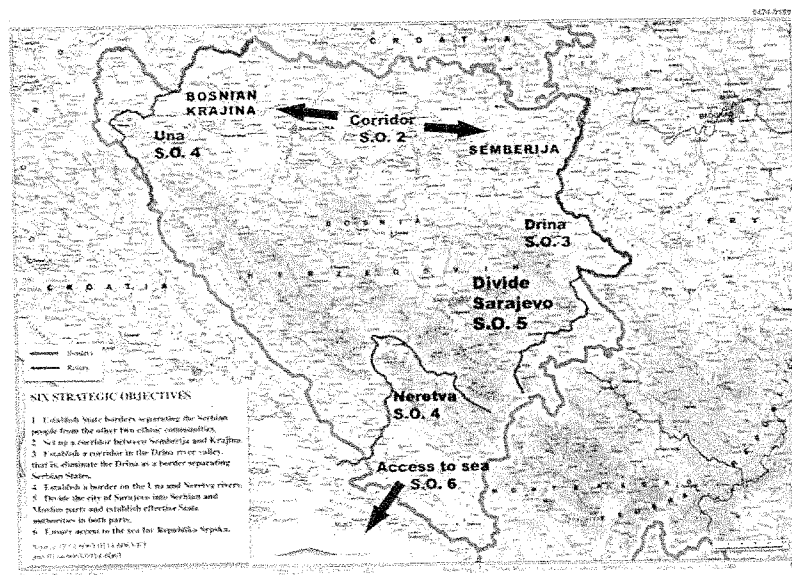
⁵³ UN General Assembly and Security Council, *Supplement to an Agenda for Peace*, 77.

⁵⁴ UN Security Council Resolution 770, S/RES/770, Aug. 13, 1992; UN Security Council Resolution 776, S/RES/776, Sept. 14, 1992. Both adopted 12-0-3, with China, India, and Zimbabwe abstaining.

stated that force did not need to be limited to self-defense but could also be used in cases when UNPROFOR units were prevented from fulfilling their mandate, that is, protection of humanitarian aid. Different commanders on the ground interpreted this mandate differently, with the new Commander of UNPROFOR II, French General Philippe Morillon, stating, "We have no intention to force our way through the blockades."⁵⁵

The first military interventions would happen one year later by engagement of NATO troops as part of operation "Deny Flight" to enforce the UN's no-fly zone over BiH. The operation started in April 1993 and lasted over two years. Within this mandate in February 1994, NATO engaged in its first air battle above the Serb-controlled town of Banja Luka. Shortly afterward, in April 1994, a NATO aircraft for the first time bombed ground targets in an operation near the UN safe area of Gorazde. "Deny Flight" led to tensions with (and within) the UN, and Serb forces took UN peacekeepers hostage in retaliation for a NATO bombing in June 1995.⁵⁶

Despite the presence of UN peacekeeping forces in the three Bosnian Muslim enclaves situated in Eastern Bosnia, two enclaves were attacked and conquered by Bosnian Serb armed forces in July 1995. Eastern Bosnia, also referred to as *Podrinje*, a geographical denotation of the territory named after the river Drina, was a corridor



MAP I: Six Strategic Objectives

Source: OTP, Radovan Karadžić Trial (IT-95-5/18), ERN 0424-9159-0424-9159.

⁵⁵ *Srebrenica – A “Safe” Area*, 741.

⁵⁶ *Srebrenica – A “Safe” Area*, 741.

of territory running along the border between Serbia and BiH. Taking this corridor was one of the Six Strategic Objectives defined by the RS political leadership in May 1992. The RS Assembly adopted the official document, known as "The Six Strategic Objectives," on May 12, 1992.⁵⁷

Following their official proclamation in May 1992, the first strategic goal – ethnic separation – had more or less been achieved by December 1992, with approximately 70 percent of BiH territory being controlled by the Serbs. What needed to be conquered from December 1992 onward were the corridors that would secure the territorial contiguity of Serb territories. For that purpose at least three of the six strategic objectives had yet to be achieved, namely: conquest of strategic parts of the Posavina Corridor in Northern Bosnia – the town of Brčko and the Bihać pocket; establishing the Drina Valley Corridor in Eastern Bosnia – the towns of Srebrenica, Žepa and Gorazde; and dividing Sarajevo.

Two important developments made the conquest of those territories and the division of Sarajevo difficult for the Serbian armed forces. First, in March 1993, during a visit to Srebrenica, UNPROFOR Commander in BiH General Morillon announced that Srebrenica would become a UN protected area. Second, after a period of hostilities, the Bosnian Muslims and the Bosnian Croats forged a military and political alliance from February 1994 by signing the Washington Agreement; this led to joint military operations against the Serb armed forces in Western Bosnia in the spring and summer of 1995. These operations, however, drew on BiH Army forces withdrawn from Eastern Bosnia, thus making the eastern areas more vulnerable to Serb attacks.

Although Morillon's pronouncement took the UN by surprise and drew criticism of him from inside and outside the UN for overstepping his mandate, he got public support from Boutros-Ghali on April 14, 1993, when the Secretary-General stated that Morillon acted within his mandate.

