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The State of International Humanitarian Law as a Consequence of the History of South Slavs' Nation-Building Processes

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Summary

South Slavs have been repeatedly used as precedents for international humanitarian law and consequently have affected global developments: from the international concern over positions of Christians in Bosnia-Herzegovina in the 1870s that led to the peaceful replacement of imperial rule to the late 20th century in the NATO intervention against Serbia and Montenegro over Kosovo Albanians, which led to the creation of the newest nation-state in Europe. In addition to internal factors, the very creation of the common South Slav state was a result of international interventions, as was the dissolution of the country. The League of Nations ruling in favour of the Yugoslav complaint against Hungary in 1934 aided in developing the UN Security Council resolutions against Afghanistan in September 2001. Bosnia-Herzegovina in 1995 was a precedent for the UN sanctioned intervention, while Kosovo was a precedent for the non-sanctioned American-led intervention. Afghanistan, East Timor, Iraq, Libya are all legal consequences of interventions in the Balkans. Therefore, local history of interventions can lead to a general understanding of the development of international humanitarian law.

Keywords: Yugoslavia, International Intervention, Humanitarian Law, Bosnia-Herzegovina, Kosovo

Introduction

The origins of the Yugoslav state are interconnected with the development of international interventionist policies. The rise of an idea of humanitarian intervention that gradually resulted in a restricted notion of sovereignty coincided with the creation of the common state of South Slavs, as well as its demise.

Some authors wrongly describe Yugoslavia as a 'creation of Versailles'. For instance, on the website that is self-described as 'a Modern World History GCSE revision site' exactly this is claimed by simplifying the facts and misleading whole generations of British high school graduates (GCSE, 2012). This was stated on the website: 'Yugoslavia was formed by giving Serbia land from the old Austrian Empire (St Germain) and from Hungary (Trianon)' (Ibid.), naming two of the post-war treaties and ignoring the simple fact that 'by the time the Conference convened in Paris in January 1919, the Serbo-Croat-Slovene kingdom was formed in Belgrade on 1 December 1918' (Djokić, 2009).

However, it is often claimed in political and even academic circles in the successor states of Yugoslavia that it was 'a creation of Versailles'. One could primarily find this kind of argument in Croatian public debates; but, since the 1990s, it was not uncommon to come across such claims in Montenegrin and Bosnian discussions. 'During the dissolution of Yugoslavia', Ivan Lovrenović observed about nationalist authors, 'the loudest argument of those wishing its end was: it cannot survive because it was artificial state, creation of Versailles...' (Lovrenović, 2008). Dejan Djokić observed that 'another oft-repeated error is that the Versailles Treaty created Yugoslavia (and Czechoslovakia)'. The victorious powers, in fact, as Djokić stated, 'did not oppose the unification of a Yugoslavia, which to them seemed a logical union of ethnically closely related peoples' (Djokić, 2009). This is a clear historical view of the creation of the state. Thus, the creation of Yugoslavia was a product of internal forces as well as the will of South Slav elites. The people's will was never checked as the referendums have never been offered. 'The Allies accepted that the new country was a reality' (Ibid.).

Despite the chronology depicting the opposite, even some 'global intellectuals' and academics, such as Michael Ignatieff, describe 'the Kingdom of the Croats, Slovenes and Serbs [sic!] created after Versailles in 1918' ignoring the fact that Versailles Peace Treaty and the preceding peace-talks in Paris took place in 1919 (Ignatieff, 2002: 62). Margaret MacMillan put it right in stating that 'well before the Peace Conference opened, the South Slavs had taken matters into their own hands' (MacMillan, 2001: 125). Eric Hobsbawm, as a careful historian, put the whole debate into context of 1990s by stating that 'the national conflicts tearing the continent apart in 1990s were the old chickens of Versailles once again coming home to roost' (Hobsbawm, 1995: 31).

One should, however, consider the international factor in the creation of Yugoslavia. After all, international recognition followed the Versailles Treaty, many factual situations have been corrected by this treaty, and therefore it was of ultimate importance for the creators of the new state to get the approval of the Great Powers in Paris. This might seem to lead to the arguments of those who denied there was

a will among Slavs for the unification, but this is not the case. As Yugoslavia was not a creation of Versailles, it was also not ‘a creation of a historical dream, lasting result of historical tendencies and political will of the peoples’ as the other side usually argued in this debate that Lovrenović closely followed throughout the cultural space of South Slavs (Lovrenović, 2008).

Vienna System of International Order: Pre-Yugoslav Period

The argument stated here is that the creation, existence and the ultimate end of Yugoslavia were closely related to international relations and the rise, in particular, of the system of international interventionism and international humanitarian law. Thus the creation of the common South Slav state was a reflection of the change of international politics from the Vienna System to the Paris System. The change of the international system was noted also by historians like Hobsbawm who observed that ‘peace meant before 1914: after that came something that no longer deserved the name’ (Hobsbawm, 1995: 23). Eric D. Weitz sees a ‘tectonic shift in political conceptions and policies’ whereas ‘Vienna centred on dynastic legitimacy and state sovereignty within clearly defined borders’ while ‘Paris focused on populations and an ideal of state sovereignty rooted in national homogeneity’ (Weitz, 2008: 1314).

