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ODE TO SARAJEVO: "WHERE HAVE ALL THE PEOPLE GONE?"*

TERRI R. DAY**

Dedicated to Judge Edward D. Re, Distinguished Professor of Law, St. John's University School of Law and Mrs. Peggy Re in appreciation for their visit to the University of Orlando School of Law.

INTRODUCTION

I took a journey across the ocean to a city, still beautiful despite the ravages of war, to a place that I knew to be the subject of world news and the situs of conflict and human rights violations. As an academic, I studied international law, pondered the future of a new world order, and followed the fall of communism and the rise of growing democracies in Europe and the former Soviet Union. As a law student, I was privileged to be the research assistant to Professor Winston Nagan,¹ my mentor and dear friend, who at the time was Chairman of Amnesty International U.S.A. One of my assignments was to help him prepare to give testimony before Congress in the hearings preceding the U.S. ratification of the Convention on Torture.²

* Inspired by the Pete Seeger song "Where Have All the Flowers Gone" sung by Peter, Paul and Mary.

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Credit and heartfelt thanks go to Leticia Diaz, Ph.D., Esq., who did the background research for this article, and to Clifford Day, my husband, for his helpful edits. Eternal gratitude to Winston Nagan and Donald Day for making this experience possible.

¹ Professor of Law, University of Florida College of Law and Affiliate Professor of Anthropology, University of Florida, Gainesville, Florida. Professor Nagan served as Chair of the Board, Amnesty International USA, 1989-91.

² See generally Winston P. Nagan, *The Politics of Ratification: The Potential for United States Adoption and Enforcement of the Convention Against Torture, the Covenants on Civil and Political Rights and Economic, Social and Cultural Rights*, 20 GA. J. INT'L & COMP. L. 311, 311 (1990) (discussing politics of U.S. ratification of international human rights instruments while contrasting 37-year history of ratification of The Genocide Convention with prospect of ratification of future human rights covenants).

Since I was educated in the area of human rights, I was aware of international norms and laws as prescribed in the Universal Declaration of Human Rights,³ the International Bill of Rights⁴ and other legally-binding human rights instruments and treaties. Despite my education and academic experiences, I was not prepared to come face to face with the people of war: People who witnessed, survived and may have even perpetrated acts of human rights violations.

Last August, I went to Sarajevo to attend and present a paper at the Third International Noel Baker-Pauling-Peccei Conference,⁵ sponsored by U.N.E.S.C.O. and organized by the Academy of Sciences & Arts of Bosnia and Herzegovina, in cooperation with other European academies and the World Academy of Art and Science. The theme of the conference was democracy, reconstruction and integrity in Bosnia-Herzegovina. The Conference was strategically held in Sarajevo, one month prior to the scheduled September 14th free elections, as prescribed by the Dayton/Paris Peace Agreement on Bosnia.⁶ In August of 1996, it was not at all clear whether elections in Bosnia could or would take place one month later. Many of the election pre-requisites prescribed by the Dayton Accord had not been effectuated.⁷ For example, refugees were supposed to return to their pre-war homes prior to the elections.⁸ With an estimated 4 million refugees displaced in camps throughout Europe and a tenuous cease-fire, it was evident that refugees could not return home to participate in local elections.

³ *Universal Declaration of Human Rights*, G.A. Res. 217A, U.N. GAOR, 3rd Sess., at 71, U.N. Doc. A/810 (1948).

⁴ See LOUIS HENKIN, *THE INTERNATIONAL BILL OF RIGHTS: THE COVENANT ON CIVIL AND POLITICAL RIGHTS* (1991).

⁵ The Conference was held on August 20-22, 1996, in Sarajevo, Bosnia & Herzegovina.

⁶ The Dayton/Paris Peace Agreement, initialed Nov. 21, 1995, U.N. Doc. A/50/790 - S/1995/999 (1995), reprinted in 35 I.L.M. 89, 89 (1996). The Dayton and Paris agreements are substantively the same, the latter (Paris) corrected mistakes in the Dayton Agreement.

⁷ See generally Paul C. Szasz, *Current Development: The Protection of Human Rights Through the Dayton-Paris Peace Agreement on Bosnia*, 90 A.J.I.L. 301, 301-02 (1996) (providing comprehensive overview of Dayton-Paris Peace Agreement, its history and provision for return of displaced refugees).

⁸ See *id.* at 312 (noting that despite condition that refugees be allowed to return, most remain displaced); see also Valerie Bunce, *Peacekeeping in Operation: A Conflict Study of Bosnia: The Elusive Peace in the Former Yugoslavia*, 28 CORNELL INT'L L.J. 709, 709 (1995) (sadly noting that terrible cost of war was Yugoslavia's 4 million displaced refugees); see also George Kennedy, *Why Push for Elections in Bosnia?*, N.Y. TIMES ABSTRACTS, Mar. 8, 1997, at A23 (attributing postponement of Bosnian elections to fear of widespread violence).

