

**NOTE: Causes, Consequences, and the International Impact of the War in the
Former Yugoslavia**

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I. Introduction

[1] Wars have plagued the Earth since the beginning of time in all parts of the world. The reasons for these wars have varied innumerable from territorial expansion to sure and simple hatred of peoples of different lands. These wars, however, do have one quality in common. Each war carries with it a lesson for the future and a key for the advancement of peace and prosperity. Lessons are not simple, nor on their face easy to ascertain. On the contrary, they are intricately complex and many times never discovered. For this reason, it is pertinent to analyze and make known exactly why particular wars occur and how to prevent similar ones from occurring in the future.

[2] One of the most recent wars of the century took place in the former Yugoslavia and led to its destruction.¹ This war began in the beginning of the 1990s and led to a terrible series of events that matched the atrocities of World War II in their severity and application.² This note proposes that the situation in the former Yugoslavia was the result of deep ethnic and religious hatred between differing groups and of the desire of those in power to expand territorially. This conflict spread from Slovenia through Croatia and into Bosnia-Herzegovina.³ Crimes of ethnic cleansing, massacres, mass

¹ CHRISTOPHER BENNETT, YUGOSLAVIA'S BLOODY COLLAPSE vii-viii (1995).

² *Id.* at 97.

³ *Id.* at 2-3.

rapes, and cultural vandalism spread, along with the conflict, like a virus.⁴ Unlike many wars, the victims of this conflict were not of one ethnicity or religion, but were Muslim, Christian, Jewish, adult, and child. In addition, there was also wide spread destruction of classical Roman ruin, Orthodox Christian monasteries, and one of the greatest array of mosques in the world. These mosques were located in cities such as Banja Luka, Bijeljina, and Visgrad. As a result, thousands of refugees clogged the roads of Croatia, Serbia, and Bosnia spilling into Slovenia, Hungary, Germany, Austria, and Italy.

[3] This note will provide a view of the events that led to the nightmare in Yugoslavia, unravel the complexities of the crisis, and show the consequences. Next, I will analyze the cause of the conflict, followed by a discussion of the role of international law. Part V will discuss why the U.N. failed in the former Yugoslavia and I will discuss the Muslim perception of this failure in part VI. I will then compare this conflict to past conflicts to offer a better understanding of the causes. Part IX will present what I believe would have been a more effective means of stopping the genocide in the former Yugoslavia. And Finally, I will offer suggestions as to how the international community can better deal with future similar conflicts by examining the inadequacies of the peacekeeping process attempted in this instance.

II. Brief History of Yugoslavia

A. Actual Events of the War

[4] A brief history of the former Yugoslavia provides a significant backdrop to the events leading up to the war of the 1900s. After World War II, Yugoslavia emerged with

⁴ *Id.* at 3.

six Slavic states.⁵ These states were comprised of Slovenians, Croats, Serbs, Montenegrins, Macedonians, and Muslims.⁶ The latter three were considered Serbs. There were also two Slavic minorities present in Yugoslavia.⁷ Although these groups shared the same territory, there were distinct differences between them that extended back for centuries.⁸ These differences were rooted in deep distrust among different ethnic groups and were compounded by the jealousy between the elites and the paupers.⁹ In addition to the basic monetary and class deviations, there were also religious differences. These differences were primarily among those who were Muslim, those who were Orthodox, and those who were Catholic.¹⁰

[5] Orthodox Serbs were perceived as Schismatics by the Catholic church.¹¹

Catholic Serbs considered themselves to be more culturally advanced than the Krajic and Turkish Serbs who lacked advancement in subjects such as philosophy, science, and poetry.¹² Other differences existed as well. Central Serbia was largely uncultivated

⁵ ALEX N. DRAGNICH, *SERBS AND CROATS* 121 (1992).

⁶ Jasminka Udovicki, *The Rise and Fall of the Balkan Idea, in YUGOSLAVIA'S ETHNIC NIGHTMARE* 17 (Jasminka Udovicki & James Ridgeway eds., 1995).

⁷ *Id.*

⁸ *Id.* at 20.

⁹ *Id.* Serbs were often oppressed by Croatian elites and were prohibited from purchasing property and were also unable to reside in the towns. *Id.* They were viewed as mere peasants and enjoyed little if any respect. *Id.* at 20-21.

¹⁰ *Id.*

¹¹ *Id.* at 20.

¹² *Id.* at 21. Croatian priests in the Ottoman Bosnia demonstrated great skills in the areas of philosophy, science, and poetry. In addition to being advanced in these areas, the

consisting mostly of wilderness with few roads. The Croats believed that everything that was located east of the Drine River was poor, corrupted, and primitive. In turn, the Serbs resented those of their Croat neighbors who enjoyed a higher standard of living.¹³

[6] “These attitudes had profound effects on the historic relations between the Croats and the Serbs,” and as a result, the level of militancy increased on the part of the Serbs.¹⁴

The Serbians east of the Drine wished to be reunited with their countrymen in Serbia.

Slobadon Milosevic manipulated these sentiments to entice the public to follow and support him in 1990.¹⁵

[7] Another fissure dates back as far as the 1100s between the Croats and the Serbs in Bosnia-Herzegovina. The population in Bosnia consisted of both Croats and Serbs and major religious differences existed among the two groups. The Bosnian church was viewed by other religions, especially the Catholic Croats or Orthodox Serbs, as semi-pagan and naturistic.¹⁶

Croations had a higher rate of literacy than Serbians. Other differences include a lower birth rate in Croatia and less disease and illness overall. *Id.*

¹³ *Id.*

¹⁴ *Id.* at 21-22.

¹⁵ *Id.* Slobadon Milosevic who united the Serbs under his power in the 1990s knew how the Serbs felt toward their neighbors and fed off their animosity. He used these ideas and claimed that he could fulfill their dream to unite in a manner that would finally give the Serbs the autonomy from the other groups and religions that they long desired. *Id.* at 22. Slobadon Milosevic was a dissident Marxist and Communism became the ideologue of the Milosevic Serbian Social Party. TIM JUDAH, *THE SERBS, HISTORY, MYTH AND THE DESTRUCTION OF YUGOSLAVIA* 5 (1999).

¹⁶ Udovicki, *supra* note 6, at 22.

[8] In the late fifteenth century, however, Bosnia underwent a major religious transition when thousands of Bosnians converted to Islam.¹⁷ Orthodox Serbs and Catholics reacted with contention toward their newly converted neighbors.¹⁸ The converts benefited from many different “social advantages and rewards” by converting to Islam.¹⁹ As others realized the benefits of converting and grew tired of being considered a lower status in society, many more decided to convert. As a result, a “Muslim dominated social hierarchy” was established in which the upper levels of the land owning classes were predominately Muslim.²⁰ For these reasons, the Serbs, Jews, and many peasants revolted against the Ottoman Empire.²¹ Uprisings began in 1804 and by 1830 Serbia had been

¹⁷ *Id.* at 23.

¹⁸ The majority of the converts to Islam were Albanians. The Bosnians, another large group, also decided to convert in order to better their social position. JUDAH, *supra* note 15, at 81.

¹⁹ Udovicki, *supra* note 6, at 23. Among these social benefits and rewards were tax breaks for those who agreed to convert to Islam, unlike their Christian and Jewish neighbors who were taxed heavily in comparison. *Id.* The new converts were also employed in higher positions than those of other religions were. *Id.*

²⁰ *Id.* Many in Bosnia experienced this Muslim oppression. Christian peasants expressed feelings of suppression and bitterness. This sentiment among the lower classes continued through the eighteenth and nineteenth centuries. *Id.*

²¹ *Id.* at 23-24. The Ottoman Empire, beginning in 1453 and which lasted for over three hundred years, began as Turkish dominated, and at its greatest power under the rule of Suleman the Magnificent, in the sixteenth century was a huge Muslim empire expanding through western and eastern Europe. The empire conquered Bosnia in 1463 and Herzegovina in 1482. PAUL COLES, INTRODUCTION TO THE OTTOMAN IMPACT ON EUROPE 110 (1968). The empire then took over Montenegro in 1496 for a short time, *id.* at 112, and threatened Croatia and Slovenia in 1535, *id.* at 120.

The Ottoman Empire was structured around the Sultan and was governed by the law of Islam. The Islamic civilization offered no distinction between the law giving and the priestly ecclesiastic functions. “Muslim law... takes all duty for its portion and defines all action in terms of duty.” *Id.* at 36 (quoting D.B. Macdonald). Muslim tradition taught that there must be an unquestionable submission to the Sultan. *Id.* at 39.

granted considerable liberty and autonomy. This autonomy was still subject to Russian oversight and in return Russia offered Serbia a measure of protection.²¹ Later in 1876, Turkey was at war with Russia and was defeated by the Russians in 1878. The result of this battle was freedom for Bulgaria, but much of Macedonia and Serbia were seized.

[9] Otto Von Bismark, the German Chancellor, “granted Serbia and Montenegro full independence but allowed Austria-Hungry, not Serbia, to gain control over Bosnia.”²²

The Serbians in Bosnia were disappointed by giving Austria-Hungary control and destroying the united Serbian dream. This dispute over territory led to fighting in the early 1900s when Serbia was devastated and one half of its population was lost. Fighting ignited again between the Serbs and Croats during World War II as a result of Nazi racial radicalism. This fighting led to the genocide of Serbs in Croatia for no other reason but for their ethnicity and religion.²³ The Serbs were infuriated.

[10] In the midst of the Croatian-Serbian conflict, an Albanian-Serbian conflict existed as well. The Serbians wanted independence from the Albanians just as they did from the Croats. Thus in the early 1900s, Serbs ordered the looting and massacres of Albanians in order to liberate themselves from Albanian control. The Serbs considered this to be a

The condition of the conquered people throughout the Balkans varied considerably. Christians were taxed more heavily than the Muslims located in the same areas. “Islamization proceeded through the Balkans, where the process of the conversion seems to have been linked much more closely to considerations of private social or economic advantage” than it was linked to certain beliefs. *Id.* at 116. There was a fundamental lack of contact and sympathy between the groups and that left non-Muslims oppressed and frustrated. *Id.*

²¹ UDOVICKI, *supra* note 6, at 24.

²² *Id.* at 25.

²³ *Id.* at 26-28. Slobadon Milosevic also used the memory of the atrocities that were inflicted upon the Serbs to unite and inspire the Serbs in the early 1990s. *Id.* at 27.

Christian birthright.²⁴ The Albanians retaliated resulting in the third Balkan War, which began in 1913 and continued with the exception of a small period of peace through World War II.²⁵

[11] Between the years of 1929 through 1941, there was a monarchy in Yugoslavia.²⁶ This monarchy could not withstand the aggressive posture of the Axis powers and collapsed under its weight.²⁷ Italy then conquered Albania and unified Kosovo and western Macedonia by using Albania force.²⁸ There were mixed sentiments of this Italian control.

[12] Similar hostilities existed in Macedonia. Serbians in the early 1900s declared Macedonia to be Southern Serbia while at the same time, Bulgarians claimed that it was West Bulgaria.²⁹ Then in 1941, Nazis conquered Yugoslavia; however a faction of Serbian forces remained loyal to Josip Broz Tito and General Mihailovic.³⁰ Tito then rid

²⁴ *Id.* at 29. Thousands of Albanians fled to Turkey to escape persecution. *Id.*

²⁵ *Id.* at 29-31.