Başak Çali saw that ‘the Congress of Vienna in 1815 inaugurated not only a legal regime, but a new political order that was based on the concept of the “balance of power”’ (Çali, 2010: 54). The balance was finally seriously disturbed a century later by the Slavs’ attempt in nation-state creation and led immediately to the global war. Mayer provided the comparative analysis: ‘The peacemakers of 1814-15 and 1918-19 convened to settle the accounts of a multilateral, unlimited and ideological conflict; to legalise a new territorial status quo; to agree on safeguards and sanctions against future transgressions by the major defeated enemy; and to explore ways of putting the peace and concert of Europe on more enduring foundations’ (Mayer, 1968: 3). Therefore an arguably decisive international element was to be found in the very roots of the South Slavs’ state creation in the 20th century.

The roots of international humanitarian intervention, while not applicable to World War One, can be traced to the Balkans of the 19th century and the Vienna System. The ‘Concert of Europe’ that greatly served the interests of the great powers of the 19th century, brought them together against the ‘sick man of Asia’, as the Ottoman Empire was often described during this period, on more than one occasion. Greece in the first half of the century, Syria around the middle and the Slavs in 1878 brought themselves to the attention of the Great Powers. Mass scale discrimination of the Christian subjects of the Ottoman Empire provoked reactions of leading European nations. It was ‘the result of entirely unanticipated events to which the

Great Powers were forced to react: peasant rebellions against Ottoman suzerainty in Bosnia-Herzegovina, Serbia, and Bulgaria; and the excessive ambitions of Russia in Southeastern Europe...' (Weitz, 2008: 1319).

One should bear in mind some historical alliances and interests that some of the Great Powers expressed, regardless of the others, and pursued interventions individually in the interest of one of the client nations. This is different from the emerging principle of international intervention, and during the 19th century, the two processes paralleled each other. An article signed by 'An Old Diplomatist' in the *North American Review*, which was published immediately after the Berlin Congress, described the behaviour of English and Russians at the time of the Serbian struggle against Ottomans: 'although that principality was a part of Turkey, England made no remonstrance when Russian volunteers poured in to assist the Servians [sic!] in their war against Turkey, and supplied her armies with officers and munitions of war' (Anonymous, 1878: 401).

Therefore this example is representative more of a realist approach to international relations than the rising idea of liberal internationalism. The Congress of Berlin connected the perceived internationalisation of roles and interests of the Great Powers, often proven in relation to Asian empires, and the rising polity of the sovereign nation-state. Berlin resulted in a somewhat restricted sovereignty, as the Great Powers 'mandated religious freedom and civil and political rights for all citizens of the new Balkan states constituted by the treaty – Bulgaria, Serbia, Montenegro, and Romania – and of the Ottoman Empire as well' (Weitz, 2008: 1320).

The mandate over Bosnia-Herzegovina that was granted to Austria-Hungary in Berlin was an example of international intervention authorised, with the lack of organisations dedicated to global governance, by the powers belonging to the 'Concert of Europe'. A British traveller wrote at the time that 'this insurrection – so pregnant in its consequences – was in its origins Agrarian rather than Political. It was largely an affair of tenant-right' (Evans, 1877: 336). Although the mission was alleged to be of humanitarian character with the aim to prevent chaos and secure Christians, it was actually an expansion southwards by the central European empire. In Vienna, however, they did not see that 'when Austria signed the Berlin Treaty she became a party to what, in all probability, will prove her own death-warrant' (Anonymous, 1878: 397).

The Berlin Congress authorised the entrance of Austria-Hungary into Bosnia-Herzegovina, while leaving official sovereignty with the Sultan in Constantinople. The consequent rebellions in Bosnia-Herzegovina, primarily by local Muslims, were just a consequence of a game played at a 'higher' level between the Great Powers. By acting with the authorisation of the rest of the Great Powers, the rulers of the KundK monarchy also failed to notice Bismarck's Machiavellian skills as he

‘has undoubtedly done all in his power to encourage Austria to enter the Slav trap prepared for her in Bosnia’ (Ibid.: 403).

Smaller and newer states then adopted the position of clients in relation to the patrons among the Great Powers. While they achieved their independence with the help of their patrons, the relationship had not yet changed with the international recognition of sovereignty. This was described in an article written at the time of the First Balkan Wars: ‘The international finger of warning was shaken vigorously in the faces of Bulgaria, Servia [sic!], Greece, and Montenegro’ (Tonjoroff, 1912: 721). The reality of these nations was given a more graphic description by naming them as ‘minor peoples, tugging at the leash in their desire to fly at the throat of their old oppressor, [who] were solemnly notified that under no circumstances would they be permitted to complicate the calculations of their betters by undertaking movements of their own, military or diplomatic’ (Ibid.). Thus, the whole region presented the leading powers with the opportunity to test some of the developing norms of international relations and diplomacy. The Balkan Wars of 1912-1913 showed the expression of a need to shift from the Vienna System to the Paris System as smaller states did proceed with their intentions regardless of the warnings from the Great Powers.