Several days later, on April 16, 1993, the Security Council adopted Resolution 819, in which Srebrenica was proclaimed a UN protected area with UNPROFOR tasked to regulate the humanitarian situation in the enclave. Some states, including the United States, supported Resolution 819 on condition that the term "safe haven" be replaced by "safe area," because "safe haven" presupposed full protection for which 15,000 ground troops would be needed. "Safe area" was supposed to change the mandate from "full protection" to a "certain degree of security," a term that needed to be explained in some detail – but never was.⁵⁸

⁵⁷ The objectives were articulated officially as: The strategic objectives or priorities of the Serbian people in Bosnia and Herzegovina are to: 1. Establish State borders separating the Serbian people from the other two ethnic communities; 2. Set up a corridor between Semberija and Krajina; 3. Establish a corridor in the Drina river valley, that is, eliminate the Drina as a border separating Serbian states; 4. Establish a border on the Una and Neretva rivers; 5. Divide the city of Sarajevo into Serbian and Muslim parts and establish effective State authorities in both parts; 6. Ensure access to the sea for the Republika Srpska.

⁵⁸ *Srebrenica – A “Safe” Area*, 774–775.

The debate on the status of Srebrenica led to a Security Council fact-finding mission led by Ambassador Diego Arria at the end of April 1993. Ambassador Arria referred to what he and his UN colleagues had witnessed as an “open air prison.” Later on, he referred to Srebrenica as a place where a “slow motion genocide” was taking place. The suffering by the people in the area took the UN fact-finding mission by surprise – they were unprepared for, and shocked by, what they witnessed on the ground; the situation had never been accurately presented to the Security Council.⁵⁹ The mission recommended that the Security Council proclaim five other places as UN safe areas, all of which were under the threat of being taken over by Serbian force. It was clear to the mission that the Bosnian Serb rejection of the VOPP plan had freed Serbian forces to attempt to conquer areas of strategic importance for the contiguity of those Serbian territories, as identified by the Six Strategic Objectives in 1992. On the fact-finding mission’s return to New York, Security Council Resolution 824 of May 7, 1993, proclaimed in addition to Srebrenica that Gorazde, Žepa, Tuzla, Sarajevo, and Bihać were to be UN safe areas. The intention was to protect civilians within these areas and, thus, to stop atrocities and to obstruct Serbian territorial designs.⁶⁰

Although the gravity of the difficulties in Eastern Bosnia had been well-known to the Security Council since 1993, no sufficient measures were taken to prevent disaster. In July 1995, Srebrenica and Žepa were taken over by Serb armed forces. Genocidal crimes followed when approximately 8,000 men and boys were killed.⁶¹ The UN safe areas status had not led to UN military protection nor had the existence of the UN-created ICTY deterred perpetrators from the commission of mass atrocities.

The takeover itself did not surprise the international community, as there was an expressed awareness, at least since June 1995, that the safe areas in Eastern Bosnia could not be defended. Sandy Vershbow, a US diplomat in charge of Bosnia policy at the National Security Council, stated that Srebrenica’s future seemed pretty gloomy and that they were seriously considering a swap of territories, that is, eastern enclaves would go to the Serbs in exchange for larger territories elsewhere staying with the Bosnian Muslims.⁶² The Serbs and some Western leaders had been

⁵⁹ International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Milošević*, Case No. IT-02-54, Testimony of Diego Arria, Feb. 10, 2004, T 31724:03-31724:10, Exhibit P 645. In his report, Arria describes how the Mission members – all were UN Security Council Ambassadors – foresaw a massacre of 25,000. Writing about the UN fact-finding report detailing the mission’s position on a “slow motion genocide.” Exhibit P645, 16–22.

⁶⁰ UN Security Council Resolution 824, S/RES/824. Adopted unanimously.

⁶¹ See, e.g., International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Judgment, June 10, 2010. This case deals with six accused of the crimes of genocide in Srebrenica, stating that the number of executions following the Srebrenica fall could be as high as 7,826, although the Trial Chamber was satisfied that 5,336 individuals were positively identified as being executed. The Appeal Judgment is still pending, but it is not likely that the Appeal Judgment would have an effect on the numbers of the established victims in any substantial way.

⁶² Laura Silber and Allan Little, *YUGOSLAVIA: DEATH OF A NATION* (Penguin, 1995), 352.

acknowledging before July 1995 that in any peace deal Srebrenica would go to the Serbs, but nobody was prepared to talk about the swap of territories openly, aware that the public would interpret it as rewarding the Serb side for ethnic cleansing.⁶³ The late General Rasim Delić, who was at the time Commander in Chief of the BiH Army, went further in his assessment of Srebrenica and the other enclaves calling them “an additional burden for the Bosnian army and government.”⁶⁴

The UN’s response to the Srebrenica takeover and to the mass atrocities committed in its aftermath cannot be properly assessed without appreciation of the political and military context as explained by diplomats, politicians, military, and other participants in the events of July 1995 and beyond. Tadeusz Mazowiecki, who was appointed in 1992 as Special Rapporteur monitoring the situation, resigned.