²⁶ *Id.* at 30.

²⁷ BENNETT, *supra* note 1, at 49.

²⁸ UDOVICKI, *supra* note 6, at 30. Albania was content under Italian control because Italy offered benefits otherwise unknown to Albanians in Yugoslavia, such as education that had been forbidden in the past. Italy also permitted the use of the Albanian flag. In addition, Italy showed preference toward Albanians over the Serbs and Montenegrin civilians. Although this treatment was preferential to the Albanians, it only further divided and exacerbated the already existing tensions between the Albanians and Serbs. *Id.* at 30-31.

²⁹ *Id.* at 31.

³⁰ Mirko Tepavac, *Tito's Yugoslavia, in YUGOSLAVIA'S ETHNIC NIGHTMARE* 57 (Jasminka Udovicki & James Ridgeway eds., 1995). This faction fought for the rebirth of Yugoslavia and for the uniting of all Serbs throughout the nation under a purely

Yugoslavia from the Nazi occupiers and Yugoslavia became a federation of the six republics with two autonomous provinces. Peace was finally restored under the rule of Tito and Yugoslavia enjoyed a period of peace.³¹

[13] Tito was a communist leader who fought for social equality and strongly opposed private capitalism. He enacted a constitution, a strongly centralized state, and reduced private enterprise and property to a minimum. Tito was largely supported in Yugoslavia and abroad.³²

[14] In 1974, the autonomous provinces of Kosovo and Vojvodina became full republics and a new constitution was implemented. The federal authority transferred central power to the republics. Each republic then became a state, gaps widened between nations, and there was little if any centrality.³³ Each state became more and more independent. These republics fell into foreign debt in 1989, which resulted in the

Serbian rule that would represent their best interests. Tito desired a federal Yugoslavia with national equality and an all out war against fascism. *Id.* Tito also promoted higher education and allowed Yugoslavs to move abroad in search of work. BENNETT, *supra* note 1, at 68. The Allied powers supported Tito because he shared their distaste for fascism.

³¹ Tepavac, *supra* note 30, at 58. The six republics were Bosnia-Herzegovina, Slovenia, Croatia, Serbia, Montenegro, Macedonia; and the two provinces included Kosovo and Vojvodina. *Id.*

³² *Id.* at 60. Tito “learned... Marxism at the feet of Stalin and others [while living] in the Soviet Union.” DRAGNICH, *supra* note 5, at 117. As a practical dogmatist, Tito believed that class struggle defined the history of society and eliminating such struggle would change society into a stateless utopia. *Id.* at 117-18.

The West supported Tito despite his communist political views since he had demonstrated independence from Stalin. Tepavac, *supra* note 30, at 61. Both Stalin and Khrushchev, who came after Stalin, were insulted that Tito disassociated himself with the Soviet Union. Tito, however, was able to maintain civil relations with the Soviet Union despite the over-loomng Soviet threat that caused unease in Yugoslavia. *Id.* at 62..

³³ *Id.* at 66.

crumbling of the economic foundation of Yugoslavia. Tito's once prosperous nation became a mere memory of the past.³⁴ There was an eight member collective presidency, one for each republic. Each presidency, however, was weak and this very weakness intensified economic difficulties. In fact, the value of the Yugoslav currency became almost worthless.³⁵

[15] In the midst of political and economic challenges, religious and ethnic tensions heightened. Albanians in Kosovo wanted Kosovo to become an Albanian region, while Serbs and Montenegrins felt pressured to leave Kosovo through 1986. This pressure increased Serbian hostility and anxiety.³⁶

[16] In 1986, Slobadon Milosevic rose in power and became president of the League of Communists in Serbia.³⁷ Milosevic led a Serbian protest the next year at the Kosovo Polje again asserting the Serbian concerns and fear of oppression based on their ethnicity and religion. This protest, and the excitement of having a leader who could effectively

³⁴ *Id.* at 68. "In its seventy years of existence, Yugoslavia tried monarchy and communism, centralized and decentralized government, 'self-management' –everything except genuine democracy. And only as a genuine democracy could Yugoslavia have held together or, if proven a failure, have dissolved honorably." *Id.* at 70-71.

³⁵ Slavko Curuviga & Ivan Torov, *The March to War (1980-1990)*, in YUGOSLAVIA'S ETHNIC NIGHTMARE 73-74 (Jasminka Udovicki & James Ridgeway eds., 1995).

³⁶ *Id.* at 78. The authorities in Kosovo did not stop the Albanians from threatening the Serbs and ordering them to leave. The Serbs were infuriated and betrayed by this injustice. In 1986, the Serbs attempted to get the attention of the authorities and government by initiating a petition, which described their fear resulting from the Albanian threats. Two thousand Serbs signed this petition, however, nothing was done to quell the tension and offer the Serbs any sense of security. *Id.* at 79-80.

³⁷ *Id.* at 84. Milosevic became increasingly influential and widely supported by the Serbs. DRAGNICH, *supra* note 5, at 164. He prided himself on creating a united Serbia, Curvuiga & Torov, *supra* note 35, at 84, however, in other circles, he was considered the main culprit behind all conflicts, *id.* at 87.

fight their cause, united the Serbs throughout Yugoslavia. Because of this, most Serbs considered all non-Serbs the enemy.³⁸

[17] By 1987, protests emerged in Vojvodina and tension grew between the Serbs and the Croats. The first serious clashes occurred in March of 1989 and resulted in the death of sixty Albanians. Then in 1990, the Serbs disbanded the Kosovo Parliament.³⁹

[18] Meanwhile, surrounding states were also becoming concerned about the spread of religious and ethnic violence. For this reason, Croats in Croatia stayed neutral to avoid stirring Serb nationalism. However, the seeds of nationalism began to grow and the Serbs in Croatia began meeting.⁴⁰

[19] Newly formed parties in Croatia, Bosnia, and Slovenia took office following the 1990 elections. Franjo Tudjman led the HDZ party in Croatia.⁴¹ In retaliation, the Serbs formed the Serbian Democratic Party, which was led by Jovan Raskovic in Croatia.⁴²

³⁸ Curvuga & Torov, *supra* note 35, at 81-84.

³⁹ *Id.* at 89. These events resulted in the start of international recognition. The international community was becoming increasingly concerned about the possible violation of human rights and the West began to monitor the Serbs and Slobodan Milosevic more closely. *Id.*

⁴⁰ *Id.* at 90. On June 28, 1989, the Serbian Orthodox Church organized a meeting of Croatian Serbs. However, Croatian Serbs did not participate in this meeting alone. In fact, Serbs from surrounding states, including a large number of Serbs from Serbia, arrived by train with banners promoting the leadership of Milosevic and national symbols. *Id.* at 90-91.

⁴¹ *Id.* at 93-94. Tudjman was the founding father of HDZ, the Croatian Democratic Union. LAURA SILBER & ALLEN LITTLE, YUGOSLAVIA: DEATH OF A NATION 23 (1995).

⁴² SILBER & LITTLE, *supra* note 41, at 21. Jovan Raskovic was considered a moderate and was also the founder of the Serbian Democratic Party. *Id.*

Thus, the Serbs again felt as though they were suppressed by the Croats because of their Orthodox religion and ethnic origin.⁴³

[20] The tension did not give way in Yugoslavia, and in fighting began in August of when the Serbs seized weapons. President Borisaw Jovic sided with the Serbians and showed his full support for Slobadon Milosevic.⁴⁴ This widespread animosity led to the breakup of Yugoslavia. The first bullets were fired in Borovo Selo on May 2, 1991.⁴⁵ This occurrence officially marked the beginning of the war.⁴⁶

[21] In the spring of 1991, Milosevic and Trudjman met in an attempt to avoid war, however their efforts were unsuccessful.⁴⁷ In June 1991, Serbs attacked the town of Glina.⁴⁸ Looting occurred throughout the country, beginning with Croatian homes, and the Croats retaliated by doing the same to their Serbian neighbors.⁴⁹ The Serbs who refused to turn on their neighbors in support of the Serbian cause were killed due to the

⁴³ Familiar conflicts resurfaced in Croatia. It was feared that, similar to World War II, the Croats would exterminate one third of the Serbs in Croatia, expel another third, and convert the remaining Serbs to Catholicism. Curvuiga & Torov, *supra* note 35, at 96.

⁴⁴ *Id.* at 97.

⁴⁵ Ejub Stitkovac, *Croatia: The First War, in YUGOSLAVIA'S ETHNIC NIGHTMARE* 152 (Jasminka Udovicki & James Ridgeway eds., 1995).

⁴⁶ *Id.* at 153.

⁴⁷ *Id.* at 154.

⁴⁸ *Id.* at 157-58. Glina was also the same town where 800 Serbs were burned in an Orthodox Church for their religious preference during World War II. The interesting and equally ironic part was that these same Serbs and Croats had lived in peace for forty years after the occurrence of World War II despite the religious differences that had once driven them to murder. *Id.* at 157.

⁴⁹ *Id.* at 160.

Serb perception that those who did not join were traitorous.⁵⁰ Thousands of Serbs were subject to ethnic cleansing and reported by many witnesses to have acted with madness. Although the Serbs were not the only ones who acted with sheer violence and rage, it is interesting to note that the international community tended to portray the Serbs as the main aggressors and as the ones who needed to be quelled the most.⁵¹ The Serbs held one third of Croatia until it was later recaptured in 1995 by the Croats.⁵²

[22] While this war continued in Croatia, the war spread to Bosnia-Herzegovina. This state in particular harbored a thriving Serbian front and the almost universal sentiment for a Serbian state solely for the Serbians.⁵³ National fragmentation was the first step to tearing apart the state.⁵⁴

⁵⁰ *Id.* at 161. These killings not only terrified the Croats, but also terrified the Serbs who refused to harm their neighbors. Many joined Slobadon Milosevic to fight the Serbian cause out of fear of being murdered. *Id.* at 160.

⁵¹ *Id.* at 163. The response to the Croat massacres was equally violent. The Croats torched Serb towns and massacred thousands of Serbs out of revenge. *Id.*

⁵² JUDAH, *supra* note 15, at 181.

⁵³ Ejub Stitkovac & Jasminka Udovicki, *Bosnia and Hercegovina: The Second War, in YUGOSLAVIA'S ETHNIC NIGHTMARE* 167 (Jasminka Udovicki & James Ridgeway eds., 1995). Bosnia in 1990 was made up of 4.5 million people. Out of this 4.5 million people living in Bosnia-Herzegovina, 43.7 percent were Muslim, 31.4 percent were Serbian, 17.3 percent were Croatians, and the remaining 5.5 percent considered themselves Yugoslavs. *Id.* at 168.

