

## Peacekeeping in Operation: A Conflict Study of Bosnia

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## Peacekeeping in Operation: A Conflict Study of Bosnia

Like Tolstoy's unhappy families, and perhaps for many of the same reasons, all United Nations "peacekeeping" operations are different. Thus, the activities carried out by the United Nations in Bosnia and Herzegovina are very different from any that the Organization has undertaken elsewhere,<sup>1</sup> even the other operations in the former Yugoslavia.<sup>2</sup>

In the first place, except for occasional ephemeral cease-fires, there is no peace to keep in Bosnia.<sup>3</sup> Thus, the international community's task can only be to try to *make* peace while attempting to mitigate the cruel effects of war.

Secondly, with respect to Bosnia, the peacemaking function has not been assigned directly to the United Nations Protection Force (UNPROFOR)<sup>4</sup> or to any other organ of the United Nations.

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1. For a general account of U.N. peacekeeping operations, see U.N. DEP'T OF PUBLIC INFORMATION, *THE BLUE HELMETS: A REVIEW OF UNITED NATIONS PEACE-KEEPING*, U.N. Doc. DPI/1065, U.N. Sales No. E.90.I.18 (1990), which describes the 18 operations initiated from 1948 to 1990. See also ROBERT C.R. SIEKMANN, *BASIC DOCUMENTS ON UNITED NATIONS AND RELATED PEACE-KEEPING FORCES* (2d enlarged ed. 1989).

2. The terms "former Yugoslavia" and "ex-Yugoslavia" are sometimes used to refer to the Socialist Federal Republic of Yugoslavia (SFRY) which was established under that name in 1974 and dissolved during the course of 1991-92. Sometimes, rather misleadingly, the term is used collectively to refer to the five successor states: the Republic of Bosnia and Herzegovina; the Republic of Croatia; the Republic of Macedonia (temporarily designated in the United Nations as "the former Yugoslav Republic of Macedonia"—see S.C. Res. 817, U.N. SCOR, 47th Sess., 3196th mtg., ¶ 2, U.N. Doc. S/RES/817 (1993); G.A. Res. 225, U.N. GAOR, 47th Sess., ¶ 2, U.N. Doc. A/RES/47/225 (1993)); the Republic of Slovenia; and the Federal Republic of Yugoslavia (FRY) (currently referred to in the United Nations as the "Federal Republic of Yugoslavia (Serbia and Montenegro)").

3. As used sometimes herein, "Bosnia" is shorthand for Bosnia and Herzegovina.

4. The United Nations Protection Force (UNPROFOR) was originally established, with that name, to assume certain functions in Croatia. S.C. Res. 743, U.N. SCOR, 47th Sess., 3055th mtg., U.N. Doc. S/RES/743 (1992). At that time, its headquarters were located in Sarajevo, the capital of the then as yet not independent Republic of Bosnia and Herzegovina. UNPROFOR was first operationally deployed in Bosnia and Herzegovina pursuant to S.C. Res. 758, U.N. SCOR, 47th Sess., 3083d mtg., U.N. Doc. S/RES/758 (1992) to reopen and secure the Sarajevo airport. Subsequently, its headquarters were moved to Zagreb, the capital of Croatia, and it received numerous other tasks with respect to both Croatia and Bosnia, as well as to Macedonia. In March 1995, the Security Council split UNPROFOR into three units, with only the one in Bosnia retaining the

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It is indeed difficult to disentangle the often overlapping multifarious tasks that have been assumed by or assigned to a confusing multitude of standing and ad hoc international organs.<sup>5</sup> As I noted elsewhere,<sup>6</sup> this involvement of an unprecedented number of international organs as part of the world's reaction to the self-destruction of Yugoslavia testifies more to haphazard improvisation and ingenuity than to any steadfast determination or even willingness to make or risk significant sacrifices.

#### A. Humanitarian Activities

With respect to Bosnia and Herzegovina, the principal efforts do not really have a peacekeeping or even a peacemaking character, but merely amount to desperate efforts to mitigate the effects of the military conflicts that began during the spring of 1992 and are still continuing. These activities are carried out or coordinated by the U.N. High Commissioner for Refugees (UNHCR) and other organizations, the most important of which are the World Food Programme (WFP), UNICEF, the World Health Organization (WHO), the Food and Agriculture Organization of the United Nations (FAO), UNESCO, as well as the International Committee of the Red Cross (ICRC) and a number of other non-governmental organizations (NGOs), such as Médecins sans Frontières. These organizations provide food, medicine, supplies and shelters for refugees, displaced persons, and even persons at home in besieged areas. They also assist in the

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name UNPROFOR. S.C. Res. 981-983, U.N. SCOR, 50th Sess., 3512th mtg., U.N. Docs. S/RES/981-983 (1995). The texts of 76 Security Council resolutions and 76 presidential statements up to April 28, 1995, relating to ex-Yugoslavia and often referring to UNPROFOR, are set out in United Nations Department of Public Information, *The United Nations and the Situation in the Former Yugoslavia*, U.N. Doc. ST/DPI/1312/Rev.4 (1995), which also contains a useful narrative account.