From incomplete evidence – as disclosed by news reports, official reports, and various investigations, including the forensic reconstruction of events through criminal trials at the ICTY – it emerges that Serb armed forces directed all attention to the east after the loss of territories in the west. The Serbs apparently enjoyed at least tacit approval of the international community to move forward, and what may have been a silent understanding about the swap of the territories was agreed to by the Bosnian Muslim leadership in Sarajevo. This explains to some extent why there was no adequate UN-NATO air support for besieged Srebrenica on July 11 and 12, 1995, that DUTCHBAT – the UN peacekeepers from The Netherlands – had sought and why the conquest of Srebrenica and Žepa was not reversed later, as French President Jacques Chirac proposed. The swap of territories and ethnic homogenisation was confirmed by US Secretary of State Warren Christopher, who stated in the aftermath of Srebrenica and Žepa that:

The overrunning of Srebrenica and Žepa created a circumstance that in some ways tragically enough makes the shape of the peace simpler than it would have been in the past.⁶⁵

Christopher talked in similar terms about the takeover of the RSK in August 1995 by Croatian Armed Forces in Operation Storm and the subsequent exodus of the Croatian Serbs from the previously designated Serb areas, using the term “simplifying the matters,” implying that ethnic homogeneity of the contested territories was needed to resolve the conflict and achieve peace.⁶⁶

Even if the warring parties had come to some kind of implicit or explicit agreement on the swap of BiH territories and a “green light” had been given by the international community for the Serbian armed forces to take the enclaves, there is a great difference between approval of a takeover free of much violence and a takeover that was expected at the time to be followed by genocidal mass atrocities.

⁶³ Mark Danner, *Bosnia: The Great Betrayal*, THE NEW YORK REVIEW OF BOOKS, Mar. 26, 1998.

⁶⁴ Silber and Little, *DEATH OF A NATION*, 346.

⁶⁵ *Peace Hope for Bosnia: Use of Force*, USA TODAY, Sept. 19, 1995.

⁶⁶ Warren Christopher’s Statement in *The Death of Yugoslavia*, BBC, Sept. 3, 1995, Time 1:24–1:37.

Although there was no international community "green light" for the commission of crimes at Srebrenica, looking back at the pattern of ethnic cleansing committed by the Serb side since 1992, what happened after the takeover was at least foreseeable.

After Serb armed forces entered Srebrenica on July 11, 1995, the deportation and executions of the Bosnian Muslims started and continued for weeks. After seeking refuge at the UN compound in Potočari, women and children were separated from men by Serb armed forces in the presence of DUTCHBAT.⁶⁷ On July 12, 1995, the Security Council passed Resolution 1004, which demanded that the Serbs suspend their offensive on Srebrenica and allow UN humanitarian assistance to reach civilian populations in the region. Neither the UN's diplomatic response nor the presence of DUTCHBAT peacekeeping forces on the ground could prevent the gravest massacre in Europe's post-1945 history. The execution of the Bosnian Muslim men took place in the days and weeks following July 11, 1995, the day of the Serbian attack and takeover of the enclave.⁶⁸

Given the intelligence capabilities of some of the principal states involved – the United States, Canada, and the United Kingdom – on which the UN depended, a first issue is whether the UN and other states were informed by intelligence of what was happening in a way that may have led to their silently agreeing to the Serb takeover of Srebrenica and even to the plans the Serbs had for the civilian population following the takeover.⁶⁹ Indeed, a core issue for the conscience of the international community may be not so much its failure to prevent the military takeover of Srebrenica as its failure to stop the crimes committed against defenseless civilians that followed. Why, given available intelligence, did the international community in general, and the Security Council in particular, not protect the civilian population?

Various sources have confirmed the existence of US intelligence consisting of intercepted telephone conversations, starting on June 17, 1995, between FRY and RS military leaders.⁷⁰ The Dutch Institute for War Documentation situated in Amsterdam (NIOD) investigating DUTCHBAT referred to a meeting between Carl Bildt, successor of Lord David Owen as the EU representative in Balkan negotiations, US Vice President Al Gore, and two others, which occurred on or about August 3, 1995, at the White House in Washington. At this meeting intercepted communications between Milošević and General Ratko Mladić of the

⁶⁷ See Danner, *The Great Betrayal*. For a more detailed factual reconstruction of the role of the events before, during, and after the fall of Srebrenica, see *Srebrenica – A "Safe" Area*, Parts II and III, highlighting UNPROFOR's and DUTCHBAT's role.

⁶⁸ See, e.g., International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Judgment, June 10, 2010.

⁶⁹ Cees Wiebes, *INTELLIGENCE AND THE WAR IN BOSNIA 1992–1995: THE ROLE OF INTELLIGENCE AND SECURITY SERVICE* (Boom, 2002), 226.

⁷⁰ *US Intelligence Knew Serbs Were Planning an Assault on Srebrenica*, BASIC REPORTS, Oct. 16, 1995. Andreas Zumach writes that U.S. intelligence services were intercepting communications starting June 17, 1995 and listening to daily conversations between Perišić and Mladić, who were planning the attack on Srebrenica. He was also quoted in Wiebes's *INTELLIGENCE AND WAR IN BOSNIA*, 221.