On the other hand, if elections were postponed, most feared that violence would be renewed and the hope of peace promised by the Dayton Agreement would vanish.⁹ The Conference concluded with the drafting and adoption of a Declaration¹⁰ supporting the peace process, the upcoming elections, and imploring the international community to extend the commitment of IFOR, the international peacekeeping forces.

My trip to Sarajevo and the Conference were professionally gratifying and personally heartfelt. Every time I begin to talk or write about my Sarajevo experience, I struggle. I am haunted by the voices of the people I met. I did not understand the language, but in their voices I heard the pain, the fear, the sadness, the betrayal, and the gratitude that we had finally come. Our own muted voices asked, "How could this happen, how could we stand by?" I was reminded of the statement written by Nobel prize winner Elie Weisel in describing the pain he witnessed in the eyes of Soviet Refusniks: "[How can I explain to you] what I myself cannot even begin to understand."¹¹

Nevertheless, I feel obligated to tell the story of what I saw, heard, and learned. This is the least that I can do.

I. THE HISTORY OF THE FORMER YUGOSLAVIA

Geographically, the former Yugoslavia¹² (SFRY) bordered the Adriatic Sea, lying east of Italy, south of Austria and north of Greece.¹³ Yugoslavia achieved charter member status in the United Nations¹⁴ in 1945.¹⁵ In 1946, it was reconstituted as the

⁹ See Simon Chesterman, *Never Again, and Again: Law, Order and the Gender War Crimes in Bosnia and Beyond*, 22 *YALE J. INT'L L.* 299, 320 (1997) (noting that with speedy elections, U.N. hoped to promote appearance of order).

¹⁰ *The Sarajevo Declaration* was adopted by the participants of the Third International Noel Baker-Pauling-Peccei Conference on Aug. 22, 1996 in Sarajevo, Bosnia and Herzegovina. (A first draft of the Declaration is on file with the ST. JOHN'S JOURNAL OF LEGAL COMMENTARY).

¹¹ ELIE WEISEL, *A BEGGAR IN JERUSALEM* 27 (1971) (asking "[d]o you understand what I myself cannot even begin to understand?").

¹² See BRUCE MCFARLANE, *YUGOSLAVIA: POLITICS, ECONOMICS AND SOCIETY* 4 (1988). "Yugoslav" literally translated means "south slav," a seemingly appropriate name for the ethnicity of the people comprising the state. *Id.*

¹³ See HENRY KISSENGER, *DIPLOMACY* 328-29 (1994) (providing detailed map of Europe depicting Yugoslavia under Soviet sphere of influence after World War II).

¹⁴ See U.N. CHARTER art. 23. The United Nations is an international organization of states that fifty states formed to create and supervise some order in the world, to "develop friendly relations among nations" and "to maintain international peace and security." *Id.* art. 1(1), 1(2).

Federal People's Republic and was comprised of six constituent republics: Croatia, Macedonia, Montenegro, Serbia, Slovenia, and Bosnia-Herzegovina.¹⁶ In 1992, Bosnia-Herzegovina became an independent state.¹⁷

It is important to understand the history of the combatants fighting in Bosnia in 1992.¹⁸ Some fourteen centuries earlier, the ancestors of these same Slavs had migrated to this region from what we now identify as Poland and the Ukraine.¹⁹ Two of these migrating tribes were known as the Serbs and the Croats.²⁰ During the Middle Ages, both the Serbs and Croats established kingdoms in the region and these kingdoms were supported by both the Byzantine (Eastern Orthodox) and Holy Roman (Roman Catholic) Empires.²¹ Consequently, the names Serbs and Croats reflect

¹⁵ See JOHN R. LAMPE, *YUGOSLAVIA AS HISTORY* 266 (1996). The author discusses Yugoslavia's charter member status. *Id.* The history of the Balkans is well-documented. This author recommends the following books as providing both an historical context and a contemporary perspective on the war in Bosnia-Herzegovina: BEVERLY ALLEN, *RAPE WARFARE: THE HIDDEN GENOCIDE IN BOSNIA-HERZEGOVINA AND CROATIA* (1996); NORMAN CIGAR, *GENOCIDE IN BOSNIA: THE POLICY OF ETHNIC CLEANSING* (1995); TOM GJELTEN, *SARAJEVO DAILY: A CITY AND ITS NEWSPAPER UNDER SIEGE* (1995).

¹⁶ See MIHAILO CRNOBRNJA, *THE YUGOSLAV DRAMA* 22 (1994) (discussing formation of six republics of Yugoslavia).