This was certainly part of the functioning Vienna System that was finally replaced after World War One. The Paris System ‘has partitioned territories along supposedly ethnic, national, and religious lines; legitimised forced deportations; consecrated civilisation and humanitarianism as express political goals; and moved the protection of rights from the purely national to the international level’ (Weitz, 2008: 1314). This did not come on its own, but as the result of behind the scenes deals between the Great Powers. Mayer described that, ‘They arrogated to themselves the right to settle basic territorial, military, economic and political issues before securing approval for their decisions from the plenary congress or conference’, and put the others in a group of ‘the secondary and minor powers [who] were cast in the role of suitors, suppliants or satellites’ (Mayer, 1968: 3).

Yet Weitz clearly states that in the separation of periods there are signs of early internationalism that could be traced to the Balkans during the Vienna System. Thus an article in *North American Review* from the pre-World War I period described Macedonia in 1906 and international reactions when ‘the “concert” undertook what promised to be an effective attempt to postpone the crisis in the Balkans by introducing a programme of reforms in the disturbed vilayets under the supervision of a Europeanised gendarmerie and a European fiscal administration’ (Tonjoroff, 1912: 724).

Therefore, one might even argue that The Balkans, and Slavs in particular, have actually experienced a shift in international solutions to the problem, or an attempt to change common practice, even earlier than the negotiations and agreement

of the Paris System. The entrance of Austria-Hungary into Bosnia-Herzegovina in 1878, the postponement of the crisis by the introduction of European-led and observed reform in Macedonia in 1906 and the role of the Great Powers in the Balkan Wars of 1912 and 1913 show the involvement, and, willingly or not, interest in European capitals for the 'Near East'. However, the Vienna System was still a dominant arrangement and only a huge historical upheaval, such as the Great War, could dramatically change the relations between the powers and smaller nations.

The changes, however, were gradual, as proven by the example of the concerns expressed at the crimes within the Ottoman Empire. One could see this development as an organised struggle of Christian powers against a Muslim Empire, which the Ottoman Empire in its structured hierarchy certainly was. All the interventions during the Vienna System occurred after the systemic crimes against Christian subjects of the Ottoman Empire. When the crimes reached genocidal levels, the leading powers, Britain, France and Russia, even coined a new term – Crimes against Christianity, but 'later substituted "humanity" after considering the negative reaction that such a specific term could elicit from Muslim populations in their colonies' (Akcam, 2012). Geoffrey Robertson also stated this late change of terminology into crimes against humanity. Originally, Britain, France and Russia drafted a statement claiming liability of Ottoman leadership for 'crimes committed by Turkey against Christianity and Civilization' (Robertson, 2002: 17).

The principle of self-determination that was ignored at the Vienna Congress, as much as possible, entered the agenda at the Congress in Berlin in 1878. The interim period until the Paris Peace Talks in the first half of 1919 was marked by increased demands for the recognition of the right to self-determination and the resistance in the capitals of the Great Powers. Thus, it was not only in Paris that 'the connection [was] drawn between populations conceived in national and racial terms and sovereignty, and the development of the civilising mission into a comprehensive program' (Weitz, 2008: 1315). The issue that remained, however, was to determine which nations 'deserved' the right to form a nation-state. The benefit of historical time differences provides us with the answer that European federations, Czechoslovakia, Yugoslavia and the Soviet Union did not pass the test of nation-building and ultimately proved the Peacemakers, as Margaret MacMillan called them, in Paris wrong (MacMillan, 2001). It was too late for the creation of new nations in Europe.

Therefore, the questions remaining were: which nations were to be granted a right to existence as holders of state sovereignty, and which nations were to be given the hardly privileged status of being minorities? The distinction required greater involvement, at least a promise of, by the remaining Great Powers in the system of protection of minorities. When this involvement failed to materialise, it led to gross human rights abuses. 'It is this profound transformation that has led in the modern

era to both the great intensification of forced deportations (sometimes leading into genocides) and the concept and practice of minority rights (later leading into human rights)' (Weitz, 2008: 1315).

Many authors viewed the dissolution of Yugoslavia and several forms of international interventions in the 1990s in the light of its origins. For Michael Ignatieff, it 'represents the culmination of the failure of the previous attempts at unification of South Slavs... Both of these two previous attempts at state formation suppressed ethnic self-determination' (Ignatieff, 2002: 62). The failure to uphold functioning international instruments to protect minorities in 'created and failed' nation-states inevitably recalled the very period of establishment of the Paris System. Thus Weitz claims that: 'In the early 1990s, David Owen, and perhaps also Cyrus Vance and Richard Holbrooke, knew of the post-World War I population exchanges as they drew up their plans for partitioning Bosnia' (Weitz, 2008: 1343).

Paris System of World Order: The First Yugoslavia

Following the end of World War I, the Serbian army was actually invited to enter South Slav lands that were previously ruled by Austria-Hungary, due to unrest, lack of order and a power-vacuum, despite an attempt to create a state of Slovenes, Croats and Serbs in the former territories of Austria-Hungary. Thus, the entrance of the Serbian army into Bosnia-Herzegovina, Croatia and Slovenia, could even be seen as a form of international intervention. It would not, however, be acceptable to the rest of the world had it not been sanctioned in some form by the leading powers, and primarily by the newly installed dominating power, the United States of America.