Bosnian Serb Army – *Vojska Republike Srpske* (VRS) – relating to the fall of the safe area were specifically referred to, and read from, by Gore, according to the NIOD report.⁷¹

It has to be noted that the United States has specifically denied the existence of Srebrenica intercepted communications through CIA Director John Deutch.⁷² However the Supreme Defence Council documents records, unavailable to the United States when these denials were made, revealed with absolute certainty that Milošević and Mladić had indeed spoken by phone at the time of Srebrenica, as Milošević referred to one of their conversations himself.⁷³ One of the plausible reasons for denial of the existence of the intelligence showing the intention of the Serb armed forces to commit crimes or revealing that such crimes were in process would be that knowledge gleaned from such intelligence material before the crimes took place could expose states concerned to allegations of complicity in genocide, a crime it was their inalienable duty to prevent.⁷⁴

The first UN response to the fall of Srebrenica came, as noted previously, in Resolution 1004 of July 12, 1995. In referring to Chapter VII of the UN Charter the resolution demanded that Bosnian Serb forces withdraw from the safe area of Srebrenica in BiH and respect the safety of personnel from UNPROFOR. The resolution also requested the Secretary-General to use all resources available to restore the safe area status of Srebrenica.⁷⁵

The response by the UN and the international community to the fall of Srebrenica and to the subsequent fate of the two other safe areas, Žepa and Gorazde, seemed uncoordinated and confused. At a meeting of the Contact Group in London on the same day, July 12, 1995, Bildt, the EU representative, expressed dissatisfaction with the language of Resolution 1004, as it raised unrealistic expectations that could not possibly be achieved. In the unfolding debate, President Chirac offered the most radical solution. He suggested reversing the military conquests by Serbs, to regain Srebrenica by military force, and to give it back to the Muslims. The British rejected

⁷¹ Wiebes, *INTELLIGENCE AND WAR IN BOSNIA*, 193, 221.

⁷² Deutch said: "And as the article suggests, rumours of intercepted communications between Generals Perišić and Mladić last summer, which have circulated since last fall, remain exactly that, rumours the US Government cannot substantiate, because it has no information to do so." See Charles Lane and Thom Shanker, *Bosnia: What the CIA Didn't Tell Us*, *THE NEW YORK REVIEW OF BOOKS*, May 9, 1996.

⁷³ Milošević said at the meeting of Supreme Defence Council (SDC) in August 1995: "Momo remembers well my conversation with Mladić on the occasion of attack on Žepa and Srebrenica. On that occasion I said: 'Ratko, you are now measuring the military price of that success. The military price is six persons killed, 20 wounded, one vehicle destroyed, etc. It is inexpensive. However, the political price could be million times higher because there might be a concern for the interests of 12 million people!'" See International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Milošević*, Case No. IT-02-54, 41st Supreme Defense Council Session, Aug. 14, 1995, Exhibit P 667.41, ERN 0345-8435-0345-8467/ET 0345-8435-0345-8467, 21.

⁷⁴ See *Convention on the Prevention and Punishment of the Crime of Genocide*, 78 U.N.T.S. 277, entered into force Jan. 12, 1951.

⁷⁵ UN Security Council Resolution 1004, S/RES/1004, July 12, 1995. Adopted unanimously.

Chirac's plan. Indeed, British Foreign Secretary Malcolm Rifkind said on several occasions that the UN forces in BiH were not there to fight.⁷⁶ The Americans, in principle, backed the French initiative but were not willing to assist with material support.⁷⁷ Chirac's initiative was interpreted by some of his colleagues, as well as in the media, as political grandstanding that was never meant to go beyond rhetoric.⁷⁸ While the international community was debating how to respond, the Serb armed forces took over the Žepa safe area on July 24, 1995. Goražde, the last remaining Bosnian Muslim enclave, now in an all-Serb surrounding, was to become the next military target but was not in fact attacked. As much as those interested were invited to assume that the international community exerted pressure to stop the Serb military offensive on Goražde, there was another interpretation of events. Namely, the Serbs counted that Goražde would not need to be taken by force as it would "blend" into the Serbian surroundings without a fight.⁷⁹

By August 1995, satellite images disclosed traces of fresh burial sites and mass graves.⁸⁰ Security Council Resolution 1010 of August 10 noted that there had been reports of breaches of international humanitarian law and that many persons were reported missing, and demanded that the Bosnian Serbs allow the UNHCR and the International Committee of the Red Cross to enter Srebrenica and Žepa to register detainees. It also demanded that the Serbian forces guarantee the safety of detainees. At the time the resolution was passed, the Serb forces had already been engaged for weeks in mass executions of the Bosnian Muslim men from Srebrenica and Žepa.

By then, the United States had taken the lead, and for the first time an aggressive negotiation style was combined with a military threat: If the Serbian artillery did not withdraw, NATO would bomb them.⁸¹ The credibility of the US military threat led to "Deliberate Force," a NATO military intervention consisting of air strikes on the Bosnian Serb heavy artillery positions that put pressure on the Serb side to accept US conditions for a political settlement of the crisis, for fear of military defeat. Bombardments lasted two-and-a-half weeks, long enough to show the Serb side that this time the international community was serious and to convince Milošević to bring the Bosnian Serbs to the negotiating table.⁸²

⁷⁶ International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Milošević*, Case No. IT-02-54, FRY Diplomatic Cable, July 17, 1995, Exhibit P 826.45.

⁷⁷ *Srebrenica – A "Safe" Area*, 2423.

⁷⁸ In his memoirs, former British prime minister John Major qualified the French initiative as a "hair raising plan." See John Major, *THE AUTOBIOGRAPHY* (HarperCollins, 1999), 545.

⁷⁹ International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Milošević*, Case No. IT-02-54, Record from a meeting of highest political and military leadership of the Federal Republic of Yugoslavia and Republic of Serbia, Aug. 25, 1995, Exhibit P 469.20, ERN 0115-2319/ET0115-2334: 8.