⁵⁴ *Id.* at 169. The population in Bosnia, like Croatia, had lived together for decades since World War II despite their religious and ethnic differences. In fact, there were many intermarriages among the population. It was these intermarriages which made the war all the more tragic since many times families were split apart forever. It is also interesting to note that historically, Muslim, Catholic, and Orthodox houses of worship had even faced each other in the town squares of Bosnia. The Muslims in this area did not have the reputation of being particularly devoted compared to Muslims in other areas. Few Muslims in that area had ever “read the Koran, fasted for Ramadan, or made pilgrimage to Mecca.” *Id.* The Muslim services that were held, were observed primarily by the elderly. Therefore, in recent times, Islam was viewed more of a nationality than

[23] Ethnic and religious groups were deeply divided by October of 1991. Bosnian Serbs set up Serbian autonomous regions and organized army units in every Serb village and town in Bosnia under the advice of Slobadon Milosevic. Peace talks were then attempted in 1992 between Tudjman the Bosnian Serb leader Koljevic. These peace talks were in vain and violence erupted in Sarajevo.⁵⁵ Serbs drafted Serbs within the villages and then slaughtered Muslims throughout Bosnia.⁵⁶ There was an exodus of Muslims to neighboring countries as a result of the mass murders.⁵⁷ Serb extremists destroyed no less than 430 mosques between April and August of 1992. This was done to demonstrate their hatred of Muslims and to intimidate the remaining Muslims.⁵⁸ The Serbs had

simply a religion representing specific beliefs. However, many continued to refer to themselves as Muslim since being perceived as Muslim was a requirement for advancement in society. This had been true since the Ottoman Empire and continued to be the reason why so many Croat and Serbs continued to convert to Islam. *Id.* Thus, although there were times of peace, the past did little if anything to maintain peace in this war.

⁵⁵ *Id.* at 172-73. Some people were hesitant to fight their neighbors during this time and secretly hoped for peace, but many again agreed to fight out of fear of being labeled a traitor and punished. In fact, some went as far as wearing stockings over their faces to conceal their identity from their neighbors, partially out of shame and part out of fear of retaliation. *Id.* Facts such as these lead many scholars to believe that the reason so many participated in the violence was a domino effect of the ethnic and religious pressure on their own people.

⁵⁶ *Id.* at 181. Through this time Serbian television also aired pictures of murdered Serbians in an effort to enrage Serbs and ensure their continued support. Serbian leaders knew that viewing scenes of such atrocities committed on their own people would make the Serbian public less reluctant to force the Muslims out, and the Serbian leaders would be able to do so with little public sentiment of guilt or regret. This tactic proved very successful for the Serb leaders. Angry Serbs reacted by murdering Muslims and Croats in mass numbers. *Id.* at 181-82. The media offensive of Milosevic was extremely similar to the propaganda campaign of Nazi Germany in the 1930s. The united Serbia theme was also very common to the united Aryan race theme. BENNETT, *supra* note 1, at 250.

⁵⁷ Stitkovak & Udovicki, *supra* note 53, at 182-83.

⁵⁸ *Id.* at 184.

almost entirely rid Bosnia of non-Serbs by this point in time and the United Nations did little to help.⁵⁹ The remaining Muslims did retaliate by raiding Serb villages in search of food and murdered Serbs in the process.⁶⁰

[24] Refugees also spilled into Croatia from Bosnia driven from their homes based on their nationality and religion. “They were not the tragic by-product of a civil war; their expulsion was the whole point of the war.”⁶¹ Those that did not leave were subjected to further ethnic cleansing.⁶²

⁵⁹ *Id.* at 187.

⁶⁰ JUDAH, *supra* note 15, at 74. “The burning of villages and the exodus of the defeated population is a normal and a traditional incident of all Balkan wars and insurrections.” *Id.* (Internal quotes omitted.) The Serbs performed similar acts on the Turks and Muslims back in the 1800s when seeking Serbian autonomy and territory. *Id.* at 75.

⁶¹ SILBER & LITTLE, *supra* note 41, at 244-45.

⁶² *Id.* Most of the men were separated from the women and children, most of whom were killed and some were never found. The systematic elimination of community leaders, prominent people, intellectuals, and the wealthy was a ordinary characteristic of the cleansing. Ethnic cleansing instilled humiliation, terror, and mental cruelty among the victims. Women were raped, children were killed, and captured Muslims were even forced to perform atrocities against each other. These atrocities were both physical and many times sexual. “They were forced to dig mass graves and collect and bury the bodies of their families and neighbors.” *Id.* at 245. Through these actions the aggressors hoped to leave the territory ethnically pure, and ensured that Muslims and Serbs would never live together again. General Kardzic, who worked under Milosevic was particularly brutal in carrying out the ethnic cleansing. Mass detention camps were also set up similar to those that were utilized in World War II to exterminate the Jews. *Id.* at 244-46. There were extreme similarities between the way Milosevic sought to manipulate the Serbs and tactics that Hitler had employed on the German minorities. BENNETT, *supra* note 1, at 116. In the same manner that Nazi Germany alleged that the German minorities were being persecuted by Czech and Polish governments, Serbia alleged that the Serbs in Croatia were victims of Croat and Muslim oppression. *Id.* In this way, Milosevic, like Hitler, convinced the Serbs that concentration camps should be utilized to exterminate all non-Serbs.

The Serb conquerors of northern Bosnia have established two concentration camps in which more than a thousand

B. Plan for Peace

[25] There were an exorbitant number of Bosnian refugees by the end of April 1992.⁶³ In 1993, the Serbs moved to attack Srebrenica, which is two hours away from Sarejevo. Srebrenca defenders had run out of ammunition and most of the inhabitants were starving, homeless, and dying in March of 1993.⁶⁴

[26] There was hope for peace for a time in 1993 with the attempt to ratify the Vance Owen Plan. Unfortunately, at first, the Serbs rejected the plan because of their lack of agreement on the distribution of the territory.⁶⁵ Later, although the plan was signed by Milosevic and General Karadzic, the Serbs still rejected it.⁶⁶

civilians have been executed or starved and thousands more are being held until they die, according to two recently released prisoners interviewed by *Newsday*. The testimony of the two survivors appeared to be the first eye witness accounts of what international human rights agencies fear may be systemic slaughter conducted on a huge scale.

Roy Gutman, *Witness' Tale of Death and Torture in Six-Week Spree, at Least 3,000 Killed*, *NEWSDAY*, Aug. 2, 1992, at 5.

⁶³ SILBER & LITTLE, *supra* note 41, at 252. Two hundred eighty six thousand total. This figure rose to 1.1 million by mid July and by the end of that year the figure rose to an astounding two million, which would be one half of the population. *Id.*

⁶⁴ *Id.* at 265-66.

⁶⁵ *Id.* at 276. They disagreed because the plan would give the Muslims most of the Drine Valley and large parts of northwestern Bosnia. The plan would deny the Serbs the “single, unbroken land mass” that they had fought so hard to establish. They also objected to living in isolated pockets of the territory. Milosevic, however was not totally opposed to the plan. He wished to sign the plan and then refuse to implement it due to needed clarification on several aspects of the plan. He wanted to argue that clarification was necessary on the status of the northern corridor linking Bosnian Serb territory with Serbia itself, on protection that would be provided to the corridor, and several constitutional issues such as on exactly what “head of state” implied. He wanted to know whether the presidency with representatives from all three nations would be a consensus

[27] The United States also lost faith in the plan since they knew it was unenforceable and the plan soon collapsed and the battle continued.⁶⁷ In late April, the war broke out again in full force between the Muslims and Croats resulting in the further ethnic cleansing at the hands of the Serbs.⁶⁸

The fall of Srebrenica, the rejection by the Serbs of the Vance-Owen Plan, the international community's subsequent failure to enforce the plan, and, finally, the outbreak of the Muslim-Croat war: all occurred within a few weeks in April and May 1993. Together they forced the Bosnian government and army to confront the new reality. A political and military sea-change followed: the Muslims began to fight back.⁶⁹

[28] During the summer of 1993 peace talks began in Geneva and on July 30 there was finally a break through. "All three sides, even the Bosnian government, ... backed a constitutional agreement for a Union of republics in Bosnia-Herzegovina—in other words, a partition along ethnic lines."⁷⁰ However, as peace talks progressed, the ground fighting intensified and the international community largely stayed out of it.⁷¹

or a majority. A majority would allow a coalition of Croats and Muslims but a consensus would *allow* the Serbs to have veto power. Milosevic, of course, preferred the consensus. Therefore, Milosevic was in favor of signing the plan and then refusing to enforce it. General Karadzic and Koljevic, were however, not in favor of signing and were shocked that Milosevic had been entertaining the idea. Thus, although the plan failed, it did succeed in dividing the Serbs. *Id.* at 276-79.

⁶⁶ *Id.* at 283-84.

⁶⁷ *Id.* at 287.

⁶⁸ *Id.* at 296.

⁶⁹ *See Id.* at 297-98.

⁷⁰ *Id.* at 303.

⁷¹ *Id.* at 304-05.

[29] Then in February of 1994, there was a mortar attack in the market square of Sarajevo, right in the midst of the Catholic church.⁷² Meanwhile, NATO, backed by the international community was coming closer to organizing a cease fire.⁷³ They also gave the Croats and Muslims an ultimatum to cooperate.⁷⁴ The pressure succeeded and negotiations went through in Washington to create cantons, elevating the many mini states of the differing religions and ethnicities.⁷⁵

C. Peace

[30] Fighting did continue although peace did finally prevail in cities such as Gorazde and Krajina. Peace did eventually spread throughout the former Yugoslavia and the war finally ended with the Dayton Peace talks. However as Lord Owen, who had been the prime negotiator on the former Vance Owen agreement, puts it, “it was peace without honor.”⁷⁶

⁷² *Id.* at 361. It was never established who fired the mortar. The United Nations believed that it was the Muslims but could never prove it. This day was also a quiet day in the fighting and that is the reason why so many people were on the street compared to most days when people remained in their homes to stay safe. *Id.*

⁷³ *Id.* at 322.

⁷⁴ *Id.* NATO wanted Croatia to heel and leave Bosnia or face the consequences. The NATO threat was that if Croatia and Serbia joined, it would face UN sanctions and world isolation. NATO also stated that it would not assist in relieving Croatia of Serbian forces unless Croatia’s own army left Bosnia. *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.* at 364. (Internal quotes omitted.)

[31] Leaders of the UN and the Presidents of the Yugoslav states all participated in the peace talks.⁷⁷ The Balkan Presidents would discuss timing in connection to a cease fire and where the peace talks would take place. Tensions were extreme since the Serbs had not opened up the main roads as they had previously promised and the Bosnian government was criticized for leaving people dependent on small and dangerous side streets where there were mines everywhere.⁷⁸ The United States was also very concerned with the activities of Seljko Raznatovic, also known as Arkan.⁷⁹

[32] On October fourth, a cease fire agreement was drafted and even Milosevic seemed optimistic. Finally, after convincing by the American diplomats, he signed a photocopy since he refused to sign the same paper as his enemies. The Croatians also stopped their advances, but some continued fighting afraid that any land not in their control at the cease fire would be hard to gain in the peace talks.⁸⁰ The cease fire finally

⁷⁷ General Karadzic and General Mladic were presently indicted for war crimes and unable to attend the talks without running the risk of being arrested. *Id.* at 365.