5. The standing organs include: the U.N. Security Council and General Assembly; the International Court of Justice (ICJ); the High Commissioner for Refugees (UNHCR); the U.N. Commission on Human Rights; the EC (now EU) Council of Ministers; the Conference (now Organization) of Security and Cooperation in Europe (CSCE); the Committee of Ministers of the Council of Europe; the North Atlantic Treaty Organization (NATO); and the Western European Union (WEU). The ad hoc organs include: the EC ("Carrington") Conference on Peace in Yugoslavia; the International Conference on the Former Yugoslavia (ICFY, also called the "Vance/Owen" and later the "Stoltenberg/Owen Negotiations"); the Arbitration ("Badinter") Commission that served both Conferences; the U.N. Military Observers (UNMO); UNPROFOR; the EC Monitoring Mission (ECMM); CSCE Observer Missions; the Security Council's Sanctions Committee for Yugoslavia; the ICFY Monitoring Mission; the U.N. Consolidated Inter-Agency Appeal for Former Yugoslavia; the Special Rapporteur on Human Rights in Yugoslavia; the Yugoslav War Crimes Commission; and finally, the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (the "Yugoslav War Crimes Tribunal").

For a more complete list of both standing and ad hoc international organizations and organs involved in the former Yugoslavia, see the Introductory Note by the present author to a set of *Documents Regarding the Conflict in Yugoslavia*, reprinted in 31 I.L.M. 1421 (1992). Citations to those organizations, organs and instruments especially relevant to Bosnia and Herzegovina will appear later in this text.

6. *Id.*, introductory paragraph.

evacuation of wounded, sick, and particularly vulnerable persons.<sup>7</sup>

UNPROFOR's principal role in Bosnia is to support these humanitarian activities by keeping open airports (especially Sarajevo), escorting and otherwise facilitating the movement of convoys, and performing other related tasks such as the repair of power, water, and sewage systems. Strictly military functions, such as the protection of the so-called "Safe Zones" and monitoring the "no flight" rule over Bosnia, are secondary and limited by the lack of adequate equipment or sufficient personnel to perform these mandates. Important, but ancillary, are the subsidiary peace-making functions that assist the opposing military forces in negotiating cease-fires or even longer cessations of hostilities, whether these are designed to facilitate humanitarian activities, assist the various diplomatic negotiating fora described below in preparing the military parts of proposed peace packages, or constitute occasional free-standing efforts to halt the carnage. Only by helping the parties implement these unfortunately short-lived cease-fires does UNPROFOR occasionally, briefly, and locally perform what might be considered classic peacekeeping operations, such as marking lines of confrontation, facilitating communications between opposing forces, presiding over joint military commissions, taking custody of heavy weapons, and occasionally interposing between armed units.

Since the early stages of the dissolution of the Socialist Federal Republic of Yugoslavia (SFRY), the U.N. Secretary-General has been represented by a Special Representative, first Cyrus Vance (former U.S. Secretary of State), then Thorvald Stoltenberg (former UNHCR and Norwegian Foreign Minister), and currently Yasushi Akashi (a former Japanese diplomat and several times U.N. Under-Secretary-General who previously served as Special Representative in charge of UNTAC in Cambodia). Special Representatives have from time to time served in negotiating capacities, including as one of the two Co-Chairmen of the Steering Committee of ICFY and as supervisor of UNPROFOR on behalf of the Secretary-General.

## B. Miscellaneous Enforcement or Punitive Functions

The international community's efforts to deal with the conflicts arising from the dissolution of the SFRY have led to a number of disparate actions that, while completely different in nature, might generally be characterized as essentially punitive or at least regulatory.

First, the Security Council imposed an arms embargo on the SFRY,<sup>8</sup> which, after the dissolution of that state, has continued with respect to all the successor Republics. Maintaining the embargo on the Government of Bosnia and Herzegovina, which is desperately fighting Bosnian Serb (and

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7. The U.N. System's humanitarian activities with respect to ex-Yugoslavia are summarized in a series of "United Nations Consolidated Inter-Agency Appeals for Former Yugoslavia," each covering a six-month period and the monetary requirements of nine organs or agencies of the System.

8. S.C. Res. 713, U.N. SCOR, 46th Sess., 3009th mtg., U.N. Doc. S/RES/713 (1991).

occasionally also Bosnian Croat) forces, has been especially controversial,<sup>9</sup> particularly in the United States.

Because the Security Council held the new Federal Republic of Yugoslavia (consisting of the former SFRY Republics of Serbia and Montenegro) largely responsible both for the outbreak of hostilities in Bosnia and Herzegovina and for supporting the Serb forces, it imposed an economic embargo on the FRY, which included restrictions on diplomatic, cultural, financial and communication activities.<sup>10</sup> The embargo has been sharpened from time to time,<sup>11</sup> but recently the Security Council also allowed a slight provisional easing after Slobodan Milosevic, the President of Serbia, agreed to support the Contact Group Plan and close the FRY borders with Bosnia—a closure monitored by an ICFY Monitoring Mission.<sup>12</sup> The ability to ease or tighten sanctions is one of the few tools available for bringing non-military pressure to bear on the FRY and, possibly, by extension, on the Serbs in Bosnia and Croatia.

Implementing both the arms embargo and economic sanctions necessitates complex efforts involving various monitoring and interdiction efforts along the borders of the FRY and throughout the world. The regulation of this effort is ultimately the responsibility of the Security Council, which imposed both these measures, and has largely been delegated by it to a Sanctions Committee (a plenary organ of the Council).<sup>13</sup>

Because it became evident from the very beginning that the struggles in ex-Yugoslavia, and especially in Bosnia, were marked by massive human rights violations, especially by “ethnic cleansing” as well as by the maintenance of concentration camps and the conduct of warfare mainly against civilians, the U.N. Commission on Human Rights appointed a Special Rapporteur for Yugoslavia, a former Polish Prime Minister, Tadeusz Mazowiecki.<sup>14</sup> His frequent, massive and well-documented reports,<sup>15</sup>

9. Even the U.N. General Assembly has repeatedly requested the Security Council to consider lifting the embargo with respect to Bosnia and Herzegovina. *See, e.g.*, G.A. Res. 10, U.N. GAOR, 49th Sess., ¶ 22, U.N. Doc. A/RES/49/10 (1994). Bosnia has also made efforts to secure a lifting of the embargo through the International Court of Justice. *See infra* text accompanying notes 24 and 44.