⁸⁰ *US Intelligence*, 1995. Wiebes, *INTELLIGENCE AND WAR IN BOSNIA*, 278. Charles Lane and Thom Shanker, *What the CIA Didn't Tell Us*.

⁸¹ The military campaign, "Deliberate Force" was the peace enforcement operation, implemented by NATO forces. NATO, *Operation Deliberate Force: Ten Years On*, available at <http://www.nato.int/docu/update/2005/08-august/e0830a.htm>.

⁸² *Srebrenica – A "Safe" Area*, Appendix XIII, *Chronology of the Bosnian Conflict 1990–1995*, 287–294.

VII. INDIVIDUAL, COLLECTIVE, AND STATE RESPONSIBILITY FOR GENOCIDE

Valuable additional material on events after the fall of Srebrenica surfaced as evidence at the ICTY trial of Milošević in the form of cables sent by FRY diplomatic missions from world capitals to Belgrade. Defense witness Vladislav Jovanović, appearing on behalf of Milošević, had been Minister of Foreign Affairs of the FRY and Serbia and became FRY Chargé d'Affaires at the UN in September 1995, where he was trusted to deal with a very sensitive diplomatic mission in the aftermath of disclosure of the gravity of Srebrenica crimes. He was asked in court by the Prosecution to comment on the contents of the diplomatic cables. He, as Minister of Foreign Affairs, like Milošević and other leading politicians, was receiving them on a regular basis throughout the war. Drafted by Yugoslav diplomats, the cables showed that details of the crimes committed in BiH by Serbian forces were coming to Serbia's leadership from ambassadors who were being informed by international media and diplomatic encounters. They constituted important evidence for the Prosecution about the notice available to Milošević of the crimes being committed and provided evidence of how events to come should have been foreseeable by him. Belgrade's failure to anticipate and respond to foreseeable war crimes, including genocide, could be argued to be inexcusable in light of this knowledge. It appeared that on July 10, 1995, one day before the siege of Srebrenica started, a cable was sent to Belgrade from the FRY New York Mission containing details of military activities of the VRS in Srebrenica.⁸³ The failure of Belgrade to act upon this information in particular was telling, more so having in mind the text of Resolution 819 in which Serbia (FRY) was called upon to prevent the genocide.

Official reaction by Serbia to the crimes committed was elicited by the UN Secretary-General's demand of November 27, 1995, for reports from parties to the conflict on the involvement of the FRY and of VJ units in Srebrenica crimes.⁸⁴ While the Serbian side was consolidating its territorial gains in BiH, the FRY leadership sent a letter to the UN, signed by Jovanović, which contained a range of peculiar assertions and arguments. The takeover of Srebrenica was referred to as Srebrenica being "liberated."⁸⁵ Another letter followed on December 18, 1995,

⁸³ International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Milošević*, Case No. IT-02-54, FRY Diplomatic Cable, July 10, 1995, Exhibit P 826.33.

⁸⁴ UN Security Council *Report of the Secretary-General Pursuant to Security Council Resolution 1019 (1995) on Violations of International Humanitarian Law in the Areas of Srebrenica, Žepa, Banja Luka and Sanski Most*, S/1995/988, Nov. 27, 1995, ¶¶ 35–37.

⁸⁵ International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Milošević*, Case No. IT-02-54, Testimony of Vladislav Jovanović, Apr. 5, 2005, T 36360:18–36361:18. See also the Letter, Exhibit P 826.52, in which FRY stated: "The claims that the Yugoslav Army had either directly or indirectly taken part in the operation for liberation of the Muslim stronghold of Srebrenica in July 1995 are completely unfounded . . . Such falsehoods, as well as untrue allegations of the existence of the prison camps for the Muslims in the territory of Federal Republic Yugoslavia, are part of well-known campaigns always launched at crucial moments when peace in the war-torn regions of the previous Yugoslavia is about to

in which Jovanović further stated that the massacre in Srebrenica was caused by the Bosnian Muslim Army attempting to prevent Bosnian Muslim civilians from surrendering.⁸⁶

These two letters can be seen in context. On December 6, 1995, a few weeks before Jovanović was trying to persuade the UN that the Bosnian Muslims were to be blamed for the atrocities in Srebrenica, Milošević had addressed the Supreme Defence Council. With the Dayton Peace Agreement behind him he spoke of the success of Serbs in Bosnia and of their victorious creation of a Serb state, now accepted internationally. He stressed the size of RS, which at 25,000 square kilometres was twice as big as Montenegro or one-and-a-half times the size of Slovenia. He spoke of the necessity of moving refugees from the FRY to populate those territories that had been gained for the Serbs and that included, according to Milošević, every town along the Sava river, three towns in the countryside, and the whole of Podrinje except for Gorazde.⁸⁷

It is significant that ethnic separation in BiH was at the top of the list of the Six Strategic Objectives formulated in May 1992 by the Bosnian Serb leadership and that every peace proposal brokered by the international community – the EU Cutiliere Peace Plan in 1992, the Vance-Owen Peace Plan in 1993, the Owen-Stoltenberg Plan in 1993, the Contact Group Peace Plan in 1994, the Dayton Peace Agreement in 1995 – was based on ethnic separation of the three principal ethnic groups. Worse, although none of the previous peace proposals allowed for territorial contiguity of the Serbian-designated parts or “cantons” of BiH, the Dayton Peace Agreement brought near complete territorial contiguity of Serb lands in BiH. This was also the first time that the territories seized by war were accepted as the basis for a peace plan. Complete connection of territories was broken only by the limited Brčko corridor in the north of BiH as Brčko was put under, and is still under, international supervision. The Dayton BiH left as its legacy a territorially divided BiH into three entities: the RS and the Muslim-Croatian Federation with Brčko District as a third form of entity. The Dayton territorial and political division makes

be reached.” International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Milošević*, Case No. IT-02-54, FRY Letter, Exhibit P 826.52.