⁷⁸ RICHARD HOLBROOKE, *TO END A WAR* 187 (1998). The United States had tried to force the roads open and eventually succeeded, proving to Milosevic that the United States would take a stand on all matters no matter how small they were. *Id.* at 188.

⁷⁹ *Id.* at 189. Arkan was described as a “freelance murderer who roamed across Bosnia and eastern Slovenia with his black-shirted men, terrorizing Muslims and Croats.” *Id.* The Serbs gave him hero status. He and his army, known as the Tigers, committed some of the worst war atrocities known during this war. Arkan was responsible for introducing the notion of ethnic cleansing to the problem in 1991 and 1992. Western police also suspected that he had ties to the Yugoslav secret police. *Id.*

The only repercussions for dealing with war crimes such as those committed by Arkan was through means of the international war crimes tribunal at the Hague, which was established by the UN security council. *Id.*

⁸⁰ *Id.* at 196-99. The final peace agreements took place in the United States subject to three conditions. First, each president had to arrive in the United States with the authority to sign the agreements and bind their nations. Next, each president was to stay as long as it took to reach an agreement and remain in the negotiations even when tempted to walk out. And finally, all presidents were to refrain from speaking to the

began after the Russians had reopened the gas lines to the former Yugoslavia.⁸¹ It was discovered that Bosnian Serbs were killing Muslims right up to the very end in the Banja Luka area contrary to the promises that Milosevic made.⁸²

D. Conclusion of the War

[33] All of the countries were left in varying degrees of disarray. In the end, Slovenia had fared the best. The leaders were tired of Milosevic and guided the country into its new independence.⁸³ Macedonia, the most southern republic, escaped the war but lost a

press. All Presidents agreed. It should also be noted that there was resentment toward the United States from other countries for their unilateralist approach to resolving the conflict. *Id.* at 199-201.

⁸¹ *Id.* at 207. Russia originally shut down the gas lines after bills were consistently left unpaid.

⁸² *Id.* at 211.

⁸³ SILBER, *supra* note 67, at 366.

By the end of 1995, [Slovenia's] two million people, enjoyed a standard of living much higher than that of their former countrymen, had developed a genuinely multiparty culture. Slovenia now stood at the doors of the European Union, ready, almost, to be drawn fully into the economic and political mainstream of the western world, its back turned away from its southern neighbors.

Id.

president.⁸⁴ Macedonia, however, “remains surrounded by predatory neighbors,” but for now remains protected by the UN.⁸⁴

[34] Croatia, which still has Tudjman as president, remains obsessed with statehood and is still reputed to oppress the Serbs in Croatia.⁸⁵ Serbia and Montenegro now stand unrecognized by the international community in the Federal Republic of Yugoslavia.⁸⁶ Bosnia-Herzegovina was hit the hardest and suffered the most amount of damage.⁸⁷

⁸⁴ *Id.* The president of Macedonia, Kiro Gligorov, survived an assassination attempt in October of 1995 when a bomb was planted in his car, but his political career came to an end. All five presidents of the other republics were in power in 1991 when the war began and remained in power in 1995. *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* at 368.

⁸⁶ *Id.* at 369. Serbs remain frustrated and disappointed with Milosevic’s failed attempts to create a united Serbia. Minorities still comprise one third of the population, most of which are Albanians. *Id.* This could lead to future conflict.

⁸⁷ *Id.* at 369. The towns and villages were mostly desolate, burned, and in disarray. Over one half of it’s population had either fled, were expelled, or killed during the fighting. In the Serb dominated areas, the signs of Muslims and Croats were all destroyed, including all mosques and catholic churches. *Id.*

The war had come full circle. The Serbs, who had launched it with the singleness of purpose that had allowed them to slice through their enemies like a knife through butter, were now divided. They had broken their own pledge that “Only Unity Saves the Serbs.” Milosevic, who had led them into battle with an apparent clarity of vision that had brought all Serbs together under a single banner, had lost his way. The instigator of Yugoslavia’s bloody disintegration, and the guiding hand behind the Yugoslav wars, proved himself no nationalist at all. Milosevic, the man once seen as a brilliant tactician, maneuvered himself, and the Serbs, into a corner. For the Serbs, Milosevic’s rule will be seen as one of the most disastrous periods in their modern history. He had held all the cards in former Yugoslavia, and one by one, played them and lost. The

III. Analysis of the Conflict

[35] Although the events surrounding the conflict may appear extremely complex and convoluted, it is pertinent to extract the underlying causes. As can be seen above, Yugoslavia's history makes it apparent that the war was not one that was sprung up overnight. This particular war was ignited over deep religious and ethnic conflicts spanning centuries.

[36] The Serbs suffered oppression from their Muslim neighbors as far back as the fifteenth century when the Serbs first converted to Islam in order to better their social status, on through the nineteenth century Ottoman Empire, and well into the end of the twentieth century under Milosevic.⁸⁸ These sentiments of oppression were only exacerbated as the years progressed when the Serbs attempted to take back what they had believed to be their Christian birthright. Thus the religious and ethnic conflict only became compounded by the desire to acquire Serbian dominated territory.⁸⁹

[37] The Serbs continued to be oppressed during both World War I and World War II.⁹⁰ Although there was a brief period of peace in Yugoslavia, the peace was short lived

Serbs, who throughout the wars had been seen as the winners, nearly overnight became the losers.

Id. at 370-71.

⁸⁸ UDOVICKI, *supra* note 6, at 24. During this time the Serbs lived in the country side as peasants. They enjoyed few opportunities to advance, while the Muslims, who lived in the towns, held higher positions and were more advanced all around in areas of law and the sciences. *Id.*

⁸⁹ *Id.* at 29. These attempts to acquire Serbian dominated territory were quashed when they failed to force non Serbs out. *Id.*

⁹⁰ *Id.* at 30-31.

and faded with the Tito era.⁹¹ Once again the Serbs felt threatened by the discrimination inflicted upon them by the Yugoslav government and peoples of differing religions, particularly by the Albanians who were predominately Muslim. Many Serbs felt hopeless and vulnerable.

[38] However, with the rise of Slobadon Milosevic, the Serbs found a new hope to improve their position and finally achieve a united Serbia.⁹² Milosevic utilized the powerful notion of religion to spark the Serbian national consciousness and molded this idea to equate it with national liberation. Many believed that genocide, the burning of villages, and other atrocities were justified actions because they saw these acts as a means to effectuate the Serbian cause. Serbs believed that there was a duty to their faith which was synonymous with a duty to a Serbian nation. Religion became much more than a simple question of belief, it became a question of identity. For this reason, Serbs remained fiercely loyal to fellow Serbs and Muslims stood shoulder to shoulder with other Muslims.⁹³

⁹¹ Curuvija & Torov, *supra* note 35, at 74.

⁹² The Serbs thought the ideal United Serbia would have a highly centralized government that would provide a strong sense of equality. Many non-Serbs felt threatened by this potential shift in power and retaliated by holding anti-Serb protests and by taking arms. This taking of arms, however did little to quell the Serbs who were already well armed themselves. Tempers flared and leaders such as Milosevic continued to manipulate this anger to ignite a war in a further attempt to achieve power and territorial expansion. Concurrent with this goal was the goal to oust all non-Serbs to neighboring countries.

⁹³ This is how many Serbs justified the killing of non-Serbs. Even though they may have had nothing personal against their neighbors, they realized that they may need to in order to maintain the Serbian unity. For those Serbs who were less concerned with achieving a unified Serbia, they killed out of fear of being labeled traitors to their faith for their lack of participation who deserved to die like the converts before them.

[39] Therefore, the underlying cause of this conflict was predominately religion.⁹⁴ It must be understood that religion mattered not so much in and of itself, but rather as the main vehicle of ethnic and national allegiance in the different states. These states desired to define citizenship almost exclusively in terms of religious and ethnic identity, which to them was really one in the same.⁹⁵ Although territorial advancement was also an underlying cause of this war, it is important to comprehend for purposes of this Note, that the main cause was a religious conflict.

IV. Role of International Law in the War of Yugoslavia

[40] We now turn to the relevance of international law and how the international community applied international law to this conflict. First, I will offer a summary of the framework of international law as it operates through the United Nations. The United Nations is comprised of the International Court of Justice, the General Assembly, the Economic and Social Council, the Security Council, the Secretariat, and the Trusteeship Council.⁹⁶

⁹⁴ DAVIE RIEFF, *SLAUGHTERHOUSE: BOSNIA AND THE FAILURE OF THE WEST* 68-69 (1995).

⁹⁵ *Id.*

⁹⁶ STANLEY MEISLER, *UNITED NATIONS* 374-75 (1995). Article 7(1) of the U.N. Charter lists the Economic and Social Council, which is concerned with cooperation on economic, social, and cultural matters, including human rights. U.N. CHARTER art. 7, para. 1. Pursuant to article 7(2), subsidiary organs may be created when necessary and have been created in substantial number and for a variety of purposes. All those who are members of the U.N. as stated in article 9(1) and 18(1) of the charter, make up the general assembly. U.N. CHARTER art. 9, para. 1. The general assembly may discuss and make recommendations on any matter within the scope of the charter. U.N. CHARTER art. 10. The general assembly may only make recommendations, but its resolutions are frequently purported to be more than recommendations. Each member of the general assembly has one vote and decisions on important issues are made by a two thirds

[41] The General Assembly has the heavy burden of addressing various conflicts worldwide. For example, “[d]uring the thirty-seventh regular annual session in 1982 the Assembly approved 430 resolutions and decisions.”⁹⁷ Of these, forty-one were dedicated, at least partially to criticizing Israel, thirty-five dealt with South African white domination, and twenty-six sought assistance for nations that were facing “severe economic, social, or medical needs.”⁹⁸ Therefore, of the above mentioned concerns, Israel, South Africa, and disaster assistance, sparked almost one quarter of the assemblies resolutions. In fact, “a study by the Heritage Foundation, based on the same year, concluded that the Assembly and its seven main committees devoted over one-third of the delegates’ time to the debate on the Middle East alone.”⁹⁹

[42] The United Nation’s charter declares the aims and purposes of the United Nations. The charter states that the main purpose of the U.N. is to “maintain international peace and security” as well as to “promote friendly relations and international co-

majority of the members present and voting. The Security Council consists of five permanent and ten non-permanent members. The permanent members are China, France, the United Kingdom, the United States, and Russia since 1992. The principle task of the United Nations is to ensure international peace and security. U.N. CHARTER. art. 1, para. 1. The Secretariat is headed by the “Secretary-General [and brings] to the attention of the Security Council any matter that in his opinion may threaten the maintenance international peace and security.” U.N. CHARTER art. 99. Finally the International Court of Justice as described in Article 92 is principal judicial organ of the United Nations. U.N. CHARTER art. 92.

⁹⁷ THOMAS M. FRANK, NATION AGAINST NATION 185 (1985).