¹⁷ See William A. Schroeder, *Nationalism, Boundaries, and the Bosnian War: Another Perspective*, 19 S. ILL. U. L.J. 153, 154 (1994). "In early 1992, the leaders of the three ethnic communities in Bosnia agreed to a European sponsored plan that would have partitioned Bosnia into Serb, Croat, and Muslim regions." *Id.* The U.S. did not support this plan, and the agreement later collapsed. *Id.* Bosnia-Herzegovina seceded from Yugoslavia in April 1992. *Id.* The U.S., the European community and the international community recognized Bosnia-Herzegovina as an independent nation state. *Id.*; see also Szasz, *supra* note 7, at 315. The Republic of Bosnia and Herzegovina (BH Republic) was the official name of the independent Bosnian state. *Id.* In March 1994, the U.S. sponsored negotiations among the Bosnian Muslims (Bosniacs), the Bosnian Croats and the Republic of Croatia, which resulted in the creation of the Federation of Bosnia and Herzegovina (BH Federation). *Id.* The Federation was carved out of the areas of the BH Republic with a majority of Bosniac and Croat population. *Id.* Republika Srpska is the Serb entity of the BH Republic. *Id.*

¹⁸ See KISSENGER, *supra* note 13, at 195 (discussing several historical conflicts occurring in Bosnia-Herzegovina); see also SABINE PETRA RAMET, *BALKAN BABEL: POLITICS, CULTURE AND RELIGION IN YUGOSLAVIA* 34-40 (1992) (wryly noting that multi-ethnic state fell apart as soon as it was constituted, lurching from crisis to crisis, abandoning one unstable social formula after another).

¹⁹ See GJELTEN, *supra* note 15, at 24-25 (detailing history of Bosnian).

²⁰ See ROBERT J. DONIA & JOHN V.A. FINE, JR., *BOSNIA AND HERZEGOVINA* 71 (1994) (noting both Serbs and Croats migrated to northern portion of Yugoslavia); GJELTEN, *supra* note 15, at 25 (providing account of Serbian and Croatian migration to Balkan areas).

²¹ See DONIA & FINE, *supra* note 20, at 7 (discussing ninth century push by Rome into Croatia, while Byzantine Empire took control of Serbia); see also JOHN V.A. FINE, *THE MUSLIMS OF BOSNIA-HERZEGOVINA* 4 (Mark Pinson ed., 1996) (stating that in ninth century, Roman Christians took control of Croatia, while Byzantine Empire controlled Serbia); LAMPE, *supra* note 15, at 3-7 (discussing Byzantine and Roman Catholic control in Serbia and Croatia, respectively).

both religious affiliation and political allegiance: The Serbian-Byzantine tradition and the Croatian-Roman tradition.²²

By the late fourteenth century, Turkish armies occupied and ruled Balkan soil and would continue to for the next four centuries.²³ The old Slavic states were merged into a single administrative zone. These Ottoman Turks ruled with remarkable tolerance as reflected by the rarity of forced conversions. Consequently, most of the conquered Slavs maintained their Christian affiliation.²⁴ The one important exception, however, were the people living in Bosnia, most of whom having accepted Turkish rule, converted to Islam.²⁵ So were born Bosnian Muslims: A Slavic-speaking, Islamic-believing population with wholly European roots.

The succession of occupiers in this region continued during the late Nineteenth Century. Ottoman rulers surrendered to Austro-Hungarian forces in 1878.²⁶ By the end of World War I, both the Ottoman and Austro-Hungarian Empires had collapsed and in 1918, Yugoslavia, an independent south Slav state, was born.²⁷

Almost from the beginning, Serb-Croat rivalries undermined the new Yugoslavian Federation.²⁸ Despite compromises between Serbian and Croatian leaders, the dreams of Serb and Croat nationalists for separate states persisted. Bosnian Muslims were expected by both Serb and Croat nationalists to declare themselves

²² See DONIA & FINE, *supra* note 20, at 73 (pointing out that Croats are of Catholic tradition; Serbs are of Orthodox tradition); see also LAMPE, *supra* note 15, at 14-18 (discussing Croatian conversion to Christianity and Serbia's allegiance to Byzantine Empire).

²³ See MCFARLANE, *supra* note 12, at 3 (stating that Turks naturally left stamp on Balkan areas after 400 years of control); see also GJELTEN, *supra* note 15, at 29-31 (discussing Ottoman Empire's 400 year rule over Balkan areas); LAMPE, *supra* note 15, at 18 (same).

²⁴ See IVO BANAC, *THE NATIONAL QUESTION IN YUGOSLAVIA: ORIGINS, HISTORY, POLITICS* 64-65 (1984) (noting Turkish tolerance of subjects retaining their Christianity); see also CIGAR, *supra* note 15, at 15 (1995) (discussing millet system, which allowed Balkan areas to retain their religions under Ottoman rule).