⁸⁶ International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Milošević*, Case No. IT-02-54, Testimony of Vladislav Jovanović, Apr. 5, 2005, T 36431:19-36434:16. See also International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Milošević*, Case No. IT-02-54, Letter from Vladislav Jovanović to UN Security Council, Dec. 18, 1995, Exhibit P 826.55. He wrote: “Immediately before the takeover of Srebrenica by the Army of *Republika Srpska*, disorder and conflicts within the Bosnian Muslims Army in that enclave erupted. In the clashes that ensued, those units which wanted to continue fighting were mercilessly killing those who wanted to surrender and were in favor of ceasefire. Since the units of the Army of *Republika Srpska* did not have access to those areas at the time, it was only after the fall of the enclave that the bodies of Muslim fighters and civilians, who died as a result of the infighting, were discovered. This situation was abused by the Bosnian Muslim government to further its propaganda campaign of the alleged mass killings and disappearances of Muslims in the area.”

⁸⁷ International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Milošević*, Case No. IT-02-54, 47th Supreme Defense Council Session, Dec. 6, 1995, Exhibit P 667.47, ERN 0345-8372-0345-8405/ET0345-8372-0345-8405, 7-8.

administration of BiH extremely problematic and has made it hard for BiH to function as a state in its international borders.

The Serbian side had every reason to be satisfied with the Dayton Peace Agreement that recognized the RS within its borders and confirmed ethnic separation by Constitutional Provisions. In fact, the Constitutional Provisions negotiated in Dayton weakened BiH as a functioning state, not only by territorial division along ethnic lines, but also by the three-headed presidency that was established, and by complicated structures put in place to regulate relationships between the BiH federal institutions on the one hand, and its federal entities – the RS and the Federation of Muslims and the Croats – on the other.

When founded in 1993, one of the stated objectives of the ICTY was deterrence of the commission of crimes. The reality was that some of the gravest atrocities of the war were committed by Serbian armed forces two years after the establishment of the ICTY. In the aftermath of Srebrenica, in 1995, the ICTY indicted RS political leader Radovan Karadžić and the Chief of Staff of the VRS, General Ratko Mladić, with atrocities committed in the war in BiH, including crimes of genocide.⁸⁸ Other indictments followed, including those of the VRS General Radislav Krstić, General Zdravko Tolimir, General Vujadin Popović, and others.⁸⁹ Article X of the Dayton Peace Agreement, dealing with military aspects of the peace settlement, referred to the obligation by signatories to cooperate fully with the ICTY.⁹⁰ The trials were held at the ICTY, and subsequent convictions of some of the indictees to life imprisonment for crimes of genocide, or for aiding and abetting genocide, have left an important record about individual criminal responsibility and about the nature of the crimes committed in BiH against Bosnian Muslims. What is remarkable from the perspective of the ICTY record of mass atrocities in BiH is that, save for Milošević, who died in 2006 before his trial finished, no other individual from the FRY, or rather from Serbia or Montenegro, has been indicted for the crime of genocide.⁹¹ Two ICTY cases with former highly placed officials in the Yugoslav Army and the Serbian Ministry of Internal Affairs, *Prosecutor vs. Momčilo Perišić* and *Prosecutor vs. Jovica Stanišić and Franko Simatović*, did include Srebrenica in

⁸⁸ International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Karadžić*, Case No. IT-95-5/18-PT, Indictment, Oct. 19, 2009; International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Mladić*, Case No. IT-09-92-PT, Fourth Amended Indictment, Dec. 16, 2011.

⁸⁹ International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Krstić*, Case No. IT-98-33, Indictment, Oct. 27, 1999; International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Indictment, Aug. 4, 2006; International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Tolimir*, Case No. IT-05-88/2-PT, Indictment, Nov. 4, 2009.

⁹⁰ See, e.g., *Dayton Peace Agreement, General Framework Agreement for Peace in Bosnia and Herzegovina, A/50/790, S/1995/999, entered into force Dec. 14, 1995, Annex 6.*

⁹¹ ICTY Indictment against Milošević, consisting of three different documents: a Croatia, a BiH, and a Kosovo indictment. For the point made in this chapter only the BiH indictment is of relevance. International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Milošević*, Case No. IT-02-54, Indictment, Oct. 23, 2002.

the charges but for crimes against humanity and not for the crime of genocide.⁹² On February 28, 2013, the ICTY Appeals Chamber Judgment acquitted General Momčilo Perišić, the Chief of Staff of the Army of Yugoslavia from 1993 to 1998, of all charges.⁹³ This very significant judgment, received in Serbia with cheers, allows his acquittal to be seen as exoneration more generally for Serbia.⁹⁴