⁹⁸ *Id.*

⁹⁹ *Id.* at 186

operation among the many nations in solving international problems of economic, social, cultural, and humanitarian concerns.”¹⁰⁰

[43] The principle legal norms of the charter are contained in articles 2(3) and 2(4).¹⁰¹ Article 2(3) commits members to “settle their... disputes by peaceful means.”¹⁰² Article 2(4) says that member states shall “refrain... from the threat or use of force against territorial integrity or political independence of any state, or in any other manner inconsistent with the [p]urposes of the United Nations.”¹⁰³ Chapter VII of the Charter gives the U.N. Security Council authority to “determine the existence of any threat to the peace, breach of the peace, or act of aggression and make recommendations, or decide what measures shall be taken... to maintain or restore international peace and security.”¹⁰⁴ Additionally, U.N. Security Council has the primary responsibility for maintaining the international peace and security. The general limitation on the purposes and powers of the U.N. is set out in article 2(7) of the Charter, which states, “[n]othing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state....”¹⁰⁵

[44] In addition to the already mentioned provisions of the U.N. Charter, article 55 and 56 are also extremely important. These two articles

¹⁰⁰ U.N. CHARTER art. 1, para. 1,3.

¹⁰¹ U.N. CHARTER art. 2, para.3-4.

¹⁰² U.N. CHARTER art. 2, para. 4.

¹⁰³ *Id.*

¹⁰⁴ U.N. CHARTER art. 39, para. 1.

¹⁰⁵ U.N. CHARTER art. 2, para. 7. “[B]ut this principle shall not prejudice the application of enforcement measures under Chapter VII.” *Id.*

commit members to take joint and separate actions to promote respect for human rights and fundamental freedoms. Other provisions of the Charter set out steps that the organization can take to promote this objective. These authorize the Assembly to initiate studies and make recommendations for the purpose of... assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.¹⁰⁶

In order to effectively regulate the manner that individual governments treat their nationals, the Charter authorizes itself to stipulate fundamental standards. The General Assembly then monitors the compliance of these standards and is legally authorized to act in the case of non compliance.¹⁰⁷

[45] On December 10, 1948 the U.N. Assembly adopted the Universal Declaration of Human Rights. This declaration despite its non-binding nature, and although not a treaty, has become the “moral touchstone” for all claims that are brought to the international level as a result of some event that occurred at the national level.¹⁰⁸ However, later the General Assembly decided to create documents that had a binding nature. In December of 1966, the assembly adopted the International Covenant on Economic, Social, and Cultural Rights and then the International Covenant on Civil and Political Rights.¹⁰⁹

¹⁰⁶ FRANK, *supra* note 97, at 231.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 232.

¹⁰⁹ *Id.* After receiving the necessary number of ratification, both came into a legally binding force on all nations who signed them. The United States had signed, but did not ratify either. These covenants, unlike the declarations before them, are treaties and therefore binding. *Id.*

“The U. N. has also been active in the drafting of principles prohibiting ‘crimes against humanity,’ such as genocide....”¹¹⁰

[46] Article 2(4) of the U.N. Charter is the most relevant provision in relation to the war in the former Yugoslavia. Although article 2(4) prohibits the use of force in most cases, there are several exceptions to the prohibition.¹¹¹

¹¹⁰ *Id.* at 233. In fact, the Convention against Genocide was adopted in December 1948, largely as a reaction to the atrocities that occurred during World War II . *Id.*

¹¹¹ *See* U.N. CHARTER art. 2, para. 4. Humanitarian intervention is one of these exceptions. States have been reluctant to formally adopt this exception to article 2(4), but the legal community has widely accepted that the charter does not limit humanitarian intervention in order to save lives, including intervention to support the self-determination of certain peoples, such as in cases of a revolution or in wars for independence. Intervention is also legally permitted for socialism and intervention to help bring about a democracy. Article 51 also makes an exception against the general prohibition of unilateral force. U.N. CHARTER art. 2, para.4. Article 51 states that a victim of an armed attack may use force to defend itself and other nations may join in the use of that force in the manner known as collective self-defense. U.N. CHARTER art. 51. This collective action by other states to defend a victim state does, however, need to be approved by the Security Council. It has also been accepted that the right of self-defense, individual or collective, is subject to limitations of necessity and proportionality. Self defense includes a right to both repel an armed attack and to take the war to the aggressor state in order to effectively terminate the attack and to prevent a recurrence.

V. Why the U.N Failed in Yugoslavia

[47] The United Nations failed to bring about an end to the violent and shocking war in Yugoslavia for several reasons. First, the failure was due to an incorrect analysis of the situation in Yugoslavia, which resulted in an incorrect application of international law. Second, the U.N. strategy was highly ineffective, and finally, there was an overall lack of interest on the part of the international community, which resulted in a strong reluctance regarding any type of commitment. This section of the note will explore the factors that led to the U.N. failure in Yugoslavia.

[48] First, the international community analyzed the situation incorrectly, which led to an incorrect application of the appropriate international law. The United States, European Community, and United Nations concluded that the Serbs were the main aggressors and that Serbian aggression was based on territorial expansion. This is true, but while territorial expansion was a goal of the Serbs, it was not the underlying cause of the war.¹¹² As noted, this was a predominately a religious conflict between Serbs and Muslims.

[49] The west also misconceived the war as a struggle between democracy and communism.¹¹³ This misconception slowed the U.N. from realizing what was really

¹¹² Philip J. Cohen, *Ending the War and Securing Peace in the Former Yugoslavia*, 6 PACE INT'L L. REV. 19, 19 (1994). Moreover, despite the international recognition of this goal, the international community did nothing to effectively end Serbian aggression. This jeopardized the entire region. *Id.*

¹¹³ James Ridgeway & Jasminka Udovicki, *Introduction to YUGOSLAVIA'S ETHNIC NIGHTMARE 9* (Jasminka Udovicki & James Ridgeway eds., 1995). The international community believed that Croatia and Slovenia were championing a democratic government while the Serbs desired a communist one. This theory has no evidence to support it. In fact, Croatia was not in favor of a democracy but of an authoritarian rule under President Tudjman. The international community while entertaining these types of theories was blind for months to the "strident ultranationalism" of the Serbs and the

happening in Yugoslavia. Ethical and religious considerations played little role in the foreign policies of the great powers. The overriding agenda of the international community was not to bring about a just settlement but attempt to prevent the war from spreading into surrounding countries. Moreover, the mediation efforts of the west were flawed because they did not frame the conflict in terms of religious and ethnic conflict.¹¹⁴

[50] The war in Yugoslavia, was a premeditated attempt to create a greater Serbia and rid that Serbia of all Muslims. It was not the result of an unfortunate series of misunderstandings. To make matters worse, what little evidence that the international community had regarding the underlying nature of the conflict was manipulated in order to justify limiting the intervention. The United Nations and the Security Council put forth their best effort to down play the ethnic cleansing because to admit that genocide was based on religious and ethnic differences would have created the obligation to intervene militarily.¹¹⁵

[51] The United Nations on the other hand is legally permitted, under the discretion of the Security Council, to intervene for the purpose of collective self-defense and self-determination. Collective self-defense means that when one border of a member state of the United Nations is intruded upon, that aggression is to be properly perceived as an

overlapping concept of religion and ethnicity. The Serbs strived to build a Serbia without the presence of Muslims. *Id.*

¹¹⁴ BENNETT, *supra* note 1, at 236-37.

¹¹⁵ *Id.* at 238-39. Many statesmen wanted to write off the conflict as tribal. *Id.* at 246. By simply placing troops on the ground in a largely humanitarian role rather than as actual peacekeepers, the international community could appear as though they were taking action, when in reality they were doing nothing to have any real impact on the war raging around them. “[T]he West has wasted a great opportunity to build bridges with the Islamic world and, in the process, has created a reservoir of potential terrorists recruits in Europe.” *Id.* at 240.

aggression against all member states. For this reason the Serb aggression, under the orders of Slobadon Milosevic, should have been interpreted as a threat to the international peace and security, and not as simply a domestic dispute that did not legally permit international involvement.¹¹⁶

[52] Collective self-defense should have been clearly recognized. Yugoslavia had already broken up into different nation states, and the United Nations recognized the nation states independence from the former Yugoslavia.¹¹⁷ The United Nations, therefore was authorized to use force to at least control the Serb aggression and their crimes of genocide.¹¹⁸ In addition, although the United Nations would have to have complied with the rules of proportionality, military intervention in the face of genocide, mass rapes, mutilation, torture, and starvation, would have been at the very least proportional to these acts.¹¹⁹

¹¹⁶ See Michael P. Roch, *Military Intervention in Bosnia-Herzegovina: Will World Politics Prevail Over the Rule of International Law?* 24 DENV. J. INT'L. L. & POL'Y 461, 476-81 (1996). The United Nation's policy of nonintervention in the domestic disputes of a nation are founded on the belief that the sovereignty of a nation should generally be respected. For this reason, article 42 of the Charter does not allow intervention solely based on human rights violation within a country's own borders. *See id.*

¹¹⁷ *Id.* at 470. For example, Bosnia was recognized as an independent nation in 1992 and the Serbs acts of aggression against Bosnia should have been perceived as aggression against all members of the United Nations that clearly warranted military intervention to protect the international peace and security. Article 51 of the U.N. Charter places a mandatory responsibility on the U.N. to protect its member states. *Id.* at 479. This failure to intervene for the collective self-defense of the independent states exemplifies the failure of the U.N. to acknowledge the crisis for what it really was. It was an act of Serbian aggression to expel all other religious and ethnic populations from the former Yugoslavia. *Id.* at 471-75.

¹¹⁸ *Id.* at 479.

¹¹⁹ See Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948, 78 U.N.T.S. 277. Article II states:

[53] When examining the situation in the former Yugoslavia, the international community should have properly balanced article 2(4) and 2(7) of the U.N. Charter in order to protect nations and the individuals within those nations, while at the same time, conforming to the internationally accepted uses of force.¹²⁰ The United Nations did not properly apply the provisions of the U.N. Charter because it perceived the conflict as primarily an internal one that did not warrant intervention, when in fact it was a threat to the international community since aggression against one state is to be perceived as aggression against all states.

[54] The second reason for the U.N. ineffectiveness in dealing with the war in Yugoslavia was a weak strategic plan.¹²¹ The international community first tried to quell

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole, or in part, a national, ethnical, racial or religious group, as such:

- a) Killing members of the group;
- b) Causing serious bodily or mental harm to members of the group;
- c) Deliberately inflicting on the group conditions of life calculated to bring about physical destruction in whole or in part;
- d) Imposing measures intended to prevent births within the group;
- e) Forcibly transferring children of the group to another group.

Id.

¹²⁰ *Id.* at 482. The factors that should be taken into account in properly applying this balancing test are the “severity of human rights violations, the nature of the intervention, the purpose of the intervention, the extent and collectivity of the action, and the balance of the alternatives and outcomes.” *Id.* at 483. It seems logical to apply these factors in the case of the former Yugoslavia in a way that would have made intervention to stop the genocide perfectly legal.

¹²¹ *Id.* at 472.

the violent conflict by implementing sanctions after obtaining approval from the Security Council. Unfortunately, these sanctions came too late and the Serbs were already in the mindset of creating a “Greater Serbia.”¹²² The next crucial mistake that the international community made in attempting to stop the war was the implementation of a trade and weapons embargo.¹²³

[55] Another crucial mistake in the U.N. strategy was expecting the victims of genocide to meet international expectations and negotiate freely and openly with their oppressors. This practice was morally reprehensible and politically unwise.¹²⁴

[56] An additional failure was the international community’s attempt to stop the Serbian violence by creating ineffective “safe areas” which were never actually safe

¹²² *Id.* at 485-86. It is interesting to note that another way that the United Nations could have authorized the use of force was after the former Yugoslavia disregarded the U.N.’s implementation of sanctions. *Id.* at 477.