²⁵ See GJELTEN, *supra* note 15, at 29 (stating that most of Bosnia's Slav population converted to Islam under Ottoman rule); see also FINE, *supra* note 21, at 11 (noting significant number of Bosnians became Muslims under Turkish rule); LAMPE, *supra* note 15, at 18 (asserting that large number of Bosnians converted to Islam under Turkish rule).

²⁶ See DONIA & FINE, *supra* note 21, at 90-92. 1875 marked the end of Ottoman rule over the Bosnians. *Id.*; ALEX N. DRAGNICH, *SERBS AND CROATS: THE STRUGGLE IN YUGOSLAVIA 7-9* (1992). In 1878, the Hapsburg Empire (Austria-Hungary Empire) replaced the Ottoman Empire for control over the Bosnians. *Id.*

²⁷ See DRAGNICH, *supra* note 26, at 20 (contending that prerequisite to Yugoslavian independence was collapse of Ottoman and Austria-Hungary Empires after World War I); see also CIGAR, *supra* note 15, at 17 (same).

²⁸ See GJELTEN, *supra* note 15, at 35 (contending that infighting between Serbs and Croats undermined new Federation); see also DONIA & FINE, *supra* note 20, at 121 (discussing clashes between Serbs and Croats due to conflicting expectations and perceptions).

as either Serb or Croat. Hence, there remained no national category or separate recognition for "Muslims."²⁹

By 1939, an agreement called the "Understanding" was reached after negotiations between the Yugoslavian Prime Minister and the Croat opposition leader. It stipulated that Bosnia would be split, with Croat-dominated areas going to Croatia and the rest to Serbia.³⁰ One month later, World War II began with the German invasion of Poland, and in April 1941, Croatia was declared a Nazi-Allied independent state.³¹ With the onset of World War II, the earlier "Understanding" would never be instituted. The Croatian state, supported by Italian and German Nazi forces, was under the leadership of the fascist Croat Ustashe (Insurgent) movement. The entire Serbian population of Croatia, including Bosnia-Herzegovina, was attacked.³²

Bosnian and Croatian Serbs immediately began organizing to defend themselves. For example, a new Chetnik³³ (guerrilla) movement was organized from the army of the exiled Yugoslav government.³⁴

An anti-Ustashe, anti-Nazi Partisan movement grew under the leadership of a Croatian-born Communist named Marshal Tito.³⁵ Tito and his fellow Partisans declared the formation of a Yugoslav federation in 1943, which consisted of six republics, including Bosnia-Herzegovina.³⁶ Despite vigorous objections by both Serb and Croat leaders, Tito envisioned Bosnia to be mixed in its national

²⁹ See GJELTEN, *supra* note 15, at 37 (discussing Bosnian Muslims who fled to avoid pressure of deciding whether they were Croats or Serbs).

³⁰ *Id.* at 37. The agreement also treated Bosnian Muslims as being non-existent. *Id.* The understanding, which was called "Spoazrum," divided Yugoslavia and gave more authority to an enlarged Croatia. *Id.* For a further description of the partitioning of Yugoslavia, see FRED SINGLETON, *A SHORT HISTORY OF THE YUGOSLAV PEOPLE* (1985).

³¹ See CIGAR, *supra* note 15, at 18. In World War II, Nazi Germany destroyed Yugoslavia. *Id.* Yugoslavia surrendered and subsequently became a member of the Axis powers. *Id.*

³² See DONIA & FINE, *supra* note 20, at 143 (stating that Ustashe committed many atrocities including killing Jews, Serbs, Gypsies).

³³ See *id.* at 143. The term "chetniks" refers to guerrilla fighters, originally Serbian nationalists, who fought the Turks. *Id.*; GJELTEN, *supra* note 15, at 35. "Chetniks" were Serbian guerrillas who fought the Turks.

³⁴ See CRNOBRNJA, *supra* note 16, at 66. A small group of nationalist guerrillas, led by Colonel Draza Mihailovic, formed the nucleus of resistance against Italian and German forces. *Id.*

³⁵ See *id.* at 68 (examining Tito's formation of six republics of Yugoslavia); see also David Lenefsky, *Three Strikes and You're in—in an International Criminal Court*, N.Y.L.J., Aug. 11, 1994, at 2 (noting communist leader Tito's distrust of nationalism).

³⁶ See CRNOBRNJA, *supra* note 16, at 66-68 (examining Marshall Tito's reign).

design.³⁷ In Tito's words "neither Serb nor Croat nor Muslim, but Serb and Croat and Muslim."³⁸

After Tito's death in 1980, the Yugoslav federation weakened.³⁹ Serb national leaders had accepted an internal border arrangement in Yugoslavia that left almost two million Serbs outside Serbia due to Serb domination of the Communist Party, the federal army and security forces, and the organs of the central government.⁴⁰

Social and economic conditions worsened in Yugoslavia.⁴¹ With the weakening of the central government, Tito's declaration of Yugoslavian brotherhood was denounced by nationalist leaders as "a big lie."⁴² By 1990, Tito's portraits had vanished from all public buildings in Serbia and Croatia.