During the American neutrality in the war, President Woodrow Wilson engaged in proposals aimed at ending the human catastrophes. In his correspondence to the American Ambassador to the United Kingdom, and 'mutatis mutandis, to the American Diplomatic Representatives' in 'France, Italy, Japan, Russia, Belgium, Montenegro, Portugal, Romania, and Servia [sic!], and to all neutral Governments' he stated the American interest 'in the means to be adopted to relieve the smaller and weaker peoples of the world of the peril of wrong and violence is as quick and ardent as that of any other people or Government' (Anonymous, 1917: 292). The French were quick in their reply, reminding the still neutral American government of 'the horrors which accompanied the invasion of Belgium and of Servia [sic!]', and that 'the civilized world knows that they imply in all necessity and in the first instance the restoration of Belgium, of Servia [sic!], and of Montenegro' (Ibid.: 307). Thus, the future Yugoslavs were at the core of the exchange of ideas for the post-war settlement, and henceforth of the Paris System.

Providing a selective right to nation-state status has opened up numerous debates since. For the case study of South Slavs, it led to several particular situations

that invoked some precedents in the international order. One might need to define briefly the nation in order to continue the discussion further. Considering various definitions, the significance for this study is in 'large-scale, anonymous (rather than face-to-face) groups that have a common culture and character' (Buchanan, 2007: 380) with historical attachment to a particular territory and the membership in the group based on mutual recognition of belonging. Hobsbawm saw nations as a myth, claiming that it was nationalism that 'takes pre-existing cultures and turns them into nations, sometimes invents them, and often obliterates pre-existing cultures' (Hobsbawm, 1990: 10).

Which of the South Slavs qualified for a nation in 1919 under this definition might add to the debate, but the importance for this study is in pre-war statehood of Serbia and Montenegro and various degrees of local autonomy, or separateness, recognised for Slavs within Austria-Hungary. The interests of many South Slavs led to the creation of the common state, but international circumstances also dictated this option as the most acceptable at the time. Serbia, as part of the victorious alliance, and specifically mentioned in Wilson's Fourteen Points Speech, thus gained access to the sea, while Croats, Slovenes, Bosnians, Herzegovinians and indeed many Serbs living in former Austrian territories, were given their own state, albeit together with Serbians and Montenegrins.

This certainly left many dissatisfied with the Paris System on all sides. The more extreme cases of disaffected groups involved those who organised themselves for terrorist actions against the new state. Croat nationalists created an organisation of Ustaschas that carried out the assassination of the Yugoslav King Aleksandar and French Foreign Minister Louis Barthou in Marseille in 1934. Historical evidence proved they were supported by Mussolini's Italy in many ways, but the Yugoslavs complained to the League of Nations against Hungary. They 'specifically accused Hungary of complicity in the crime, and asked the League to investigate "this situation, which seriously compromises relations between Yugoslavia and Hungary..."' (Kuhn, 1935: 88). Czechoslovakia and Romania, Yugoslav Central European allies, joined the complaint urging the League of Nations to act and preserve the peace in this region. Even the accused Hungarians drew upon preservation of peace 'emphasizing that delay would be dangerous because the political atmosphere thus created was "capable of affecting even the peace of the world"', while maintaining 'Hungary had merely granted a right of asylum to refugees' (Kuhn, 1935: 89). Another article at the time claimed Alexander's death was 'loss to Europe and humanity at large' (Balkanicus, 1934: 219).

Thus the League of Nations had to get involved in preservation of 'peace of the world' by debating international legal possibilities for solving the crisis. The organisation is often viewed as 'the first major attempt to coordinate the behaviour

of states through an international actor that possessed its own legal personality and staff and set as its goal the advancement of international peace and security as opposed to the interests of individual member states' (Çali, 2010: 57).

Kuhn, in his analysis, recalled Vattel's view: 'If a sovereign who has the power to see that his subjects act in a just manner permits them to injure a foreign nation, either the state itself or its citizens, he does no less a wrong to that nation than if he injured it himself' (Kuhn, 1935: 89). As highlighted by Hungary, the post-war settlement clearly created large groups of dissatisfied, minorities and refugees. Yugoslavia, however, questioned the nature of 'those terrorist elements which had taken refuge in Hungary and which have continued to enjoy the same connivance in that country as previously, and it is only thanks to this connivance that the odious Marseille outrage could have been perpetrated' (Ibid.: 90).

The assassination of Austrian Archduke Ferdinand in Sarajevo in 1914 left Austria-Hungary with no global institution to complain to. The complaint by Yugoslavia in 1934 was heard and dealt with by the League of Nations. Thus, the 1914 assassination led to the war, while neither the murder of Alexander in 1934 nor any other political assassination in the inter-war period led to the second global conflict. Although the League of Nations might be described as a failure in preserving international peace, it did act on this occasion in order to preserve it, and consequently created some precedents. The resolution that was adopted unanimously stated: 'That it is the duty of every State neither to encourage nor tolerate on its territory any terrorist activity with a political purpose; That every State must do all in its power to prevent and repress acts of this nature and must for this purpose lend its assistance to governments which request it' (Ibid.: 91).