10. *See* S.C. Res. 757, U.N. SCOR, 47th Sess., 3082d mtg. ¶ 4 *et seq.*, U.N. Doc. S/RES/757 (1992).

11. *See* S.C. Res. 787, U.N. SCOR, 47th Sess., 3137th mtg., U.N. Doc. S/RES/787 (1992) and especially part B of S.C. Res. 820, U.N. SCOR, 48th Sess., 3200th mtg., U.N. Doc. S/RES/820 (1993).

12. S.C. Res. 943, U.N. SCOR, 49th Sess., 3428th mtg., U.N. Doc. S/RES/943 (1994), subsequently extended for an additional period by S.C. Res. 970, U.N. SCOR, 50th Sess., 3487th mtg., U.N. Doc. S/RES/970 (1995).

13. The Committee is officially called the “Security Council Committee Established Pursuant to Resolution 724 (1991) Concerning Yugoslavia,” after the resolution of December 15, 1991, by which it was established. It was set up to monitor the implementation of the arms embargo with respect to all of ex-Yugoslavia and has since received numerous assignments in connection with the economic sanctions imposed on the Federal Republic of Yugoslavia. To guide its work and to assist those petitioning the Committee, it has established and periodically revised an extensive set of Guidelines (which are not public).

14. U.N. ESCOR, 1st Spec. Sess., Agenda Item 4, U.N. Doc. E/CN.4/S-1/8 (1992).

many of which were submitted directly to the General Assembly and/or the Security Council, became an important factor in defining the world's understanding of these conflicts and in shaping responses. Other reports, now numbering well over a hundred, were prepared by CSCE Missions, by NGOs, and by numerous governments.<sup>16</sup>

As the documentation concerning human rights violations grew—violations not seen since the end of the Second World War—the Security Council started considering what effective response might be made. In October 1992, the Council asked the Secretary-General to establish an impartial Commission of Experts, informally known as the Yugoslav War Crimes Commission.<sup>17</sup> It functioned from November 1992 until its tasks were assumed in the spring of 1994 by the Prosecutor of the new Yugoslav War Crimes Tribunal. The Commission investigated and gathered evidence concerning certain war crimes, such as those signalled by numerous mass graves. It issued two interim reports and a final one,<sup>18</sup> the first of which proved instrumental in the establishment of the War Crimes Tribunal.

As evidence of continuing ethnic cleansing and other massive violations accumulated, the Security Council in February 1993 decided in principle to establish a War Crimes Tribunal and requested the Secretary-General to submit a report on the modalities therefor.<sup>19</sup> The report, prepared by the U.N. Legal Counsel, set out a proposed draft Statute with a commentary.<sup>20</sup> The Council adopted that Statute on May 25, 1993,<sup>21</sup>

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15. The first report of the Special Rapporteur to both the U.N. General Assembly and the Security Council was dated September 3, 1992. *Note by the Secretary-General*, U.N. GAOR, 47th Sess., Provisional Agenda Item 98(c), U.N. Doc. A/47/418-S/24516 (1992). Subsequently, similarly titled reports to the General Assembly and the Security Council were dated November 6, 1992 (U.N. GAOR, 47th Sess., Agenda Item 97(c), U.N. Doc. A/47/635-S/24766 (1992)); November 17, 1992 (U.N. GAOR, 47th Sess., Agenda Item 97(c), U.N. Doc. A/47/666-S/24809 (1992)); February 26, 1993 (U.N. GAOR, 48th Sess., Preliminary List Item 115(c), U.N. Doc. A/48/92-S/25341 (1993)); and November 4, 1994 (U.N. GAOR, 49th Sess., Agenda Item 100(c), U.N. Doc. A/49/641-S/1994/1252/Annex (1994)). Reports with the same title to the Security Council alone were dated May 10, 1993 (U.N. SCOR, 48th Sess., U.N. Doc. S/25792 (1993)); August 30, 1993 (U.N. SCOR, 48th Sess., U.N. Doc. S/26383 (1993)); September 8, 1993 (U.N. SCOR, 48th Sess., U.N. Doc. S/26415 (1993)); and September 28, 1993 (U.N. SCOR, 48th Sess., U.N. Doc. S/26469 (1993)).

16. For an extensive but no longer up-to-date list, see Paul C. Szasz, *The Proposed War Crimes Tribunal for Ex-Yugoslavia*, 25 J. INT'L L. & POLITICS 405, 431 n.81 (1993).

17. The Commission was formally known as the "Commission of Experts established pursuant to Resolution 780 (1992)" referring to S.C. Res. 780, U.N. SCOR, 47th Sess., 3119th mtg., U.N. Doc. S/RES/780 (1992) of 6 October 1992.

18. It issued two interim reports: *Interim Report of the Commission of Experts*, U.N. SCOR, Annex 1, U.N. Doc. S/25274 (1993), and *Second Interim Report of the Commission of Experts*, U.N. SCOR, Annex, U.N. Doc. S/26545 (1993). It later issued the *Final Report of the Commission of Experts*, U.N. SCOR, Annex, U.N. Doc. S/1994/674 (1994).