Between Tito's death and the deteriorating structure of the Yugoslavian federation, Bosnia's separate existence as a viable entity was in jeopardy. Patriotic Bosnians left Tito's pictures on Bosnian office walls, recognizing Tito as a man who had protected their interests. Meanwhile, Serb and Croat nationalist fervor increased.

By 1990, no single ethnic group was dominant in Bosnia. Bosnia's population was 44 to 49 percent Muslim, 31 to 35 percent Serbian, and about 17 percent Croatian.⁴³ Interestingly, a 1990 survey revealed that the Bosnian Muslims were more in favor of a Yugoslavia Republic than any other ethnic group in the country.

³⁷ See Lori Lyman Bruun, *Beyond the 1948 Convention: Emerging Principles of Genocide in Customary International War*, 17 MD. J. INT'L L. & TRADE 193, 198 (1993) (noting Tito managed to suppress ethnic dissent).

³⁸ GJELTEN, *supra* note 15, at 39 (discussing Tito's goal of unity and equality among different religious factions in Yugoslavian republic); LAMPE, *supra* note 15, at 232 (reiterating Tito's credo of "brotherhood and unity" to dispel ethnic, as well as religious, differences among Yugoslavians).

³⁹ See Erik Drewniak, Comment, *The Bosphorus Case: The Balancing of Property Rights in the European Community and the Public Interest in Ending the War in Bosnia*, 20 FORDHAM INT'L L.J. 1007, 1046 (1997) (agreeing that Tito's death in 1980 left "power vacuum in Yugoslavia" that allowed national conflicts to surface); see also PAUL MOJZES, YUGOSLAVIAN INFERNO 76, 77 (1994) (discussing revival of ethnic strife after Tito's death).

⁴⁰ See GJELTEN, *supra* note 15, at 40 (asserting border agreement weakened after Tito's death).

⁴¹ See MOJZES, *supra* note 39, at 76-77 (describing disintegration of socialist system following Tito's death).

⁴² See GJELTEN, *supra* note 15, at 41 (detailing deterioration of political leadership after Tito's death).

⁴³ See Schroeder, *supra* note 17, at 154 (discussing current ethnic makeup of Bosnia).

If nothing else, Tito's Yugoslavia had left them alone, which was as much as they ever wanted.⁴⁴

Understanding the history of Yugoslavia enables us to dispel both oversimplification and myth. The war in Bosnia has been explained as being "domestic, inter-ethnic, and inevitable."⁴⁵ While the history reveals age-old tensions between Serbs and Croats, it is legally incorrect to describe the war in Bosnia as a civil war because Bosnia was an internationally recognized independent state when the Serbs and Croats invaded.⁴⁶ Despite the centuries-old nationalist rivalry between Croats and Serbs, Bosnia Muslims first considered themselves Yugoslavians, then Bosnians, who merely practiced a different religion from their Serbian and Croatian neighbors.⁴⁷

How we define a problem will influence how it is solved. Thus, by defining the war in Bosnia as "domestic, inter-ethnic, and inevitable," both international institutions and western governments were able to avoid responsibility for the genocide that occurred.⁴⁸

The Serbian Democratic Party, headed by Radovan Karadzic, one of the leading war criminals still at large, opposed independence for Bosnia.⁴⁹ Bosnian Serb leaders demanded the establishment of a separate "Serb Republic" on Bosnian territory, and the partitioning of Sarajevo into ethnic zones.

On April 6, 1992, the date associated with the beginning of a two-year siege of Sarajevo, 20,000 Bosnian Serbs, Muslims and Croats gathered in front of the Parliament Building to show their

⁴⁴ See GJELTEN, *supra* note 15, at 41.

⁴⁵ See Bunce, *supra* note 8, at 709.

⁴⁶ See FINE, *supra* note 21, at 3 (stating that both Slavs and Croats invaded Bosnia, which was already independent).

⁴⁷ See DONIA & FINE, *supra* note 21, at 9 (asserting that Croats, Slavs, Bosnians are all Yugoslavians who speak same language, yet practice different religions); see, e.g., Richard F. Iglar, *The Constitutional Crisis in Yugoslavia and the International Law of Self-Determination: Slovenia's and Croatia's Right to Secede*, 15 B.C. INT'L & COMP. L. REV. 214, 230-35 (1992) (discussing broad commonalities and specific differences of Muslims, Slavs, Serbs, Croats and Slovans).