The League set up a committee with the aim to draft a convention to secure the repression of conspiracies with political and terrorist aims. Even the French idea of setting up a 'Permanent International Penal Court' was discussed by this committee. Robertson states that by 1937 they managed to draft convention for the creation of an 'International Criminal Court with jurisdiction to try terrorist offences but it failed to attract many signatories before most of its members slid into another world war' (Robertson, 2002: 227).

Cold War: The Second Yugoslavia

The end of the war resulted in significant changes in international relations, especially with regards to issues of international interventionism. Prior to World War II, as Scheffer stated, 'unilateral military intervention for strictly humanitarian purposes was regarded as legitimate by a large community of international law scholars' (Scheffer, 1992: 258). The establishment of the United Nations with the Charter explicitly prohibiting use of force except in self-defence or by the approval of

the Security Council meant a completely different period began in 1945, and by coinciding with the Cold War, pushed the issue of interventionism outside of mainstream debates.

The bipolar world, balance of powers and the establishment of the Movement of Non-Aligned Countries meant that the second Yugoslavia was secure in its existence. Domestic politics were controlled and prevented any threats to its stability, while international situations kept both superpowers off the limits of the state. Thus, the irony is that the period of stagnation in the development of the idea of international humanitarian intervention actually created the period of the greatest prosperity and stability for Yugoslavia.

It was only with the end of the Cold War that the attitude towards international interventions changed in many leading nations, while internal interethnic difficulties in Yugoslavia led to a series of wars of Yugoslav succession. 'The end of the Cold War', Çali noted, 'saw the United Nations collective security system enter a new phase' (Çali, 2010: 225).

The wars of 1990s provided an opportunity to check whether the new world order was capable of reducing the misery of people by strong military action that would ignore sovereignty of the state. Some additional factors also contributed to the changed circumstances. Technological developments meant media could report live from almost anywhere in the world, and when a capital city came under siege in Europe, it was too big of a challenge and too 'good' a news story to be ignored by all global media. Thus, reports on daily suffering of Sarajevo citizens meant that citizens in liberal democracies increasingly urged their leaders to stop the war in Bosnia-Herzegovina. David Scheffer, who was American Ambassador at Large for War Crimes in Clinton's administration, wrote just prior to the war in Bosnia-Herzegovina: 'To argue today that the norms of sovereignty, non-use of force, and the sanctity of internal affairs are paramount to the collective human rights of people, whose lives and well-being is at risk, is to avoid the hard questions of international law and to ignore the march of history' (Scheffer, 1992: 259).

The principle of non-changing European borders was broken by the unification of Germany and sent a clear signal to various leaders in Yugoslavia. The country soon descended into a series of ethnic wars and offered a flash dilemma of an intervention on behalf of humanity, or respecting the principle of state sovereignty. The West was confronted with the question, as Buchanan put it, whether 'proclaiming the conflict to be an internal dispute protected from intervention by the veil of Yugoslav state sovereignty and attempting to constrain what soon came to be seen as the inevitable process of disintegration' (Buchanan, 2007: 340), because in his view 'Yugoslavia broke down before it broke up' (Ibid.: 366).

Uni-polar System: The Post-Yugoslav Wars

This development of the early 1990s offered the dilemma of the right of the international community to intervene into a sovereign state's territories in order to protect civilians or to continue the Cold War practice of non-intervention. The change in the White House is of great importance for the global change in the policies of interventionism. The two processes coincided with the war in Bosnia-Herzegovina, which offered a fresh challenge and sought a solution. The developments were gradual, as many resisted the idea of intervening after the setback in Somalia. Through the media pressure, however, liberal intellectuals globally and new politicians in power came to the conclusion that the war and the siege had to be stopped. Nonetheless, it still took them three years to execute this move. Numerous resolutions were adopted by the United Nations Security Council over this period and changed little in practice. The gap between bureaucratic wording in the Security Council and actual action remained, in practice, but the level of verbal threat of using military action increased.

The slow changes and slowness of the UN apparatus is reflected in the case of Srebrenica. Military campaigns by Bosnian Serbs in 1992 ethnically cleansed most of eastern Bosnia and forced some 100,000 Bosnian Muslims into the small town. The Security Council passed Resolution 819 on April 16th 1993 and the town itself was overrun by Bosnian Serbs' forces in July 1995 to be followed by the execution of some 8,000 Bosnian Muslims. The International Court of Justice named this act as genocide in its judgement and in a consequent explanatory statement on February 26, 2007 (ICJ, 2007). 'This is the first legal case in which allegations of genocide have been made by one State against another' (Ibid.), said the statement by the Court as Bosnia-Herzegovina accused Serbia of committing genocide. 'The Court found that there was conclusive evidence that killings and acts causing serious bodily or mental harm targeting the Bosnian Muslims took place in Srebrenica in July 1995' (Ibid.). The Court, however, also found that it was not another state, i.e., Serbia, that controlled the forces of the Bosnian Serbs Army that committed the genocide.