19. S.C. Res. 808, U.N. SCOR, 48th Sess., 3175th mtg., U.N. Doc. S/RES/808 (1993).

20. U.N. SCOR, U.N. Docs. S/25704 (1993), S/25704/Add.1 (1993), and 25704/Corr.1 (1993).

21. S.C. Res. 827, U.N. SCOR, 48th Sess., 3217th mtg., U.N. Doc. S/RES/827 (1993).

thereby establishing the Yugoslav War Crimes Tribunal.<sup>22</sup> Headquartered in The Hague, the Tribunal consists of an eleven-Judge Court, divided into an Appellate and two Trial Chambers, a Prosecutor and staff, and a Registry. After various delays necessitated by the Tribunal's novelty and the importance of tackling its massive task carefully and with due preparation, the Court recently authorized the first several indictments that had been prepared by the Prosecutor, and it is expected that trials will begin in 1995.<sup>23</sup>

Finally, it should be mentioned that the Republic of Bosnia and Herzegovina has filed with the ICJ a Complaint against the FRY accusing the latter of complicity in genocide carried out within Bosnia. The Court disposed of two successive requests for indications of provisional measures<sup>24</sup> and is now awaiting the conclusion of an exchange of written pleadings by the parties.

### C. Efforts at Peacemaking

As already pointed out, the international efforts to achieve peace in Bosnia among the various political/military factions in the country—principally the Muslims or Bosnians, the Serbs and the Croats—are not centered in UNPROFOR, or even in any purely U.N. organ. Indeed, as will be explained, the initial efforts with respect to Bosnia were made in the EC-sponsored Carrington Conference. These efforts were later taken up by the UN/EC co-sponsored London Conference and by ICFY, and currently are being conducted by a five-nation Contact Group in loose association with ICFY.

#### 1. The Problems

The conflict in Bosnia and Herzegovina is commonly described as an "ethnic" one. Opposed in bloody conflict are the Bosnian Muslims, who in 1991 constituted some 45% of the population, the Bosnian Serbs, with

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22. The Statute of the Tribunal is set out in the Annex to the Secretary-General's report, *supra* note 20, and in Szasz, *supra* note 16, app. A. For some of the academic literature about the Tribunal, see D. Shraga & R. Zacklin, *The International Criminal Tribunal for the Former Yugoslavia*, 5 EUR. J. INT'L L. 360 (1994) and to other articles cited *id.* at 362 n.4; see also LAWYERS COMMITTEE FOR HUMAN RIGHTS ON PROSECUTING WAR CRIMES IN FORMER YUGOSLAVIA, THE INTERNATIONAL TRIBUNAL, NATIONAL COURTS AND CONCURRENT JURISDICTION: A GUIDE TO APPLICABLE INTERNATIONAL LAW, NATIONAL LEGISLATION AND ITS RELATION TO INTERNATIONAL HUMAN RIGHTS STANDARDS (1995).

23. This preparation included the adoption by the Court of: *Rules of Procedure and Evidence*, U.N. Doc. IT/32 (1994), reprinted in 33 I.L.M. 484 (1994), with amendments in 33 I.L.M. 838 (1994), and 33 I.L.M. 1620 (1994); *Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal*, U.N. Doc. IT/38/Rev.3, reprinted in 33 I.L.M. 1590 (1994); and *Directive on Assignment of Defence Counsel*, U.N. Doc. IT/73/Rev.1 (1994), reprinted in 33 I.L.M. 1581 (1994). For the texts of the initial indictments, see 34 I.L.M. 997 and 1013 (1995).

24. See *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, 1993 I.C.J. 3, and *id.* at 325, both of which requests were principally designed to cause the Court to recommend a termination of the arms embargo against Bosnia and the latter also to invite the Court to intervene in the then ongoing political negotiations concerning the future structure of Bosnia and Herzegovina.

about 33%, and the Bosnian Croats, with about 16%. Strictly speaking, these three groups are all ethnically "Southern Slavs," speaking practically the same language although the Muslims and the Croats write using the Roman alphabet while the Serbs use the Cyrillic one. The most notable difference is the groups' religions: Muslims belong to Islam, Serbs are largely Orthodox, and Croats are usually Roman Catholic. However, it would not be right to characterize this as a religious war, for while some of the initial atrocities involved abuses of religious symbols, none of the respective peoples are religious fanatics, and the fears and hatreds that fuel their struggle are of a nationalist rather than a religious nature.

The difficulty is that these three "peoples" do not live in neatly separated areas, which at least in principle would permit Swiss-type cantonization. Rather, the populations are largely inter-mingled, and though there are areas of heavier concentration of one group or another, these concentrations are rarely clearly marked and are even more rarely geographically extensive or coherent. An *opstina* (county) that is recorded as having an over-all majority of Muslims may, on closer examination, consist of a town that is heavily Muslim but is surrounded by villages that occupy most of the *opstina's* area and that are almost purely Serb or Croat. Only in some of the larger towns, principally in Sarajevo, has there been a real intermingling of peoples, characterized by many intermarriages and other blurring of ethnic distinctions.

As a consequence, it is not feasible to characterize any large, coherent areas as clearly belonging to one group or the other. It is in recognition of this circumstance that all the groups, but most especially the Serbs, have engaged in "ethnic cleansing," i.e., the creation of artificially homogeneous areas by often brutally forcing the members of other groups to leave and by destroying any cultural/religious buildings and symbols they are forced to leave behind.