⁴⁸ Bunce, *supra* note 8, at 709. See generally Winston P. Nagan, *Genocide Retrospect-Prospect* (unpublished paper delivered to the ABA YLD Standing Committee on World Order Under Law in Chicago, Illinois on August 5, 1995). This paper discusses the labeling of ethnic conflict and how such labeling hides responsibility for decision-making in ethnic violence. *Id.* at 43. "[G]enocide [does] not simply happen. There does exist a chain of responsibility . . . the ethnic cleansing in Bosnia was part of a plan, borne of political conflict, to exterminate whole groups of human beings." *Id.*

⁴⁹ See GJELTEN, *supra* note 15, at 11 (quoting Karadzic as saying "there is no Bosnian nation"); see also Krajisnik *Growing Impatient with Serb Standoff*, AGENCE FRANCE-PRESSE, Sept. 24, 1997, available in 1997 WL 13401003 (noting Karadzic is hero of Serb people, who believe he is not criminal, but has merely defended his people).

support for an independent united Bosnia. Bosnians advocated a "citizens' state" based on civil rights and constituted for individuals of all ethnic and religious backgrounds.⁵⁰ Snipers from the Serbian Democratic Party stationed in the Holiday Inn across from the Parliament Building killed four demonstrators and wounded several others.

Over the next few years, "the rebel Serb forces through shelling and gunfire killed more than 9,000 Sarajevans, 1,500 children among them. United Nations brought more than 100,000 tons of food and other humanitarian aid to the encircled city, but the average Sarajevan still lost about twenty-five pounds."⁵¹ By the time the shelling finally ended in the spring of 1994, 70 percent of the buildings in Sarajevo had been severely damaged or destroyed. Sarajevo's population of 300,000 prior to the war had dwindled to only 150,000.⁵²

II. MY VISIT TO SARAJEVO

I arrived in Sarajevo on Tuesday, August 20, 1996. Since there were no commercial flights into Sarajevo, the Conference attendees gathered in Zagreb, Croatia and traveled by bus to Sarajevo. The trip from Zagreb to Sarajevo is about 300 miles. We were told that the bus ride would be about six and a half hours. Fourteen hours after leaving Zagreb, however, we finally arrived in Sarajevo. We ended up taking a circuitous route from Zagreb to Sarajevo to avoid Serbian-held territory.

The bus ride was one that I will never forget. I remember seeing miles and miles of devastation. There was nothing left of the villages. Only the shells of homes remained: No roofs, no windows and no doors. There were no people anywhere; no signs of life. The roads were unmarked. The bridges had been knocked out and temporary ones were rebuilt. There were no lights and no signs of civilization. We could only ask ourselves in hushed, somber tones: Where have all the people gone? What became of the

⁵⁰ See DONIA & FINE, *supra* note 20, at 1 (detailing events that led to two year war in Bosnia); GJELTEN, *supra* note 15, at 2 (discussing early history of two year siege of Sarajevo).

⁵¹ See GJELTEN, *supra* note 15.

⁵² Seid Hukovic, Remarks Made in Key-Note Address to Participants of the Third International Noel Baker-Pauling-Peccei Conference, Sarajevo (August 21, 1996).

women, the children and the families that once populated the area?⁵³

In the darkness, we saw a line of fire stretch across the abandoned fields. IFOR troops had deliberately set the fields ablaze in an attempt to activate the hundreds of thousands of unmarked mines planted by the Serbs. Because the mines were placed below the surface, the controlled fires only detonated about 10 percent of the mines that had turned the beautiful countryside into killing fields.

On the long bus ride, I read Beverly Allen's book, *Rape Warfare: The Hidden Genocide In Bosnia-Herzegovina And Croatia*. Beverly was one of the Conference's participants. She had documented the existence of a military policy of genocidal rape.⁵⁴ Rape for the purpose of genocide took three main forms:

(1) Chetniks (guerrilla fighters or irregular Serb forces) or other Serb forces enter a Bosnian-Herzegovinian or Croatian village, take several women of varying ages from their homes, rape them in public view, and depart. The news of this atrocious event spreads rapidly throughout the village. Several days later, regular Bosnian Serb soldiers or Serb soldiers from the Yugoslav Army arrive and offer the now-terrified residents safe passage away from the village on the condition they never return. Most accept, leaving the village abandoned to the Serbs and thus furthering the genocidal plan of "ethnic cleansing"

(2) Bosnian-Herzegovinian and Croatian persons being held in Serb concentration camps are chosen at random to be raped, often as part of torture preceding death;

(3) Serb, Bosnian Serb, and Croatian Serb soldiers, Bosnian Serb militias, and Chetniks arrest Bosnian-Herzegovinian and Croatian women, imprison them in a rape/death camp, and rape them systematically for extended periods of time. Such rapes are either part of torture preceding death or part of torture leading to forced pregnancy. Pregnant victims are raped consistently until such time as their pregnancies have progressed beyond the possibility of a safe abortion and are then released. In the first case, the death of the victim con-

⁵³ See, e.g., Anna-Patricia Kahn, *Wo Sind Die Busnischen Kinder?*, *Focus*, May 16, 1994, at 108 ("Where are the Bosnian children?").