State, as opposed to individual, responsibility for genocide and a state's obligation to prevent genocide has been a subject of proceedings before the International Court of Justice (ICJ), also situated in The Hague. Unlike the ICTY, the ICJ can deal with state responsibility and is not limited to individual criminal responsibility. BiH filed a lawsuit against the FRY (Serbia and Montenegro) in March 1993. In its Judgment of 2007, the Court recognized that the crime of genocide had taken place, and recorded that Serbia did not commit genocide but had failed to prevent it.⁹⁵

Although BiH has ten years to file an application for revision of the judgment if fresh evidence becomes available, the detail in the Perišić judgment and the mere fact of Perišić's acquittal sent a strong message from the UN court (ICTY) to BiH. If the message is accepted then there will be no attempt at revision of the ICJ judgment. BiH – and in particular the descendants of today's Bosnian Muslims – will discover in centuries to come that their history as a nation is written in court decisions that may have been politically slanted or historically inaccurate for one of many evidential or procedural reasons.

The risk that shortcomings of judicial process may contribute to unreliable history can be seen clearly in the judgment in the Perišić case. The Judgment read that Perišić acted upon the decision of the civilian commander of armed forces of the FRY (Federal Republic of Yugoslavia), consisting of three presidents: president of FRY, president of the Republic of Serbia, and president of the Republic of Montenegro. They operated through the federal body known as the Supreme Defence Council (SDC). They were the decision makers; Perišić was the Chief of Staff of the Yugoslav Army (VJ), who was executing their decisions. Former president of Serbia and later of FRY, Slobodan Milošević, was the only of the SDC members who was ever indicted for war crimes committed in BiH. Without Milošević or his colleagues on the SDC being tried and convicted – the record for BiH will read as if there were no crimes, let alone genocide – committed in BiH with the involvement or complicity of Serbia.

⁹² International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-PT, Indictment, July 10, 2008; International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Perišić*, Case No. IT-04-81-PT, Indictment, Feb. 5, 2008.

⁹³ International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Perišić*, Case No. IT-04-81-PT, Judgment Summary, Feb. 28, 2013.

⁹⁴ See, e.g., Lakić Đorović, *Zasluzili ste orden od Pavkovića i Miloševića*, available at <http://www.e-novine.com/stav/80744-Zasluzili-ste-orden-Pavkovića-Miloevia.html>.

⁹⁵ International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, 2007 ICJ 43, Judgment, Feb. 26, 2007, 237–238.

In 2013, some eighteen years after genocide took place in BiH against the Bosnian Muslim population, the survivors of the genocide, the victims, those bereaved, and victim organizations have been trying to establish the truth and to find justice. The only successful lawsuit – brought against the Netherlands and tried at a Dutch national court – was by plaintiffs who lost family members who had been trying to find shelter at the DUTCHBAT Compound in Potočari in July 1995. This case – *Mustafić et al. v. The Netherlands* – was a civil case against a state that had participated in the military mission in BiH under the UNPROFOR flag. The state of the Netherlands was alleged to have been responsible for its failure to protect the plaintiffs' relatives from genocide. The plaintiffs were successful as against this state and were awarded damages.⁹⁶ The UN, however, has been able at all times to date to use its immunity to deter any criminal or civil actions concerning its failings.⁹⁷

VIII. UN IN POST-CONFLICT BIH

Security Council involvement in BiH did not stop with the end of the war in December 1995. Resolution 1031 of December 15, 1995, established a multinational UN Implementation Force (IFOR), supporting the implementation of Annex 1-A of the Dayton Peace Agreement. The political administrative function of the UN's High Representative in Bosnia was confirmed, giving the administration of BiH all elements of an international protectorate, with separate political entities – the RS, the Muslim-Croatian Federation, and the Brčko international protectorate – being stronger than the federal state.⁹⁸ Resolution 1035 of December 21, 1995, also established the International Police Task Force (IPTF) and the United Nations Civilian Office. In 2007 the number of troops was reduced to 1,600.

After the expiry of the IFOR mandate, the UN military mandate continued for one year through the Stabilization Force (SFOR).⁹⁹ In December 2004, SFOR was replaced by the Euro Forces (EUFOR), tasked with overseeing the military implementation of the Dayton Peace Agreement.¹⁰⁰ The Security Council has extended

⁹⁶ Court of Appeal in the Hague, *Mustafić et al.*, Case No. 200.020.173/01, LJN: BR5386, Ruling, July 5, 2011.

⁹⁷ Benjamin E. Brockman-Hawe, *Questioning the UN's immunity in the Dutch Courts; Unresolved Issues in the Mothers of Srebrenica Litigation*, ExpressO (2010).

⁹⁸ Security Council Resolution 1031, S/RES/1031, Dec. 15, 1995. Adopted unanimously.

⁹⁹ See SFOR's official site for its mandate: "The Stabilization Force (SFOR) Mission: The Stabilization Force (SFOR) will deter hostilities and stabilize the peace, contribute to a secure environment by providing a continued military presence in the Area Of Responsibility (AOR), target and coordinate SFOR support to key areas including primary civil implementation organizations, and progress towards a lasting consolidation of peace, without further need for NATO-led forces in Bosnia and Herzegovina." SFOR, *History of the NATO-Led Stabilisation Force (SFOR) in Bosnia and Herzegovina*, available at <http://www.nato.int/sfor/docu/dq8116a.htm>.