If these peoples cannot be separated, can they not live together? After all, they did so for hundreds of years, with relatively few outbreaks of major hostilities. The apparent answer is that these peoples can indeed live together, if compelled to do so. For centuries that compulsion was external, imposed by the Ottoman and Habsburg Empires, which did not tolerate internal ethnic or other conflicts. After World War I it was the absolutist Serb monarchy, and after World War II the government of Tito and his quasi-Communist party, that instilled order. Only after he died in 1980 and thereafter the latter dissolved in the wake of its Soviet model, did relative freedom come, including the freedom to indulge in increasingly violent ethnic conflicts until the state itself—first the SFRY and then Bosnia and Herzegovina—was destroyed.

The question then became whether the world, or at least the European community, was prepared to assume the role of the former empires and impose order on Bosnia. Initially the answer appeared yes, or at least maybe. The Vance/Owen Plan<sup>25</sup> was to a considerable extent premised

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25. See *infra* note 37 and accompanying text.



on the assumption that at least for a transitional period of perhaps five years there would be a sufficiently massive foreign military presence to enable the restoration of a reasonably integrated state and the reversal of ethnic cleansing, involving the return of refugees and displaced persons to the homes from which they had recently been expelled.<sup>26</sup> However, the material and human costs and dangers of such an enterprise, combined with the disaster in Somalia and other external political factors, made this solution increasingly improbable after the spring of 1993.

By the time it was realized that the world would not actually force the Bosnians to live together, the international community had already committed itself to preserving Bosnia and Herzegovina as an integral state within the boundaries that it had had as part of the SFRY.<sup>27</sup> This solution, understandably desired by the Muslims in light of their considerable plurality and expected future majority due to their higher birthrate, is for the same reasons quite unacceptable to the Serbs and even to the Croats. To these substantive conditions the world community has, mostly at the initiative of the United States, implicitly added the procedural condition that all the parties must freely agree to the final arrangement, as no force is to be used to impose it. Although an apparently logical requirement, the condition nevertheless has the effect of minimizing the likelihood of reaching peace, at least in the near future and on the terms that the world community has declared to be indispensable.

## 2. *Successive Attempts at Resolution*

The first attempts to resolve some of the issues relating to Bosnia and Herzegovina, then still a part of the already diminished SFRY, were by the Arbitration Commission of the Carrington Conference.<sup>28</sup> In three successive Advisory Opinions it held: (1) that though the Bosnian Serbs had a right to self-determination, this did not imply the right to separate themselves from any future state;<sup>29</sup> (2) that the internal boundaries of the Republics within the former SFRY had, on the dissolution of that state, become international boundaries due the respect such borders are accorded under international law;<sup>30</sup> and (3) that the future Republic of Bosnia and Herzegovina, though it had by December 1991 not yet formally decided on independence, would be a state worthy of recognition by

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26. At the time, discussions were taking place concerning an expanded UNPROFOR of 70-100,000 troops with a large police component.

27. See, e.g., S.C. Res. 770, U.N. SCOR, 47th Sess., 3106th mtg., U.N. Doc. S/RES/770 (1992); London Conference, Statement on Bosnia ¶ 2(b), Conf. Doc. LC/C5, August 27, 1992, reprinted in 31 I.L.M. 1537 (1992); G.A. Res. 121, U.N. GAOR, 47th Sess., Agenda Item 143 ¶¶ 1, 7(b), U.N. Doc. A/RES/47/121 (1992).

28. The Arbitration Commission is briefly described by Maurizio Ragazzi in an Introductory Note in 31 I.L.M. 1488 (1992), and its first 10 opinions are reproduced *id.* at 1494-1526. Documents relating to later developments concerning the Arbitration Commission and its opinions 11-15 are reproduced in 32 I.L.M. 1586-1598 (1993).

29. Carrington Conference, Arbitration Commission Opinion No. 2, Jan. 11, 1992, reprinted in 31 I.L.M. 1497 (1992).

30. Carrington Conference, Arbitration Commission Opinion No. 3, Jan. 11, 1992, reprinted in 31 I.L.M. 1499 (1992).

the EC and its members once that decision had been made.<sup>31</sup> Unfortunately, to the extent that these opinions encouraged the Bosnian Government to seek early independence, that step provoked the disaster from which Bosnia-Herzegovina is still suffering and is unlikely to emerge soon.

Just before independence became irrevocable, the Carrington Conference initiated a "Round of Talks on Bosnian Constitutional Arrangements," chaired by Portuguese Ambassador José Cutileiro. The Talks culminated on March 18, 1992, in a Statement of Principles (supplemented on March 31 by some additional human rights provisions), according to which Bosnia would have been divided into three substantially autonomous and largely ethnically defined entities (whose precise borders remained to be defined), only loosely held together by a weak central government.<sup>32</sup> Though informally agreed to by the leaders of what were then technically the three political parties representing, respectively, the three major ethnic groups, these principles were almost immediately denounced.<sup>33</sup> Soon thereafter, independence was declared, international recognition was obtained followed soon by U.N. membership,<sup>34</sup> and the war started. The armed conflict enabled the better prepared and equipped Serbs, initially with the assistance of the Yugoslav Army, to occupy quickly almost all of the more than seventy percent of the country that they currently hold.