⁵⁴ ALLEN, *supra* note 15, at 62-63. See also Madeline Morris, *By Force of Arms, Rape, War and Military Culture*, 45 *DUKE L.J.* 651, 664 (1996) (examining relationship surrounding sexual assault, combat, and military organizations).

tributes to the genocidal goal; in the second, the birth of a child does, for the perpetrator - or the policy according to which he is acting - considers this child to be only Serb and to have none of the identity of the mother.⁵⁵

Thirty such death/rape camps were in existence. All forms of genocidal rape constitute the crime of genocide as described in Article II of the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide.⁵⁶ As of Friday, November 29, 1996, only four of the 74 indicted war criminal suspects have been prosecuted by The Bosnian War Crime Tribunal in the Hague.⁵⁷

Upon our arrival in Sarajevo, we checked into the infamous Holiday Inn, situated across from the Parliament Building and the site of the first killings of the two-and-a-half-year siege of Sarajevo. It was dark and we were tired. The extent of the devastation did not become apparent until morning light exposed the destruction.

Sarajevo was once a beautiful European city that sat in a valley surrounded by majestic mountains. The city was the host of the 1984 winter Olympics.⁵⁸ The world was enchanted by the beauty of Sarajevo and the city's hospitality, friendliness, sophistication and apparent unity. In 1984, Sarajevo was a city that embodied Tito's declaration of Yugoslavian brotherhood.

The remnants of a beautiful city remained. Tragically, however, the tall, modern buildings that once charmed the world during the 1984 Winter Olympics were mere facades.⁵⁹ Every building had been damaged by Serbian sniper fire and mortar shells. Electric-

⁵⁵ See ALLEN, *supra* note 15, at 62-63.

⁵⁶ Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 77 (entered into force Jan. 12, 1951; for the United States, Feb. 23, 1989).

⁵⁷ See Tyler Marshall, *A Session Starts Tuesday; War Crimes Trial to Reveal Horrors of Bosnian Clash; Accused Serb Solider Will be Focus of Tribunal's First Proceeding*, MILWAUKEE J. & SENTINEL, May 5, 1996, at 24 (discussing commencement of trial of Dusan Tadic, indicted war criminal); *War Crimes Court to Hear Witnesses Against Kradzic; Mladic*, AGENCE FRANCE-PRESSE, May 21, 1996, available in 1996 WL 3857729 (reporting that international war tribunal began hearing testimony in prosecution against Kradzic and Mladic); Tracy Wilkinson, *Soldier Sentenced for Bosnia War Crime*, THE MIAMI HERALD, Nov. 30, 1996, at A1 (reporting that Bosnian Croat solider Drazen Erdemovic was sentenced to 10 years for his part in massacre of 1200 Bosnian Serbs).

⁵⁸ See *Sports Briefs*, AUSTIN AMERICAN STATESMAN, Jan. 13, 1997, at D2, available in 1997 WL 2809279 (noting recent reopening of Sarajevo's famous Olympic ski areas, closed since 1992).

⁵⁹ *But see* Steve Collins, USA TODAY, May 7, 1996, at B1 (reporting on Olympic committee's pledge of 15 million dollars to rebuild stadium damaged by war).

ity and water had been completely cut off during the two-and-a-half-year siege of Sarajevo.⁶⁰ Although electrical and water services have since been restored, such amenities are still available only a few hours a day.

There was no running water at the Academy of Sciences and Arts, the site of the Conference. We were invited to a lovely meal at the home of the President of the Federation of Bosnia and Herzegovina, one of the two entities dividing the BH Republic.⁶¹ We were treated with all the fanfare and formality of foreign dignitaries. Imagine my shock upon discovering that even the President's home did not have running water. The toilet did not flush and water would not flow through the faucet.

Despite an arms embargo,⁶² Sarajevo fought alone for two and a half years. I heard the desperation, isolation, and the feeling of betrayal by the international community in their voices. There were several panel discussions on various topics during the two and a half day conference. Microphones were provided so that members of the audience could participate along with the panel members. Although there were interpreters, Bosnians in the audience often spoke so frantically and with so much emotion that the interpreters could not continue to translate. There was so much pain in the voices of the speakers!