The aim of this paper, however, is to focus on the changes in general attitude towards international intervention which indeed have followed the genocide in Srebrenica. 'The tragedy of Srebrenica will haunt our history forever', then Secretary-General Kofi Annan wrote in a 1999 review of the UN's failure to protect the people of Srebrenica. 'Through error, misjudgement and inability to recognise the scope of evil confronting us, we failed to do our part to save the people of Srebrenica' (Lynch, 2010).

The power, or lack of it, of the UN was exercised in Bosnia-Herzegovina by NATO, who 'enforced the UN Security Council's No-Fly Zone over Bosnia'

(NATO, 2009). It was by imposing the 'Operation Deny Flight' that NATO got involved in the first ever combat mission when they 'shot down four Bosnian Serb fighter-bombers conducting a bombing mission in violation of the No-Fly Zone' (Ibid.). 'NATO fighters, acting in accordance with the established procedure, shot down four of six jets in the airspace of Bosnia and Herzegovina which had defied the international ban on military flights and ignored two warnings by the NATO fighters' (UN, 1996).

Another precedent came when they effectively imposed the end to atrocities and the siege of Sarajevo. 'After a mortar attack caused a heavy loss of life at a marketplace in Sarajevo, UN peacekeepers requested NATO airstrikes, which began on 30 August against Bosnian Serb air defences (Operation DEADEYE)' (NATO, 2009). After a five day pause and the Bosnian Serbs' failure to comply with the demands to withdraw, NATO conducted the action Deliberate Force that 'targeted Bosnian Serb command & control installations and ammunition facilities. These airstrikes were a key factor in bringing the Serbs to the negotiating table and ending the war in Bosnia' (Ibid.).

Prior to the decisive action in the summer of 1995, the UN system kept attempting to solve the problem in a traditional manner, as stated by the UN themselves: 'In a series of resolutions and statements, the Security Council appealed to all parties to bring about a cease-fire and a negotiated political solution, and demanded, inter alia, that all forms of interference from outside Bosnia and Herzegovina, including by JNA, as well as by the Croatian Army, cease immediately and that all local irregular forces be disbanded and disarmed' (UN, 1996). This resolution, like numerous others, proved to be of very little assistance in ending the conflict.

One development was crucial in the later precedent when the UN used NATO to intervene violently in Bosnia-Herzegovina. The session of 7th January 1994 of 'The [Security] Council reaffirmed its commitment to implement all its relevant resolutions, in particular resolution 836 (1993), by which it had authorised UNPROFOR to use force to protect Sarajevo and five towns previously declared "safe areas" in Bosnia and Herzegovina' (Ibid.). Just a few days later, 'the Heads of State and Government participating' at the NATO meeting 'reaffirmed their readiness under the authority of the Security Council "to carry out air strikes in order to prevent the strangulation of Sarajevo, the safe areas and other threatened areas in Bosnia and Herzegovina"' (Ibid.).

A series of similar developments in New York and Brussels effectively changed the role of the UN forces because it meant they 'could launch offensive action against Bosnian Serb elements', while during the first 22 months of the war, the UN 'had previously been allowed to use air support only in defence of United Nations personnel' (Ibid.). This was a crucial change for Bosnia-Herzegovina. Firstly, it pro-

vided grounds for the first combat action carried out by NATO and consequently prepared legal grounds by the Security Council for authorisation of the use of offensive action.

Operation Deny Flight was replaced by operations Deadeye and Deliberate Force in August and September 1995. The two actions taken against Bosnian Serbs, led by the NATO forces on behalf of the UN and under the authorisation of previously adopted Security Council resolutions, ended the war in Bosnia-Herzegovina. It was the precedent that marked the change of understanding of the role of international community in the conflict following the end of the Cold War. Even more, the German Luftwaffe participated, which was ‘the first time German forces have been deployed in Europe outside Germany since 1945’ (The Independent, 1995).

Thus, Bosnia-Herzegovina provided an example of legal ‘humanitarian intervention’ where the global organisation – the United Nations – put the most powerful military organisation – NATO – into use. There were, as always, those who opposed such actions, but the voting in the Security Council showed no votes against the action in Bosnia-Herzegovina. When it came to Kosovo in 1999, the situation was very different. It is essential to recall the definition of ‘humanitarian intervention’ as the ‘threat or use of armed force by a state, a belligerent community, or an international organisation, with the object of protecting human rights’, according to Brownie (1974: 217). The objections with regards to Kosovo came from China and Russia which effectively blocked the Security Council resolution. Therefore, the legality of military action by NATO against The Federal Republic of Yugoslavia, by then consisting of Serbia and Montenegro, has been questioned and debated ever since, because ‘intervention without UNSC authority remained controversial’ (Bellamy & Wheeler, 2008: 524). Antonio Cassese, the first President of the International Criminal Tribunal for former Yugoslavia, noted that ‘in the present instance, the member states of NATO have not put forward any legal justification based on the United Nations Charter’ (Zolo, 2002: 71).