The Carrington Conference, having thus failed in its primary task of holding Yugoslavia together, and having been equally unsuccessful with respect to Bosnia and Herzegovina, quietly folded during the summer of 1992. The brief UN/EC co-sponsored London Conference of August 26 and 27 *inter alia* issued a "Statement on Bosnia," which affirmed the international community's dedication to the territorial integrity of that state<sup>35</sup> without offering more than pious platitudes as to how to achieve and maintain it. The London Conference also established the International Conference on the Former Yugoslavia, with a Bosnia-Herzegovina Working Group tasked with promoting a cessation of hostilities and a constitutional settlement in Bosnia-Herzegovina.<sup>36</sup> The Co-Chairmen of the ICFY Steering Committee were Cyrus Vance (former U.S. Secretary of State, continuing in his role as the U.N. Secretary-General's Special Representative for Yugoslavia) and Lord David Owen (former British Foreign Secretary, in effect taking the place of Lord Carrington and thus representing the EC Foreign Ministers).

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31. Carrington Conference, Arbitration Commission Opinion No. 4, Jan. 11, 1992, reprinted in 31 I.L.M. 1501 (1992).

32. The three-page Statement of Principles agreed to on March 18, 1992, in Sarajevo, and a supplemental page on human rights agreed to on March 31, 1992, in Brussels have not been published.

33. U.N. SCOR ¶ 30, U.N. Doc. S/24795 (1992).

34. G.A. Res. 237, U.N. GAOR, 47th Sess., Agenda Item 20, U.N. Doc. A/RES/47/237 (1992).

35. See *supra* note 27.

36. London Conference, Work Programme of the Conference ¶ 4(a), Conf. Doc. LC/C4, Aug. 27, 1992, reprinted in 31 I.L.M. 1534 (1992).

After extensive consultations with the parties throughout the fall of 1992 and the winter of 1992-93, the Vance-Owen Plan (VOP) evolved, essentially consisting of four instruments that together constituted a package. The first was an "Agreement Relating to Bosnia and Herzegovina" that set out nine principles for a "Constitutional Framework for Bosnia and Herzegovina," under which the country would be a decentralized state divided into ten provinces, three each with a predominantly (but not exclusively) Muslim, Serb or Croat ethnic character, plus the mixed capital district of Sarajevo. The provinces would have responsibility for all governmental functions directly affecting citizens, while a relatively weak but functional central government would be charged with essential common tasks. The second instrument was a map setting out the borders of the ten provinces. The third was an "Agreement for Peace in Bosnia and Herzegovina" specifying detailed arrangements for a cessation of hostilities and withdrawal of forces under UNPROFOR supervision. Finally, the package included an "Agreement on interim measures."<sup>37</sup> While the Bosnian Croats immediately signed on to all elements of this Plan, the Muslims followed suit only later, and then reluctantly. When the Bosnian Serbs finally signed the Plan on May 2, 1993, they did so conditioned on ratification by their Assembly; that body quickly rejected the agreement, a decision rapidly confirmed by a referendum.

Following the demise of the VOP, the Serbian and Croatian governments briefly attempted, in effect, to carve up the bulk of the country between themselves or their local surrogates. Soon, however, negotiations under ICFY auspices resumed, under the leadership of Thorvald Stoltenberg, former Norwegian Foreign Minister who replaced Vance, and Lord Owen. These negotiations culminated in the "Invincible Plan," so named for the British carrier aboard which the final details were settled on September 20, 1993.<sup>38</sup> Conceptually close to the Cutileiro Principles, the Plan called for three ethnic Republics that would hold most of the governmental powers, leaving little more than foreign relations and the protection of human rights to a marginally functional Union government. Unlike the earlier Principles, the new Plan not only clearly specified the borders between the Republics but also made a number of elaborate geographic arrangements. It allowed access to the Adriatic Sea, in part through Croatia, and connected portions of various Republics that were

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37. The first version of the Vance-Owen Plan was presented to the parties on January 2, 1993 and did not yet include any provisions on interim measures; the texts are reproduced in U.N. SCOR, Annexes 5-8, U.N. Doc. S/25050, (1993). The final version appears in U.N. SCOR, Annexes 1-4, U.N. Doc. S/25479, (1993). The "Constitutional Principles" were abstracted from a more detailed paper that had been presented to the parties at the end of October 1992, U.N. SCOR, Annex 7, U.N. Doc. S/24795, (1992), which might be considered the precursor to the Vance-Owen Plan.

38. The definitive and complete "Invincible Plan" does not appear in any published document, but most of its elements were reproduced in an Addendum to *Letter Dated 20 August 1993 From the Secretary-General Addressed to the President of the Security Council*, U.N. SCOR, U.N. Doc. S/26337/Add.1 (1993). A later addition appears in *Letter Dated 23 September 1993 From the Secretary-General Addressed to the President of the Security Council*, U.N. SCOR, Annex, U.N. Doc. S/26486 (1993).

separated by strips of land belonging to other Republics. This Plan failed because the 30% territory allocated to the Muslims, less generous than under the VOP map, was not acceptable to them.

The European Union, which came into being shortly thereafter by the ratification of the Maastricht Treaty, tried to revive the Invincible Plan. In return for a promised easing of sanctions, the EU pressed the Serbs to offer 33 1/3% of the country's territory to the Muslims. However, by mid-January 1994 these negotiations broke down.