¹²³ *Id.* at 477. This weapons and trade embargo was a mistake for several reasons. First there was wide spread lack of enforcement of these embargos. *Id.* The embargos were also disregarded by the majority of militants within Yugoslavia. In fact, the net effect of these trade and weapons embargos was the obstruction of the self-defense of the Muslims against their Serb aggressors. Cohen, *supra* note 112, at 21. This culminated by the lack of intervention, especially in 1991, created a power vacuum in the entire Balkan area. Many Muslims then realized that it would be extremely difficult, if not impossible to defend themselves and comply to the arms embargo at the same time. They decided either to flee relinquishing more land to the Serbs, or decided to ignore the embargo in the interests of survival. *Id.* at 21-22.

¹²⁴ *Id.* at 24. This action only served to make Serb aggression easier and even legitimized their ill gotten war gains by not allowing the Muslims to fight back. It is now abundantly clear that Serbia and the Serbian forces bear the overwhelming responsibility for almost all of the atrocities committed in the former Yugoslavia. *Id.* at 19. The “incompetent international maneuvering by the EC and the U.S. has had the net effect of encouraging Serbian aggression and weakening Serbia’s victims.” *Id.* at 24. It was, therefore, predictable that the overall lack of international involvement and ambition to put a stop to the initial Serb advances provided time for Serbia to take over more Croatian territory, it damaged the Croatian economy, and inflicted great human losses. *Id.* at 29.

despite the presence of militarily peacekeepers.¹²⁵ Muslim refugees trying to escape the genocide and Serb aggression went to safe areas in hopes of remaining safe. These areas were supposed to be protected by the United Nations and were created to provide essentials such as medical supplies, clothing, and food. These safe areas, however were unable to fulfill any of these tasks most of the time.¹²⁶

¹²⁵ MEISLER, *supra* note 96, at 321-23.

¹²⁶ *Id.* Many times the Serbs were successful in preventing any food from getting in. *Id.* This was especially a problem in 1993 and 1994 when Serbs refused to allow relief convoys from reaching Muslims who were located in small enclaves throughout the former Yugoslavia. Roch, *supra* note 116, at 472. Later in 1994 the convoys were finally able to get through but only after NATO commenced air strikes. However, by spring of that same year the Serbs held more than seventy percent of the territory. *Id.* at 473. U.N. personnel who were stationed in the former Yugoslavia, especially those in the vicinity of Bosnia were extremely frustrated by a lack of authority to effectively take action. *Id.* at 472. Sometimes peacekeepers were forced to bargain with drunken Serbs for hours and, more often, days to permit the convoys passage. MEISLER, *supra* note 96, at 318. The result of the U.N. impotence was contempt on behalf of the U.N. peacekeepers, the Serbs and the Muslims. *Id.* at 319. The Muslim Croats were shocked at the level of ineffectiveness of the international community. In fact, the World Health Organization estimated that between “twenty to thirty people died from starvation and illness every day.” *Id.* at 321.

Another example of the failure of the international community to secure safe areas was in the case of Srebrenica. SILBER & LITTLE, *supra* note 41, at 356. Silber and Little note that

[t]he United States and Europe did nothing to stop the murder of perhaps as many as eight thousand Muslim men who were rounded up while trying to escape to Bosnian government-held territory. Srebrenica was one of six U.N. designated “safe areas.” Its defeat exposed the complete lack of international commitment to defend them. It was the terrible culmination of a series of badly-laid plans and half-hearted guarantees: from the beginning of the safe-areas policy, western governments had contributed no more than 7,000 of the estimated 34,000 troops needed to implement it; and in the end the Serb offensive—though predictable—caught the world off-guard. International observers misread it even when it was in full swing. Crouching in a field, surrounded by the rolling green hills of the Drina valley in summer-time, countless Muslim men

[57] In a report made to the Security Council in March of 1994, the Secretary General summed up the conditions. The Secretary General concluded that the presence of the U.N. peacekeepers “has indeed deterred major attacks on these towns, reduced the level of conflict, lowered casualties and improved basic humanitarian conditions.” He continued “living conditions in the safe areas remain appalling: the areas are inviable socially and economically and suffer high levels of unemployment, overcrowding and crime, as well as the tension of an uncertain future.”¹²⁷

[58] The third reason for the failure of the intervention was a lack of interest and commitment on behalf of the United States, the European Community, and the United Nations. Between the years of 1991 and 1992, important strategically to get a firm grasp on the crisis, all three were wrought with indecision regarding the importance of the Bosnian conflict and whether to intervene.¹²⁸ In fact, the United States, often the first to loudly condemn such atrocities, had little interest in the conflict and was, therefore, reluctant to provide military assistance or attempt to persuade the United Nations to get involved.¹²⁹ Some countries, such as Germany, Italy, Greece, and Turkey were reluctant

await execution. The image was captured by a US spy satellite, but never released to the public. In the days following the capture, by the Bosnian Serb Army, of the Muslim enclave of Srebrenica in eastern Bosnia, thousands of Muslim men met this chilling fate: some shot while running; others were simply lined up, executed, and dumped in mass graves.

Id. at 356-357.

¹²⁷ MEISLER, *supra* note 96, at 323. (Internal quotes omitted.)

¹²⁸ Roch, *supra* note 116, at 472.

¹²⁹ *See id.* at 471-72.

to intervene because they were excluded militarily.¹³⁰ Moreover, Western Europeans were divided over Yugoslavia.¹³¹

[59] Another reason for the overall lack of interest in the situation, especially during its onset, was that this war broke out in the midst of a sea of change and conflict world wide. This war broke out almost immediately after the collapse of the Soviet Union and the Eastern Bloc. In addition, Western Europe was preoccupied with the movement for unification and the issuing of a universal currency, the Euro. Furthermore, Germany had just reunited and was heavily burdened by the economic repercussions of this move. To further complicate matters, for the United States especially, the U.S. had over 400,000 troops already stationed in the Persian Gulf.¹³² These fundamental distractions started the European community off on the wrong foot. Their disinterest only grew with time and, as a result, they did anything in their power to avoid the issue of intervention.¹³³

[60] The international community also tried to portray all religious groups as equally at fault, thereby pardoning the international community of any obligation to step in.¹³⁴ “By

¹³⁰ Ridgeway & Udovicki, *supra* note 113, at 8.

¹³¹ For example, the Germans had historic ties to Croatia. They wanted independence for Croatia and Slovenia because they believed that only independence for these nations would be able to prevent a full scale war. Others, in contrast, believed that independence for these nations would only succeed in igniting a war. France was one of the strongest believers in the latter theory. *Id.*

¹³² *Id.* at 3-5.

¹³³ *Id.* at 5. For example, after just six months of fighting between Croatia and Serbia the European diplomats concluded that the conflict “had been contained” and there was no substantial reason to intervene. *Id.* at 8-9.

¹³⁴ JUDAH, *supra* note 15, at 74. In a speech made in 1992, Thomas Pickering, the departing American ambassador to the United Nations described the United States’ policy on Bosnia in this way: “[i]f Europe leads, we will follow.... If Europe does not lead, we will also follow.” MEISLER, *supra* note 96, at 312 (internal quotes omitted).

the end of 1994, the Security Council had issued well over a hundred resolutions and official statements on the crisis in the former Yugoslavia. Most focused on Bosnia, and few changed the course of the war.”¹³⁵ Meanwhile, the consensus in Europe was that humanitarian aid had not affected the outcome of the war while prolonging it needlessly. France and Britain bore the brunt of the responsibility for the U.N. failure and resented being put in that position.¹³⁶

[61] Although given the international community’s failure, many member nations of the U.N. have claimed ignorance. In reality, the international community was not ignorant. Years before the actual break up of the former Yugoslavia, western intelligence informed their governments of the potential threat lying in Yugoslavia. The fatal truth is that anyone who had had an interest in the current events of Yugoslavia would have very easily been able to predict its imminent future.¹³⁷

[62] The international community can take credit for very few successes. There were some credible achievements in Bosnia, Croatia, and Macedonia. A successful relief operation that was implemented for several winters in order to help prevent starvation in

The United States wanted to leave the “most brutal conflagration in Europe since the end of World War II” up to Europe to deal with. It was too much for Europe to manage. The sad truth was that neither European governments nor the government of the United States wanted to risk their own citizens to save Bosnia. *Id.*

¹³⁵ MEISLER, *supra* note 96, at 312. In fact, Bill Clinton did not want to sent the 25,000 troops that he had promised because he did not want them to die only to reinforce what he already believed was a defeat. SILBER & LITTLE, *supra* note 40, at 356. “For Bill Clinton to put American lives in danger for so inglorious an operation, and in the year when he would be running for a second term in the White House, spelled electoral disaster.” *Id.*

¹³⁶ SILBER & LITTLE, *supra* note 40, at 355.

¹³⁷ BENNETT, *supra* note 1, at 236.

Sarajevo and Bosnia.¹³⁸ The U.N. did manage to calm the shelling a bit by “talking and threatening its way through an endless succession of cease-fires and broken cease-fires....”¹³⁹ The international community was also able to prevent the aggression from spreading outside the borders of the former Yugoslavia. And even with this limited intervention, the international community did suffer some losses. One hundred forty-nine peacekeepers were killed and 1,366 were wounded by March 1995.¹⁴⁰

[63] From the very beginning, the West spent more time justifying a limited role of intervention instead of analyzing the conflict and coming up with effective strategies to stop the Serb inflicted violence and genocide. The West was preoccupied with other world conflicts and did not perceive the conflict in the former Yugoslavia as one that sufficiently threatened their own national security. Although the conflict was without a doubt an inconvenience, it was perceived as one that the rest of the world would be able to deal with as long as the conflict was contained within the borders of the former Yugoslavia.¹⁴¹

VI. The Muslim Perception of the International Community’s Failure.

¹³⁸ MEISLER, *supra* note 96, at 313.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ BENNETT, *supra* note 1, at 237.

[64] The people of the former Yugoslavia, particularly the Muslims, depended on the international community and did not anticipate that it would permit the destruction of a newly admitted sovereign member of the U.N.¹⁴²

[T]he Croats and Muslims have come to understand—and are applying—the great lesson of the Yugoslav wars, a lesson the Serbs demonstrated in the days of their military supremacy: that in the post-Cold-War world there is no collective security, no international will to protect the weak against the strong; the lesson that to win freedom and security for one's people requires neither a sound argument nor a good cause but a big army. Victory, in former Yugoslavia, will fall not to the just, but to the strong.¹⁴³

VII. The U.N. Effectiveness in Yugoslavia Compared with a Similar Role in Rwanda.

[65] In order to more clearly understand how the international community utilizes international law, it is helpful to compare the situation in the former Yugoslavia with that of Rwanda. This comparison will demonstrate the strikingly similar lack of effectiveness to stop the flagrant violations of international law, particularly genocide. The acts of genocide in Rwanda were initiated for very similar reasons as the initiation of genocide on behalf of the Serbs in the former Yugoslavia.¹⁴⁴ These crimes, like the crimes in the

¹⁴² SILBER & LITTLE, *supra* note 40, at 369.