Following the intervention, Kofi Annan ‘declared that there was a “developing international norm” to forcibly protect civilians who were at risk from genocide and mass killing’ (Bellamy & Wheeler, 2008: 524). However, many ‘have rejected the idea that international law permits humanitarian intervention without the authorisation of the Security Council’, as was the case over Kosovo (Brown, 2000: 1701). Even if one looks at the very roots of the conflict in Kosovo, there are opposing opinions, as Buchanan found: ‘There is no doubt that Serbia, under Milosevic’s leadership, unilaterally revoked Kosovo’s autonomy in 1989. But there is dispute about who violated the terms of the autonomy agreement first’ (Buchanan, 2007: 358).

Other authors saw that ‘NATO was propelled into action by a mixture of humanitarian concern and self-interest’ (Bellamy & Wheeler, 2008: 529). The motives

of the USA, without which there was no successful intervention in recent times, are also questioned, because the advocates of interventionism 'usually concede that the United States' safety was never directly threatened by the crises there' (Valentino, 2011: 72). However, other authors saw 'the United States and its allies, as wealthy and powerful states, have a lot to lose from instability and chaos in the international system' (Brown, 2000: 1710). American President Bill Clinton justified the action to the nation: 'By acting now we are upholding our values, protecting our interests and advancing the cause of peace', said the President on the eve of strikes, adding: 'We learned some of the same lessons in Bosnia just a few years ago' (Clinton, 1999).

Legality remains the issue, because, as Zolo strongly put it, 'the armed attack against the Federal Republic of Yugoslavia, a sovereign state and a member of the United Nations, was a pure and simple act of aggression, a most serious breach of current international law, against which the Security Council had the duty to intervene on the authority of Articles 2, 39, 41 and 42 of the United Nations Charter, using military force, if necessary, to assist the state attacked' (Zolo, 2002: 72).

There were also inevitable comparisons of victims in Kosovo, Bosnia-Herzegovina, Rwanda and elsewhere with victims of the Holocaust. While the comparison stands with regards to innocent victims, there is a main objection of who is benefiting from the interventions at the end of the twentieth century. Valentino saw 'the choice to aid these groups also entailed supporting the less than upstanding armed factions on their side' (Valentino, 2011: 63). The legality, if not legitimacy, of the intervention against primarily Serbia, as Montenegro was considered less of a problem to the solution of Kosovo, was questioned in many forums: 'Military action to aid the Kosovar Albanians was the right thing to do, but it is unacceptable that no clear legal justification for that operation has been offered' (Brown, 2000: 1690).

Another view compared the horrors of WWII and Yugoslavia yet again: 'Europe and the United States had a moral, even more than a legal, right to prevent a revival of the horrible crimes of World War II – mass deportation, rape, terrorism, genocide – in former Yugoslavia' (Zolo, 2002: 66). In doing so, however, NATO was subject to unprecedented public scrutiny. 'Human Rights Watch estimates that NATO air strikes killed more than 500 civilians... These and other incidents led Human Rights Watch to conclude that NATO had violated international humanitarian law in its conduct of the war. Amnesty International accused NATO of war crimes' (Valentino, 2011: 64). Many academics added their concerns to those of international NGOs: 'The principal issue of international humanitarian law raised by the recent NATO military action against Yugoslavia concerns collateral damage to civilians and their interests' (Brown, 2000: 1731).

It was already observed that 'the 1999 NATO bombing of Yugoslavia was not a typical armed confrontation, and it has raised a challenging set of legal issues' (Ibid.:

1684). Greenwood, while justifying the causes for action, joined the critical voices: 'The military response by NATO, however, aroused more controversy than any use of force since the end of the cold war' (Greenwood, 2002: 143). Brown adds to the debate with the note that 'the NATO operation on behalf of the Kosovar Albanians seems to represent a prima facie violation of the U.N. Charter's rules on the use of force' (Brown, 2000: 1739). Greenwood claims 'modern customary international law recognizes a right of military intervention on humanitarian grounds by States or by an organization like NATO' (Greenwood, 2002: 170). 'On balance', Geoffrey Robertson concludes, 'Kosovo was a just and lawful war, and the victims of Serbia's crimes against humanity are better off as a result of it' (Robertson, 2002: 451).

Zolo, however, points to the precedent: 'In previous cases, countries promoting military interventions had sought to justify their decision by appealing to international law and soliciting and in one way or another obtaining *a posteriori* the approval of the Security Council of the United Nations. In the case of war for Kosovo, NATO instead first threatened to use force and then actually did so without even beginning to go through the formalities required to obtain an authorisation from the Security Council' (Zolo, 2002: 69). 'This is a just war, based not on any territorial ambitions but on values', stated British Prime Minister Tony Blair and pointed to history: 'We have learned twice before in this century that appeasement does not work. If we let an evil dictator range unchallenged, we will have to spill infinitely more blood and treasure to stop him later' (Blair, 1999). The Czech President Václav Havel offered the justification: 'This did not happen irresponsibly, as an act of aggression or out of disrespect for international law ... The alliance has acted out of respect for human rights, as both conscience and international legal documents dictate' (Havel, 1999).