During the resulting hiatus in negotiations, a shell that killed sixty-eight civilians in a Sarajevo market hall triggered a brief burst of NATO activity in February 1994. Thereupon, the United States convened a meeting including the Bosnian Muslim leadership (who now identified themselves as "Bosniacs" to emphasize that theirs was not intended to be a merely ethnic grouping), the Bosnian Croat leadership, and representatives of the Republic of Croatia. This meeting took up a suggestion that Croatian President Franjo Tudjman had made in early January, that the Bosnian Muslims and Croats form a Federation, which would in turn establish a Confederation with Croatia. A set of preliminary agreements was negotiated in a few days and signed in Washington on March 1, 1994.<sup>39</sup> Negotiations then resumed in the U.S. Embassy in Vienna, and by March 18 the parties signed, at the White House, a Proposed Constitution of the Federation of Bosnia and Herzegovina, as well as a Preliminary Agreement between the Federation and the Republic of Croatia Concerning the Establishment of a Confederation.<sup>40</sup> The Federation Constitution in effect constitutes a reversion to the constitutional principles of the VOP, but applies to only two rather than to three ethnic groups. It divides into eight cantons (four Bosniac, two Croat, and two mixed) the parts of Bosnia and Herzegovina that, prior to the war, had possessed either a Muslim or a Croat majority.<sup>41</sup> The Constitution also assigns most governmental powers to the lowest feasible level (municipal, cantonal or federal) so that, as far as possible, citizens will mainly have to deal with authorities of their own ethnicity. It requires democratic governance at all levels and contains elaborate provisions for preventing the Bosniac majority from dominating the Croat minority, while also reserving some influence for

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39. These texts are annexed to a *Letter Dated 3 March 1994 From the Permanent Representatives of Bosnia and Herzegovina and Croatia to the United Nations Addressed to the Secretary-General*, U.N. SCOR, U.N. Doc. S/1994/255 (1994).

40. The Proposed Constitution of the Federation of Bosnia and Herzegovina, *reprinted in* 33 I.L.M. 743 (1994); Preliminary Agreement Concerning the Establishment of a Confederation Between the Federation of Bosnia and Herzegovina and the Republic of Croatia, *id.* at 611.

41. A separate agreement between the Bosnian Muslim and Croat parties, reached in Vienna on May 11, 1994, established the boundaries of the cantons; it is reproduced in 33 I.L.M. 783-84 (1994). These boundaries define a territory for the Federation covering about 58% of the total area of Bosnia and Herzegovina, which considerably exceeds the 51% that would be allocated to the Federation by the Contact Group Plan (see the following paragraph of the text). On July 20, 1994, the Federation accepted the Plan but the Bosnian Serbs did not. As of the writing of this article, the Federation actually controls about 28% of Bosnia and Herzegovina.

"others." On March 30, 1994, a Constituent Assembly adopted and thereby put into force the Constitution, subsequently amending it once.<sup>42</sup> Though speedily formulated and adopted, its actual implementation has been slow, and only now, in early 1995, have serious efforts been undertaken under American and German auspices to make the Federation a reality. Meanwhile, the plan for the Confederation has been put aside, apparently by mutual agreement.

Establishing the Bosniac/Croat Federation left two significant problems to be settled with the Bosnian Serbs. The first was how to geographically divide the territory of Bosnia and Herzegovina between the Federation and the Serb entity, which calls itself the Republica Srpska. Second, legal relations between the two entities had to be defined. To assist in resolving these problems, the U.S., Russian, British, French and German governments formed a five-nation Contact Group in May 1994. The Group, after consulting separately with each party, initially elaborated a map dividing the country by allocating fifty-one percent to the Federation and forty-nine percent to the Republica Srpska. It presented the map to the representatives of the parties on July 6, 1994, receiving two weeks later an acceptance from the Federation authorities and, in effect, a rejection from the Serbs, who insisted that they would first need to negotiate both some changes in the proposed map (not necessarily in the proportions but rather in the location of some strategic lines) and the nature of the relations between the parties. As to these relations, the Contact Group had not prepared any official proposals, but it informally indicated that it was considering an extremely loose Union between the constituent entities, with at best minimal powers vested in a very weak central government. Nevertheless, it was clear that the Serbs thought this suggestion foresaw too much of a constitutional structure, while the Federation authorities considered it far too insubstantial. Since that time, there have been no substantive negotiations. The Contact Group has, so far unsuccessfully, attempted to establish some basis for further talks, taking into account various outside factors such as Security Council decisions and ex-President Carter's efforts.

### *3. Available Inducements to Influence the Parties*

In view of the continuing attempts by each of the Bosnian parties to achieve military success and their general lack of faith, and consequently of interest, in constructive negotiations, the question is what methods the world community has available to it to terminate the conflict.

First, the possibility of using military force to induce a peaceful solution looks bleak. UNPROFOR, initially established as a conventional "Blue Helmet" operation, was intended to operate only with the consent of all affected parties. In spite of its later nominal conversion into a Chap-

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42. Special Regime for [Middle Bosnia] and [Neretva] Cantons, *reprinted in* 33 I.L.M. 781 (1994).

ter VII operation<sup>43</sup> that in principle can overcome resistance by force, the international community has never given UNPROFOR either the numerical strength or the military equipment to impose itself on all or even any of the parties. Therefore it continues with its predominantly humanitarian mandates, although the increasing violence of all the parties makes it doubtful that UNPROFOR can continue to carry out even those tasks. At the present time, the world community does not have the political will either to strengthen that Force or to induce NATO or the WEU to introduce sufficient troops to achieve any political end other than perhaps the safe extraction of UNPROFOR, should that become necessary.