¹⁴³ *Id.* at 372.

¹⁴⁴ See Peter Rosenblum, *Dodging the Challenge: The U.N. and Rwanda 1993-1996*, 10 HARV. HUM. RTS. J. 313 (1997) (reviewing DEPARTMENT OF PUBLIC INFORMATION, THE UNITED NATIONS, BLUE BOOK SERIES X (1996)). During the years between 1993 and 1996, while the war in the former Yugoslavia was simultaneously raging, there was an ethnic war in Rwanda between the Hutus and the Tutsis. The victims were mostly the Tutsis who were hated by the Hutus because they belonged to an ethnic minority. The Hutus, who numbered in the tens of thousands committed atrocities such as mass rapes,

former Yugoslavia were in gross violation of international law and specifically in violation of the Universal Declaration of Human Rights and the Convention on the Prevention and Punishment of the Crime of Genocide.¹⁴⁵

[66] However, also like the case in the former Yugoslavia, the international community did little to stop it. The U.N. ineffectiveness was primarily due to the failure of an effective early warning system, downplaying the severity of the situation, and limiting assistance to a small mission referred to as United Nations Assistance Mission to Rwanda (“UNAMIR”).¹⁴⁶

Prior to 1993, the U.N.'s role had been fairly limited. For the Secretary-General, it was focused entirely on the peace process between the pro-Hutu Rwandan government and the predominantly Tutsi Rwandan Patriotic Front (RPF) at war since 1990, and the eventual establishment of a peacekeeping force.... As the peace talks inched towards conclusion, it became clear that a major international force would be desired to guarantee the commitments of the parties.¹⁴⁷

Finally, some UNAMIR troops were deployed by the U.N. and the U.N. believed that they would be more than enough to control the conflict. The day after these troops were deployed, the Rwandan President's plane was shot down and the Hutus began a genocidal campaign aimed at exterminating the Tutsi population.¹⁴⁸ Instead of offering the

torture, mass destruction, and of course mass genocide. The atrocities were so outrageous that in only a few months between 500 and 800 thousand people were murdered. *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 319.

¹⁴⁷ *Id.* at 316-17.

¹⁴⁸ *Id.* at 317.

Rwandans the protections they were entitled to, the U.N. glossed over the situation and refused to recognize the genocidal campaign in Rwanda.¹⁴⁹

[67] In fact, during the height of the genocide that took place between April 7th and April 21st, the Security Council actually reduced the UNAMIR forces. This action was very similar to the action, or more properly put, inaction on the part of the international community in Yugoslavia. The U.N. turned a blind eye to the reality in Rwanda as it did with the reality in Yugoslavia. Instead of trying to put an end to the violence, the U.N. concentrated on a cease fire. It was only after April 21st that the Secretary General reluctantly conceded that genocide was occurring.¹⁵⁰

¹⁴⁹ *Id.* The decision to downplay the actual situation in Rwanda was made by the Secretary General. *Id.* In fact, there were internal documents in the U.N. that identified the number of concrete examples of genocide that had failed to elicit a proper response, including a cable sent by the UNAMIR force commander Romeo Dallaire on January 11 to the U.N. Secretariat. This cable cited a Hutu leader who spoke about the genocide that was to come, and it was accompanied by a detailed strategy to carry it out. This cable was simply put aside. The same thing happened to another memo that was sent by General Dallaire concerning the distribution of weapons to civilians in the area. *Id.* at 320.

¹⁵⁰ *Id.* at 323-24.

[T]he Secretary-General was more influenced by the early press reports than the reports of informed observers, including human rights organizations. This is a strong accusation given the poor quality of the journalism at that point, which portrayed a vision of Hutus and Tutsis consumed by ancient tribal hatred periodically erupting in murderous rage, as if unconnected to external events. Only slowly and unevenly was this powerful, exculpatory image altered or amended with details about colonial history and political manipulation.

Id. at 324.

[68] Securing a cease-fire should not have been the aim in either case. The U.N. should have been a put a proactive strategy in place to put an end to the genocide. The U.N. ineffectiveness in Rwanda actually did get worse. The U.N. decided to pull out almost entirely because “there was no use in expending valuable good will on a lost cause.”¹⁵¹ The message to the killers was that the international community did not care and atrocities could be committed without any fear of intervention or meaningful disapproval.¹⁵²

[69] The United States was involved, and actually constrained the action of the United Nations in Rwanda.¹⁵³ As in the case of the former Yugoslavia, there was a high level of disinterest of high level officials who could have made a difference and the Pentagon was opposed to any intervention.¹⁵⁴ The most important U.S. efforts were aimed at deflecting responsibility and limiting the amount of publicity.¹⁵⁵

¹⁵¹ *Id.* at 326.

¹⁵² *Id.* Finally on May 25th, the Secretary General did change his mind and went on nightline stressing that the genocide needed to be stopped. *Id.* at 327.

¹⁵³ *Id.* at 327-38.

¹⁵⁴ *Id.* Their decision to limit intervention was predominately based on a desire to avoid the disaster and embarrassment that occurred when the United States intervened in Somalia. *Id.* at 328. The United Sates mounted a humanitarian mission to Somalia in which the first President Bush sent troops. Lori Fisler Damrosch, *The Constitution Under Clinton: A Critical Assessment: the Clinton Administration and War Powers*, 63 LAW & CONTEMP. PROB. 125, 133 (2000). Congress had many differences relating to the exact purpose for sending the troops; whether it was to be active intervention or only to offer humanitarian aid. This frustrated the troops causing confusion as to their appropriate role in Somalia. These troops never received much attention internationally or by the United States until tragedy struck. Eighteen Army Rangers lost their lives in an armed confrontation with one Somalian faction. This was extremely embarrassing and enraged the United States, especially when the public viewed on television U.S. soldiers being drug through the streets of Somalia. Congress acted quickly and cut off all funding for the deployment of more troops to Somalia in March of 1994. *Id.* Predictably,

[70] The United States was also responsible for downplaying the genocide. The U.S. refused for a time, to refer to the activity as genocide. It is believed that this refusal to correctly term the atrocities genocide was a direct attempt to avoid the Geneva Convention, which makes it almost impossible to avoid collective action.¹⁵⁶ The U.S. government stated that “no obligation accrued until the government was absolutely sure of the facts.”¹⁵⁷

[71] Another part of the problem in Rwanda actually took place in the aftermath of the genocide. This was the lack of capabilities to carry out indictments of war criminals, especially for those who were particularly involved in effectuating mass rapes and genocide.¹⁵⁸ International War Crimes Tribunals for the former Yugoslavia and Rwanda were both created in 1994.¹⁵⁹ These tribunals, hereinafter referred to as “ICTY” and “ICTR” respectively, were established by the U.N. Security Council to indict the “perpetrators of the widespread ethnic slaughter.”¹⁶⁰ A two month investigation,

international intervention in obscure countries, especially African ones, became politically unpopular.

¹⁵⁵ Rosenblum, *supra* note 144, at 327.

¹⁵⁶ *Id.* at 328.

¹⁵⁷ *Id.* at 329. (Internal quotes omitted.)

¹⁵⁸ Rocco P. Cervoni, Note, *Beating Plowshares into Swords - Reconciling the Sovereign Right to Self-Determination with Human Rights Through an International Criminal Court: The Lessons of the Former Yugoslavia and Rwanda as a Frontispiece*, 12 ST. JOHN’S J.L. COMM 477, 480 (1997).

¹⁵⁹ *Id.* at 485.

¹⁶⁰ *Id.*

conducted in 1997 by the U.N. Inspector General, proved that no single administrative area of the Rwandan tribunal functioned effectively due to wide spread incompetence.¹⁶¹

[72] This was similar to the ICTY problem in which there was a failure to take affirmative steps in enforcing indictments of war criminals like Serbian President Kradzic despite acts of genocide and massive violations of international law.¹⁶² Both tribunals' subject matter jurisdiction was based on violations of the 1949 Geneva Convention for crimes of genocide and crimes against humanity.¹⁶³ Both tribunals remain highly ineffective.¹⁶⁴

¹⁶¹ *Id.* There was rule breaking and mismanagement. The tribunal was also completely ineffective in routing out criminals and delivering justice, partly due to a lack of authority in the tribunal. *Id.*

¹⁶² *Id.* at 485-86.

¹⁶³ *Id.* at 503. All of these offenses described are based on rules of both customary international law and the *nullun crimen sini lege* doctrine (no crime is chargeable absent an applicable law), and are binding on all states. *Id.* at 503-04.

¹⁶⁴ *Id.*

By April of 1997, of the seventy-five individuals indicted by the War Crimes Tribunal for the former Yugoslavia only seven were in custody, none of whom had yet been convicted. Most notable among the seventy-five indictments were the joint arrest warrants issued against Bosnian Serb President, Radovan Karadzic, and Bosnian Serb military leader, Ratko Mladic.... Based on most international legal standards, the Tribunal's issuance of an arrest warrant constitutes a request for extradition, subject to refusal only upon a showing that the warrant gravely contravenes local law. Viewed in this light, the recent position of the Federal Republic of Yugoslavia ("FRY"), for example, to not surrender its citizens because its constitution forbids the extradition of nationals, is a legally insufficient basis for failing to obey the Tribunal's juridical orders. The fact of the matter is that, barring some serious legal impediment, requests for the surrender of persons indicted by the Tribunal are binding under Chapter VII of

[73] Thus, the international role in Rwanda was largely a failure for the same reasons that it was a failure in Yugoslavia. In both the situation was incorrectly assessed as being something other than genocide. In Yugoslavia, the conflict was driven by religious and ethnic fundamentalism and later turned to genocide. In Rwanda, the conflict was also ethnic and aimed at exterminating a minority ethnic group; it was not simply heated tribal differences that transformed into unpremeditated violence. These incorrect assessments then led to an incorrect application of international law. In Yugoslavia, collective security was appropriate because there were acts of aggression on a member state of the United Nations, and as the U.N. declares aggression against one is aggression against all. Collective security was also warranted because in the case of genocide the international community has a legal obligation to intervene to stop the genocide. In Rwanda, collective security was also warranted because of the principle of *jus cogen*.

[74] Furthermore, in both cases there was very poor strategy. In both the former Yugoslavia and in Rwanda, there was a lack of an appropriate number of troops, a lack of a clear initiative, and delayed reactions to the violence. Finally, the international missions failed for the lack of international interest and a low level of commitment.

the UN Charter and take precedence over a member nation's local authority. Nevertheless, the Security Council, in clear abrogation of Chapter VII, has somehow allowed the Tribunal to concede its superior authority in this matter by kowtowing to local pressure and failing to enforce arrest warrants. This has resulted in criminal indictments for genocide effectively going ignored and international justice being trounced in the process.

Id. at 504-06.