Yet, it is a problem to interpret the UN Charter as it allowed for the military intervention over Kosovo. The Security Council resolution was impossible to be adopted even a month earlier in the case of extension of the UN mandate in neighboring Macedonia because China used its veto 'to block renewal of the mandate in protest at Macedonian links with Taiwan' (Greenwood, 2002: 151). Legal justification was impossible because of geopolitical interests of the Great Powers that the case of China blocking mandate in Macedonia 'graphically illustrated the difficulties which would be faced if NATO sought authorization for action from the Security Council in the Kosovo crisis' (Greenwood, 2002: 151). NATO simply bypassed the UN system and reached an agreement with the Macedonian government. In March 1999, NATO also ignored the UN and international system and launched the humanitarian intervention over Kosovo. As Zolo stated, 'NATO has simply ignored provisions of the United Nations Charter' (Zolo, 2002: 70).

Contemporary World: Conclusion

The precedents have been set in Yugoslavia for later actions across the globe. Firstly the founding of the International Criminal Tribunal for former Yugoslavia created a precedent. This tribunal set up by the United Nations was the first attempt at bringing the war criminals to international justice since the Nuremberg and Tokyo trials in 1940s. On May 25, 1993, the UN Security Council passed resolution 827 formally establishing the Tribunal. This was followed by the establishment of a similar court for Rwanda, then a hybrid court for Sierra Leone and several other nationally or regionally restricted courts. Finally, the International Criminal Court was set up by the Rome Agreement in 1998 and the ratification of the agreement by the 60th state in 2002, when it came into existence. This was the first globally important precedent coming out of the former Yugoslavia.

Another important precedent was the result of the League of Nations resolution that stated ‘that it is the duty of every State neither to encourage nor tolerate on its territory any terrorist activity with a political purpose...’ (Kuhn, 1935: 91). This act was followed by the attempts to establish an international criminal tribunal, but the initiative was prevented by World War II.

The end of the state of Yugoslavia provided global precedents in the field of international justice and also for humanitarian intervention. Bosnia-Herzegovina throughout the first half of 1990s was the case of the Security Council’s resolution that gradually led to the NATO-led military involvement, and finally to the humanitarian intervention in 1995 that ended the four year war. A year earlier, it provided the grounds for the first military combat of NATO troops in its history. The precedent was also set for the involvement of German military outside of the country for the first time since the end of WWII. The case of Bosnia-Herzegovina provides a perfect case of the post-Cold War international humanitarian intervention that was legal due to the Security Council resolutions. The intervention that commenced in Afghanistan in 2001 is partly based on the legal precedents of the League of Nations resolution from 1934 and the United Nations intervention in Bosnia-Herzegovina in 1995.

Kosovo provided another example of a precedent when there was a NATO humanitarian intervention carried out without the approval of the Security Council of the United Nations. Geoffrey Robertson supported the intervention by stating ‘there is no court as yet to stop a state which murders and extirpates its own people for them, if the Security Council fails to reach superpower agreement, the only salvation can come through other states exercising the right of humanitarian intervention. Thanks to Kosovo, that right has re-entered international law...’ (Robertson, 2002: 448). Another example from the former Yugoslavia provided NATO with a challenge after China blocked the renewal of the UN mandate in Macedonia only for NATO

to reach a separate agreement with the government in Skopje. Thus a precedent has been set – there was no need for Security Council approval of international engagement in preserving peace and security. This has been used in Iraq in 2003, when even NATO members were divided, and therefore a ‘Coalition of the Willing’ was formed by the Americans. By then, the leftovers of Yugoslavia began their separate lives and the development of the instruments of international humanitarian intervention was shaped, as demonstrated in the cases of Libya and Syria. There is no rule and the nations’ destinies are dependent on the Great Powers’ interests.

The first Prosecutor at the International Criminal Tribunal for former Yugoslavia, Richard Goldstone, who also chaired the International Commission on Kosovo, concluded: ‘We came to a unanimous conclusion – I suppose an oxymoron – that the NATO intervention was illegal but legitimate’ (New Statesmen, 2009). Some legal experts supported Russia’s failed attempt to secure support for the resolution to condemn the NATO intervention. Others observed ‘the justification for the NATO bombing campaign, acting out of area and without UN authorisation, in support of the repressed ethnic Albanian population of that province of Yugoslavia, was that of humanitarian necessity’ (Shaw, 2008: 1156).

Goldstone connected the developments and the consequent debate to the latest development in the field of international humanitarian intervention: ‘It was an after-the-fact acceptance of what happened. That led to the Canadian inquiry, which developed into the “Responsibility to Protect” doctrine, which has in turn become soft law’ (New Statesmen, 2009). One might argue that without the violent collapse of the Yugoslav state and consequent international developments, without the unprecedented developments during the existence of this state, and finally without the changes in global order, there would be no strong steps taken towards a new doctrine of responsibility to protect, one that has not yet become a norm, but is considered more seriously than ever before. Kofi Annan said in the United Nations that there was responsibility to protect innocent civilians and ‘history will judge us very harshly if we let ourselves be deflected in this task, or think we are excused from it, by invocations of national sovereignty’ (Annan, 2004).

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