I befriended a young Bosnian Muslim man who transported me and other participants back and forth from the Academy to the hotel. He detailed some of the horrors of living surrounded by enemy fire. The Holiday Inn sat on a main street. This street was known as "sniper alley" because the civilians were daily targets of the Serb snipers positioned on the hillside.⁶³ My friend pointed out the place where ten, twenty or sixty people were killed on any

⁶⁰ See Aida Cerkez, *Seige in Sarajevo is Officially Over. City Dwellers Say They're Survivors of Hell*, PITTSBURG POST-GAZETTE, Mar. 1, 1996, at 1 (reporting that survivors are still at mercy of Serbs for electric, gas and water).

⁶¹ On August 22, 1996, the Conference participants dined at the home of President Kresimir Zubak.

⁶² See S.C. Res. 713, U.N. SCOR, 46th Sess., 3009th mtg., at 1, U.N. Doc. 5/RES/713(1991), reprinted in 31 I.L.M. 1427, 1431-32 (1992). The U.N. Security Council adopted resolution 713, which authorized the arms embargo, because the situation was a threat to international peace and security. *Id.*

⁶³ See Philip Smucker, *Albright Uses Carrot and Stick*, WASH. TIMES, June 2, 1997, at A1, available in 1997 WL 3673611 (describing U.S. Secretary of State Madeline K. Albright's stroll down "once perilous alley"); see also *Pope Braves Bosnia's Death Alley*, GREENSBORO NEWS & RECORD, Apr. 13, 1997, at 1, available in 1997 WL 4579763 (relating Pontiff's journey in Popemobile past "notorious sniper alley" during peace-keeping visit).

given day.⁶⁴ I wondered how he was able to go outside during the two and a half year siege since most people remained inside for days upon days to avoid becoming human targets. He answered that one would run across "sniper alley" with his or her eyes closed, hoping not to be hit by gunfire. "In war," he lamented. "everyone does things they regret." I knew he was remembering the atrocities he had witnessed and perhaps even participated in. He was a soldier who had defended Sarajevo during the siege.

It is hard to understand how neighbor turned against neighbor in Sarajevo. Sarajevo's history of interfaith harmony was unparalleled in all of Europe. Mosques, churches, and synagogues were built within yards of one another in the city center and spiritual leaders routinely acknowledged one another's holy days. Most Sarajevo Christians grew up familiar with Islam; Sarajevo Muslims often joined their friends at worship services on Christmas Eve or Easter. I heard a story about an old Muslim man who regularly went to a Catholic church to pray because his legs were weak and he liked sitting in a pew. "It is the house of God," he explained. "God is all-knowing."

Most Sarajevans did not consider themselves Serb, Croat or Muslim. The intermarriage rate was 35 percent, the highest in all of Bosnia.⁶⁵ Consequently, many of the children had parents of mixed ethnic backgrounds.

I can not answer the question of how neighbor turned against neighbor. But to me the parallels between Nazi Germany in the 1930s and Bosnia in the 1990s are frighteningly similar. For example, notice how the minutes of an official meeting of Serb Army officers, held just outside Belgrade in late 1991, sound strikingly similar to Nazi dictates:

Our analysis of the behavior the Muslim Communities demonstrates the morale, will, and bellicose nature of their groups can be undermined only if we aim our action at the point where the religious and social structure is most fragile. We refer to the women, especially adolescents, and to the children. Decisive intervention on these social figures would

⁶⁴ See, e.g., *Sniper Alley Horror Captured on Film*, THE INDEPENDENT-LONDON, Mar. 6, 1996, available in 1996 WL 4061216 (reporting on sniper alley documentary that showed woman and dog felled by sniper fire).

⁶⁵ See GJELTEN, *supra* note 15, at 10 (stating that Sarajevans do not identify themselves as one group or another since prevalence of intermarriage renders such issues moot).

spread confusion among the communities, thus causing first of all fear and then panic, leading to a probable (Muslim) retreat from the territories involved in war activity.

In this case, we must add a wide propaganda campaign to our well-organized, incisive actions so that panic will increase. We have determined that the coordination between decisive interventions and a well-planned information campaign can provoke the spontaneous flight of many communities.⁶⁶

CONCLUSION

As a Jew, I identified with the Bosnian Muslims. This was not a military war, it was a war of genocide. Bosnian Muslims, who were descended from the same Serb and Croat ancestors as their Christian brothers and sisters, were targeted for annihilation for no reason other than their religious practices.

How could this happen? How could we stand by? Yes, Weisel said, "How can I explain to you what I myself cannot even begin to understand."⁶⁷ But it is our burden and obligation to determine how this could have happened. As American citizens, lawyers, and human beings, our moral compass commands us, even at this late date, to educate ourselves and try to salvage and rebuild the lives of people who are not so different than you and me.

Torture, murder, rape camps, mass graves, widows, orphans, and ghost-towns. Where have all the people gone? And all of this less than fifty years after we said "NEVER AGAIN."

⁶⁶ ALLEN, *supra* note 15, at 57.

⁶⁷ WIESEL, *supra* note 11.