¹⁰⁰ SFOR was disbanded by Security Council Resolution 1551, S/RES/1551, July 9, 2004, adopted unanimously. EUFOR was established by UN Security Council Resolution 1575, S/RES/1575, Nov. 22, 2004, adopted unanimously. The formation of EUFOR for BiH was a result of the EU Thessaloniki Declaration of 2003, dubbed Operation "Althea." It was the third and largest military operation that the

the EUFOR mandate on several subsequent occasions.¹⁰¹ Troop levels have been repeatedly reduced over time¹⁰² EUFOR's current mandate is until November 2013 with a very high probability of an automatic extension.

CONCLUSION

It was not so much that the disintegration of the SFRY came as a surprise in the 1990s, but the fact that the EC, the UN, and the United States – at a very early stage of the crisis – believed that Yugoslavia could and should be kept together. Once the disintegration became a fact and violence was unleashed, the BiH war became a critical test for the UN and for the EC. The UN's greatest shortcoming, as exposed during the war in BiH, was and remains its inability to enforce peace. All attempts to move to the use of force in order to stop the conflict failed. The UN thus lost a chance to become an important post-Cold War global, political, and military actor in resolutions of violent conflict. The United States and NATO were obliged, however late, to fill the gap the UN could not, and would not, fill, thereby introducing a new era in international relations of US interventionism and global leadership.

In the absence of any effective imposed or assisted solution, the conflict in BiH turned into violence and war. No mechanisms to enforce peace were available to the UN. The UN maintained its own neutrality while it balanced *peacekeeping operations*, provision of *humanitarian aid*, and *peacemaking*, all through negotiation. Subsequently the UN developed a policy of appeasement of the Serbs. Yet neither neutrality nor appeasement led to conflict resolution. By the end of the BiH war in 1995 some 100,000 people had already been killed.

Despite its declared neutrality, the UN was not perceived as neutral by any of the warring parties. The Serbs in BiH were never truly appeased by UN neutrality or by the UN's peacemaking efforts. In the end, the principle "victim" group, the Bosnian Muslims population – perceived the UN as a co-responsible for the genocidal crimes that happened in Srebrenica and Žepa in the summer of 1995.

Despite – perhaps because of – its inability to stop the war and the mass atrocities committed against Bosnian Muslim civilians, the UN established the ICTY as the first post-Nuremberg criminal tribunal in 1993. Its foundation did not, and could

EU had embarked upon. Currently, EUFOR is a manifestation of the European Security and Defence Policy (ESDP). From the ESDP has evolved the Common Foreign Security Policy (CFSP). The CFSP, in addition to the objective of strengthening the security of the Union in all ways, also has a prime objective of preserving peace and strengthening international security in accordance with the principles of the UN Charter. The EUFOR ALTEA mandate has been extended until November 15, 2013, by the UN Security Council Resolution 2074, S/RES/2074, Nov. 14, 2012, adopted unanimously.

¹⁰¹ EUFOR, *Operation ALTHEA*, available at http://www.euforbih.org/index.php?option=com_content&view=article&id=13&Itemid=133.

¹⁰² EUFOR started in 2005 with a troop level of 7,000, similar to those deployed by SFOR. After that the troops have been reduced on regular basis, with a major restructuring of EUFOR taking place in 2012 when its troop levels were reduced to approximately 600 with a mandate focused on city building and training of BiH Armed Forces. For more information, see EUFOR, *Operation ALTHEA*.

not, compensate for the failures at the political, diplomatic, and military levels to stop the war in BiH or prevent the war in Kosovo in 1999, or to facilitate a smooth normalization of relations in a post-conflict period. The severest crimes in BiH happened two years after the ICTY was created. Ever since its creation and until today, the ICTY has been unjustifiably burdened by expectations impossible to meet.

To the UN's embarrassment, neither its policy of neutrality and appeasement nor the humanitarian aid that was provided, nor the peacekeeping that was attempted, nor the foundation of the ICTY in the middle of the war could prevent the Srebrenica genocide. Foreseen by some for years, it occurred after almost four years of daily presence in the territory of thousands of "internationals," many of whom were able to see what was to come. The Srebrenica narrative is still developing but victims are losing their voice with the passage of time.

Official reports and the records of trials at the ICTY do not provide a full account of what happened because there are too many parties interested in obscuring the truth. Unless urgent and determined measures are taken to capture all information now about how this tragedy occurred, it will, at best, occupy an uncertain place in the history of these conflicts. At worst its incompletely logged record will allow for future manipulation at the hands of any who could profit from reinterpretation of history.

Almost eighteen years after Dayton, Bosnia is still a nonfunctioning state heavily dependent on international patronage and foreign aid. Efforts should be directed to renegotiation of Dayton principles, including of the BiH Constitution, combined with revitalization of BiH's economy and a focus on regional cooperation. With BiH preserved as a state, the region could finally move toward stability, something that it might be wise to combine with the creation of its own best record of its recent past.

Encouraged to join the EU, the BiH state leadership has been trying to find a way forward by concentrating on technical inter-state cooperation and avoiding the reopening of unhealed wounds. It is not showing an interest in setting down its own record of the conflict that did it so much irreparable damage.

The presence of the international community in the post-conflict period in BiH has not contributed to BiH becoming a properly functioning state. It is economically impoverished, politically and territorially divided along ethnic fault lines, and a long way from being integrated into the EU. The leadership of RS still use the rhetoric of unification with neighboring Serbia in some near, or not so near, future.