The second inducement involves the military embargo still being imposed on all of former Yugoslavia, including Bosnia and Herzegovina. Three legal arguments have been made against the embargo's continued application to the latter: that it is contrary to the intent of the original resolution, which was adopted before Bosnia-Herzegovina was a recognized independent state; that it violates Bosnia's "inherent right of individual and collective self-defence" recognized by Article 51 of the U.N. Charter; and that it prevents Bosnia-Herzegovina from resisting genocide, a task in which it should be assisted by all states that are parties to the Genocide Convention.<sup>44</sup>

Beyond the legal arguments, from a practical point of view, merely lifting the legal embargo may not produce any immediate effect. The FRY and the Republic of Croatia, which completely surround Bosnia-Herzegovina, must consent or at least tacitly cooperate for any military support to reach the Muslims or the Federation. Finally, from a political point of view, there is the possibility that the British and French, as well as other troop contributors to UNPROFOR, will effectively terminate the operation by withdrawing from it if fighting in Bosnia should increase as a result of the introduction of further arms into that territory. The Russians have also hinted that if the United States unilaterally lifts the embargo on Bosnia, they might then have to lift the corresponding embargo on the FRY. All of these considerations limit the possibility of rewarding the Muslims or punishing the Serbs by lifting the arms embargo on Bosnia.

The third inducement to a peaceful solution involves manipulating the economic sanctions imposed on the FRY in connection with its initial support for the Bosnian Serb military actions. In principle, that embargo could be strengthened if the FRY fails to cooperate with attempts to bring peace to Bosnia. In practice, however, in light of the extensive boundaries

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43. See S.C. Res. 807, U.N. SCOR, 48th Sess, 3174th mtg. at 1-2, U.N. Doc. S/RES/807 (1993). This designation of UNPROFOR as a Chapter VII operation was maintained in subsequent resolutions, such as S.C. Res. 815, U.N. SCOR, 48th Sess, 3189th mtg., U.N. Doc. S/RES/815 (1993) and S.C. Res. 847, U.N. SCOR, 48th Sess, 3248th mtg., U.N. Doc.S/RES/847 (1993).

44. By Article I of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, "the Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law *which they undertake to prevent and punish.*" 9 December 1948, Art. I, 78 U.N.T.S. 280 and 45 Am. J. INT'L L. SUPP. 7 (emphasis added).

that the FRY shares with numerous states with which it is politically friendly or which it is able to influence, strengthening the sanctions would be difficult. On the other hand, the promise of easing sanctions could induce the FRY to help resolve the Bosnian conflict. Indeed, there has already been some provisional easing of strict prohibitions of cultural ties and flights, in return for which President Milosevic has closed the borders with the Serb-occupied parts of Bosnia and even permitted limited monitoring of the closure.<sup>45</sup> Current negotiations on the conditions for further relaxing sanctions are premised on specific acts by the FRY, such as the formal recognition of the Republic of Bosnia and Herzegovina within its internationally recognized borders.

Finally, inducements can be extended to all parties, including the Federation, the Republica Srpska, and the FRY, in the form of promises of positive assistance and cooperation. Such promises could include financial aid for reconstruction and admission to or cooperative arrangements with various world-wide and European institutions, such as the United Nations and its specialized agencies,<sup>46</sup> the EU, OSCE, the Council of Europe, and others. Although, in principle, these promises are of interest to the parties, their effective remoteness seems for the present insufficient to stop the struggles that each of them conceives as a question of survival and existence—if not necessarily of the country or of their ethnic group, then in any event of the leaders who would have to sign the necessary agreements, and in so signing risk their political future, if not their very lives.

## Conclusion

The prospect for a peaceful solution of the bloody struggles in Bosnia and Herzegovina is not at all hopeful. If nothing changes, and in particular if the international community declines to become more forcefully involved, the current warfare may conceivably continue at a modest level for

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45. S.C. Res 943, *supra* note 12.

46. Currently the membership of the Federal Republic of Yugoslavia in the United Nations is in limbo, as it has been decided that the FRY can not automatically continue the former membership of the SFRY and should therefore apply for membership. *See* S.C. Res. 777, U.N. SCOR, 47th Sess., 3116th mtg., U.N. Doc. S/RES/777 (1992) and U.N. GAOR, 47th Sess., 7th plen. mtg., Agenda Item 8, U.N. Doc. A/RES/47/1 (1992). This membership is unlikely to be granted, considering the current unpopularity of the FRY with several permanent members of the Security Council and with a great majority of the members of the General Assembly; however, the only immediate consequence that the Council and the Assembly decreed would follow from that situation is that the FRY may not participate in the General Assembly and in ECOSOC. *See* Section III, "The Exclusion of the 'New Yugoslavia'" in Michael P. Scharf, *Musical Chairs: The Dissolution of States and Membership in the United Nations*, 28 CORNELL INT'L L.J. 29 (1995). Similarly, the FRY has been excluded from participation in most other world-wide and European organizations. Though the other SFRY successor states have achieved membership in the United Nations and many other organizations, membership in the Council of Europe and negotiation towards membership in or cooperation with the European Union requires settlement of the current conflicts in which most of them are embroiled.

decades. Of course, any great intensification of the warfare, especially in the form of an extension to neighboring countries such as Macedonia or Albania, or even a dramatic massacre, could force the European or world powers to take decisive action.

Meanwhile, the question of the continued humanitarian activities of the United Nations remains in the balance. They have undoubtedly succeeded to this point, despite dire predictions, obstacles, and humiliations. Large scale starvation has been prevented, and at least the minimum necessary medical and other aid has almost always gotten through. Whether it will be possible and necessary to maintain these international activities in the future, taking into account the shifting military situation in Bosnia, is another question.