VIII. U.N. Effectiveness in Iraq Compared with its Ineffectiveness in the Former Yugoslavia

[75] I now turn to a comparison of the U.N ineffectiveness in Yugoslavia with the U.N.'s overall effectiveness in Iraq. The U.N. intervened in Iraq in two particular instances that are important for the purposes of this note.¹⁶⁵ The first was during the gulf war and the second was in the aftermath of the gulf war to stop the genocide of Iraqi Kurds.¹⁶⁵ During the Iran-Iraq war, which took place between the years of 1980 and 1988, Iraq terrorized Iran, largely over oil disputes. The international community reacted by implementing a military operation called "Desert Storm" with the central aim of forcing Iraq to withdraw from Kuwait. The international community under the supervision of the U.N. was successful in forcing this retreat and in 1991 with the passage of Resolution 687, which was authorized under Chapter VII of the U.N. Charter,¹⁶⁶ the international community required Iraq to destroy all weapons of mass destruction.¹⁶⁷

[76] Then the international community intervened again, shortly after the end of the war in order to stop Iraq from committing mass genocide of Iraqi Kurds, in violation of

¹⁶⁵ Ruth Wedgewood, *The Enforcement of Security Council Resolution 687: The Threat of Force v. Iraq's Weapons of Mass Destruction*, 92 A.J.I.L. 724, (1998). In Iraq weapons of mass destruction were created under the orders and supervision of the government of Sadaam Hussein. These weapons were to be utilized against civilians who opposed Hussein and any military opponents. *Id.* at 724-25.

¹⁶⁶ *Id.* Then the international community committed to continue the weapons inspections of Iraq every year after to ensure that Iraq was complying with Resolution 687. *Id.* at 725.

¹⁶⁷ *Id.* at 724.

international law.¹⁶⁸ This genocide was the result of Iraqi hatred of the ethnic Kurds and was done to rid Iraq of the Kurds.¹⁶⁹

[77] The international community was also successful in this intervention in Iraq and was able to stop the genocide. The West intervened almost immediately to provide food, medicine, and safe havens for the Kurds. The U.N. also passed resolution 688 which gave authorization for this humanitarian intervention, which was to be given under the protection of allied military forces.¹⁷⁰

[78] The reason these international acts were successful in Iraq is because of the quick and accurate recognition of the situation, a threat to the international security in the first instance and genocide in the other. This recognition was followed by the correct application of international law, and the implementation of effective strategic methods. Finally success can be attributed to the high level of interest in the international community.¹⁷¹

[79] In the first instance, Iraq's creation of weapons of mass destruction was seen as threat to the entire international community.¹⁷² The U.N. realized that it must act in the interests of collective security and to restore international peace to the region.¹⁷³ The

¹⁶⁸ *Id.* at 728.

¹⁶⁹ See Jon E. Fink, *From Peacekeeping to Peace Enforcement: The Blurring of the Mandate for the Use of Force in Maintaining International Peace and Security*, 19 MD. J. INT'L L. & TRADE 1 (1995).

¹⁷⁰ *Id.*

¹⁷¹ Wedgewood, *supra* note 165, at 727-28.

¹⁷² *Id.* at 725.

¹⁷³ *Id.* The use of force coincides with the understanding that compliance is central to renewed peace and security. *Id.* at 727.

international community was able to stop the weapons production and then decided to conduct inspections every year in order to enforce continued compliance.¹⁷⁴ Thus, due to correct assessment of the situation, the international community was able to correctly apply international law. Furthermore, the U.N. took effective military actions to first stop production and then to enforce the order.

[80] In the second instance, the U.N. quickly ascertained that the atrocities that were being committed against the Kurds were not random but a calculated attempt to rid Iraq of the entire Kurd population. The U.N. properly decided that the sovereignty of Iraq would have to be sacrificed in order stop the genocide. In addition, the U.N. not only created safe enclaves for the Kurds, but deployed a sufficient military force to effectively stop the genocide.

[81] Part of the reason for these successes was the high level of interest on behalf of the international community. First, the U.N. was concerned about the mass production of weapons because it directly effected the West.¹⁷⁵ In addition, the West was also concerned about maintaining a level of control on the large quantity of oil that is located in the area that was greatly needed by the West.¹⁷⁶ In addition, to the international

¹⁷⁴ *Id.* at 725.

¹⁷⁵ *Id.* at 727. The international community realized that without a unilateral commitment to enforce their goal, they would not be effective in stopping the weapons production. *Id.* “Multilateral action is often desirable for political reasons, to help build a lasting coalition against an aggressor state, and to avoid any dissenting voices within the legal community.” *Id.*

¹⁷⁶ Thomas A. Geraci, *War in the Gulf, 1990-1991: The Iraq-Kuwait Conflict and Its Implications*. By Majid Khadduri and Edmund Ghareeb , 93 A.J.I.L. 754 (1999) (book review). After World War II, the United States became the dominant foreign power in the gulf. The United States believed that this domination was necessary in order to ensure a steady flow of oil from the area. Even from the beginning of the Iran-Iraq war,

concerns of maintaining oil flow to the West, the West was also concerned about monitoring the actions of Sadaam Hussein.¹⁷⁷

[82] Therefore, the international community was successful in controlling the situation in Iraq, because, unlike the assessments in Yugoslavia or Rwanda, the Iraqi situation was accurately assessed. This accuracy resulted in the correct use of international law as permitted by the U.N. Charter. Finally, there were effective strategic measures implemented by the West and a high level of interest in curing the situation in Iraq that reinforced a multilateral commitment on the part of the U.N.

IX. Factors that Would have Led to a Successful Mission in Yugoslavia

[83] A successful mission in Yugoslavia required an accurate assessment of the genocide early, better strategies, and a commitment on behalf of the international community.¹⁷⁸ As stated previously, there was great reluctance to acknowledge the violence for what it was, genocide based on religious and ethnic hatred. A quick and accurate assessment of genocide is pertinent in order to put a stop to the violence before it consumes an entire nation as it did in the former Yugoslavia. This means that if the United Nations had properly balanced section 2(4), which stipulated the legal and illegal uses of force, with section 2(7), which asserts that the international community must generally respect the sovereignty of a nation, they would have had more success. A proper

the West focused on the importance of maintaining the flow of oil from the region. The West would not have been able to simply wait for an Arab solution as it did for a Yugoslav and Rwandan solution because the West had too much at stake. *Id.*

¹⁷⁷ Wedgewood, *supra* note 165, at 724.

¹⁷⁸ Cohen, *supra* note 112, at 23.

balancing of these provisions would have shown that although the sovereignty of the former Yugoslavia should generally be respected, collective security overrides that sovereignty when there is a threat to international peace and security.

[84] Next, the international community would have had more success if they had implemented more effective strategies. The most rational strategy would have been to arm the victims of the genocide instead of implementing an arms embargo.¹⁷⁹ The arms embargo in Croatia and Bosnia Herzegovina only weakened the victims and strengthened the Serbs who already had their weapons and were largely unaffected by the arms embargo.¹⁸⁰ If the victims had been armed, they most likely would have been able to stop, or at least slow down the Serb aggression.¹⁸¹

[85] Another more effective strategy would have been to offer military assistance prior to 1991. This would have deterred further Serb attacks because they would have known that they would not only be facing Muslim resistance, but a united resistance front.¹⁸²

[86] Finally, the U.N. would have been more successful if they had been more interested and if they could have reached a consensus regarding an intervention. A multilateral consensus to act would have outweighed the pressure to avoid interference.¹⁸³

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* This arms embargo was also a clear violation of a nation's right to self-defense in the case of violent aggression. *Id.*

¹⁸¹ *Id.* at 24.

¹⁸² *Id.* at 33. Prior to 1991 there was little military intervention and the European community's announcement that it would not get involved militarily escalated the Serb attacks because they knew that there would be little if any resistance or repercussions. *Id.*

¹⁸³ *Id.*

X. The Lesson of the Yugoslav Experience

[87] There are several lessons that the international community can benefit from by examining the failure in Yugoslavia. First, there needs to be a better understanding of religious and ethnic conflicts. The concepts of religion and ethnicity many times are actually one in the same and religion, as in the case of the Serbs and the Muslims, often defines one's ethnicity.¹⁸⁴ Then once a religious conflict is acknowledged, the history behind those religions must be examined in order to understand the underlying hostility between those religious groups. In this case the underlying hostility was centuries of oppression of the Serbs by the Muslims.¹⁸⁵ Thus, what may have appeared to be pure Serb aggression to gain territory was actually aggression aimed at creating a "Greater Serbia," one that was free of any Muslim inhabitants. Genocide became the most effective way to achieve a "Greater Serbia" and get rid of all Muslims.

[88] The next lesson that should be gained by this examination is to better analyze the appropriate use of force under the U.N. Charter. Although the U.N. Charter strictly prohibits interference on a nation's sovereignty, there are legal uses of force that must be implemented to secure international peace and security.¹⁸⁶ This collective security is to be utilized in the case of illegal aggression and in the case of genocide.¹⁸⁷ Intervention

¹⁸⁴ *Id.*

¹⁸⁵ *See supra* for a brief history of the oppression that the Serbs had suffered at the hands of the Muslims.

¹⁸⁶ *See supra*, explaining that the United Nations is authorized to utilize a measure referred to as collective security to protect a member state from illegal aggression and hostility.

¹⁸⁷ *See* U.N. CHARTER art. 55 & 56. (The Universal Declaration of Human Rights, and The Convention Against Genocide.)

should not only be utilized when convenient or when there is an overwhelming interest for the West, as was the case in Iraq.¹⁸⁸ The members of the United Nations have assumed the responsibility of protecting the member states from exactly the type of occurrences that took place in the former Yugoslavia. The international community must fulfill these obligations at all times to the best of their abilities.

[89] Finally, once the U.N. decides to intervene, it should do so in full force. This will limit the number of atrocities and control the conflict in an effective manner. By only deploying a minimum number of troops with out clear initiatives, it is impossible for the U.N. to have any success in achieving their goals. In addition, employing a strong military presence will also better ensure the safety of those troops abroad.

XI. Conclusion

[90] The U.N.'s failure in Yugoslavia was the result of a poor understanding of the religious conflict underlying the violence, a weak application of international law as stipulated by the U.N. Charter, poor military strategies, and finally the overall lack of interest and commitment on behalf of the international community. The U.N. would benefit greatly by examining situations like the one in Yugoslavia in order to be successful in future international conflicts.

[91] However, at present the following quote accurately sums up the U.N.'s performance in Yugoslavia and unless the U.N. changes its policy, it will probably represent future performances of the U.N.

¹⁸⁸ *See supra.*

While Yugoslavs are responsible for creating the conflict, international attempts to halt the fighting have been farcical. Indeed, even had the great powers set out to manufacture a state of permanent turmoil in the Balkans, it is unlikely that they could have created a greater quagmire. Yet the level of failure should not come as a surprise, since at no stage has there been any attempt to deal with the Yugoslav wars on their own merits or to address the causes of conflict. Instead, the running has been made by statesmen who had made up their minds in advance that the order of the day was damage limitation, not conflict resolution.¹⁸⁹

¹⁸⁹ BENNETT, *supra* note 1, at 236.